Environmental Defenders Office

4 December 2023

Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney
NSW 2000

By email: Mel.Smith@asic.gov.au

Dear Mel

RE: Super funds – request for further guidance

1. We write to request that ASIC issue guidance to the superannuation industry in relation to the following:

   (a) standards for credible, science-based net zero commitments against which super funds can interrogate net zero commitments of investee companies;

   (b) steps that the superannuation industry should take to avoid engaging in greenwashing in relation to "active ownership" claims; and

   (c) clarification that adherence to a net zero commitment does not necessarily entail a breach of trustees' duties to act in the best financial interests of their beneficiaries.

Background

2. The superannuation industry has approximately $3.5 trillion under management.[1] Given the size of their holdings, super funds have considerable influence over the companies in which they invest and play a critical role in the transition to a low carbon economy. As demand increases for the industry to take stronger action on climate, some funds are responding by making commitments to achieve net zero portfolio emissions by 2050, consistent with the goals of the Paris Agreement. Recent research conducted by the EDO found such commitments to be widespread across the industry (**Super fund Research**).

   The Super fund Research is contained in **Annexure A**.

3. We consider that the prevalence of net zero commitments carries the increased risk of greenwashing in at least two respects: <u>*first*</u> where a super fund's net zero commitment is not aligned with the goals of the Paris Agreement due to a failure to properly interrogate net zero commitments made by investee companies; and <u>*secondly*</u>, where a super fund's net zero commitment is coupled with claims that "active ownership" is a means by which those net zero commitments will be achieved in circumstances where there is no evidence of engagement with investee companies and where voting practices are inconsistent with those claims.

[1] Association of Superfunds Australia, *Superannuation Statistics* (September 2023).

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4. Our concerns are heightened in respect of both issues by the continued investment by super funds in companies involved in the exploration and production of fossil fuels whose net zero commitments do not align with the goals of the Paris Agreement.

5. We note that we do <u>not</u> make any allegations of greenwashing in respect of any particular super fund; the following consists of overarching themes we have observed through our engagement with super funds, and across the industry more generally.

Assessing credible net zero plans

6. The key climate goal of the Paris Agreement is to limit global warming to 1.5°C above pre-industrial levels. Staying within an increase of 1.5°C requires global emissions to be net zero by 2050 at the latest.[2] The term "net zero" is derived from Article 4.1 of the Paris Agreement, which requires "a state by which the greenhouse gases going into the atmosphere are reduced as close to zero as possible and any residual emissions are balanced by permanent removals from the atmosphere by 2030". Meeting the climate goals requires the rapid reduction of the use of fossil fuels and that significant amounts of fossil fuel reserves remain in the ground.

7. In that regard, we note the Intergovernmental Panel on Climate Change AR6 Synthesis Report found that projected CO2 emissions from <u>existing</u> fossil fuel infrastructure already exceeds the remaining carbon budget required to stay within 1.5°C of warming (which does not take into account emissions from new fossil fuel projects).[3] As such, any super funds assessing company transition plans should take this into account.

8. Coinciding with the goals of the Paris Agreement is an increasing number of emissions reductions targets announced by companies which claim to be Paris aligned. Indeed, as at 31 March 2023, 61% of ASX200 companies had net zero emissions targets, which accounts for approximately 80% of ASX200's collective market capitalization.[4] A significant amount of the EDO's work relates to the analysis of company transition plans. We are concerned by the prevalence of transition plans that are not aligned with Australia's international and statutory climate-related commitments, and the scientific consensus on what is required to achieve those commitments.

9. Accordingly, we are concerned that super funds with net zero commitments may be misleading consumers where they commit to align their portfolios with the Paris Agreement without properly interrogating the net zero commitments of the companies in which they invest. We consider that the crux of the issue lies in there being no guidance setting out standards as to what a credible net zero plan requires against which super funds can assess the net zero commitments of their investee companies.

<u>Net zero standards</u>

10. There is broad scientific consensus on what is required for an entity's net zero plan to be Paris aligned. In that regard, the United Nations High Level Expert Group on the Net Zero Emission Commitments of non-State Entities (**UN Expert Group Report**)[5] recently provided guidance as to

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[2] IPCC, 2018: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, Strengthening and implementing a global response*, p358.

[3] IPCC, 2023: *Climate Change 2023 Synthesis Report: Summary for Policymakers*, p19

[4] Australian Council of Superannuation Investors, *Promises, pathways & performance: Climate change disclosure in the ASX200* (August 2023) p 5.

[5] United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (Report, November 2022).

the requirements of a credible net zero plan and the Science Based Targets Initiative (**SBTi**) set a common standard for corporate net zero targets to be aligned with the Paris Agreement's 1.5°C temperature goal.[6]

11. The UN Expert Group Report has provided ten recommendations to create a universal definition of net zero and standardise net zero claims (**UN Standards**). According to the Working Group, "net zero" targets should:[7]

    (a) include interim targets (including targets for 2025, 2030 and 2035) and plans to achieve net zero that are consistent with the Intergovernmental Panel on Climate Change (**IPCC**), or the International Energy Agency's (**IEA**) modelled pathways that limit warming to 1.5°C with no or limited overshoot, and with global emissions declining at least 50% by 2030;

    (b) include Scope 1, 2 and 3 emissions across the entities' entire value chain;

    (c) account for all greenhouse gases (i.e., not just carbon dioxide);

    (d) include specific targets to end the use of and/or support for fossil fuels in line with the IPCC and IEA modelled pathways that limit warming to 1.5°C, including no new fossil fuel projects or the expansion of existing projects;

    (e) prioritise urgent and deep emissions reductions; and

    (f) only use carbon credits to offset residual emissions, and not count offsets towards interim emissions reductions required by a net zero pathway.

12. This is broadly aligned with the SBTi's Corporate Net Zero Standard,[8] which is accompanied by sector-specific guidance for all sectors except oil and gas.[9]

13. We note the IEA recently published an updated World Energy Outlook 2023, which projects that fossil fuel demand peaks by 2030 in all three transition scenarios (being the Stated Policies Scenario (**STEPS**), the Announced Pledges Scenario (**APS**) and the Net Zero Emissions by 2050 Scenario (**NZE**)):[10]

> *Accelerated scale up of the clean energy transition means there is very little runway left for growth in fossil fuels: for the first time, demand for oil, natural gas and coal each peak in the three World Energy Outlook-2023 scenarios before 2030. The share of fossil fuels in primary energy demand declines from 80% over the last two decades to 73% in the STEPS by 2030, 69% in the APS and 62% in the NZE Scenario* .

<u>Request for further guidance</u>

14. In light of the above, we request that ASIC issues guidance as to the requirements of a credible net zero plan based on the UN Standards.

Engagement with super funds

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[6] Science Based Targets initiative, *SBTi Corporate Net-Zero Standard* (April 2023).
[7] United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (Report, November 2022).
[8] Science Based Targets initiative, *SBTi Corporate Net-Zero Standard* (April 2023).
[9] Science Based Targets initiative, *Sector Guidance* (Website, accessed 15 November 2023) <https://sciencebasedtargets.org/sectors>.
[10] IEA, World Energy Outlook 2023, Pathways for the energy mix (Website, accessed 22 November 2023) <Pathways for the energy mix – World Energy Outlook 2023 – Analysis - IEA>.

15. Between August 2022 and September 2023, the EDO wrote to HESTA, UniSuper and Hostplus on behalf of their respective members raising a number of concerns, including that representations to the effect that the super funds commit to transition their portfolios to achieve net zero portfolio emissions by 2050, in line with the goals of the Paris Agreement, may amount to misleading or deceptive conduct in contravention of s 1041H of the *Corporations Act 2001* (Cth) and/or ss 12DA, 12DB(1)(a) and (e) of the *Australian Securities and Investment Commission Act 2001* (Cth) (**Correspondence**).

    The Correspondence is contained in **Annexure B**.

16. The basis of our allegations in relation to HESTA's, UniSuper's and Hostplus' net zero representations was that the representations were inconsistent with their investment in companies involved in the exploration and production of fossil fuels whose net zero targets and plans are not aligned with the goals of the Paris Agreement, including Woodside Energy Ltd (**Woodside**) and Santos Ltd (**Santos**), according to the UN Standards.

17. At the time of the Correspondence, each of the super funds held shares in Woodside and Santos. The Correspondence interrogated Woodside's and Santos' net zero plans for consistency with the UN Standards and noted the following:[11]

    (a) neither Woodside's nor Santos' net zero targets include Scope 3 emissions;

    (b) Woodside's net zero plan is reliant on offsets to reduce emissions;

    (c) both Woodside and Santos plan to significantly expand their oil and gas operations; and

    (d) neither Woodside nor Santos prioritise urgent and deep emissions reductions.

18. In relation to both companies' expansion plans, an investor briefing published by Market Forces found that Woodside plans to increase production by 45% by 2027 and Santos 60% by 2030, which would see an increase in emissions at both companies by 40% to those dates respectively.[12]

19. Accordingly, the EDO considers that neither Woodside's nor Santos' net zero plans are aligned with the Paris Agreement when compared against the UN Standards.

20. Four overarching themes that emerged, either individually or collectively, from the super funds' responses to the allegations made in the Correspondence, and that we have observed across the industry more broadly, are categorised as follows:

    (a) Super funds' "active ownership" approach to investment is a means by which their own climate commitments can be achieved (**Active Ownership Response**);

    (b) membership of the UN Principles of Responsible Investment (PRI) is used as evidence of a super fund's "active ownership" approach in relation to their climate commitments (**PRI Response**);[13]

    (c) rigid adherence by a super fund to its own climate commitments may involve a breach of trustees' statutory and fiduciary duties (Breach of Duties Response); and

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[11] See Correspondence for detailed analysis.

[12] Market Forces, *Investor Briefing* (10 March 2023) (Website, accessed 4 November 2023: [2023-03 STO & WDS investor briefing (marketforces.org.au)]).

[13] United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (Report, November 2022).

(d) the proper understanding of a super fund's net zero commitment is that the totality of its portfolio is aligned to the Paris Agreement (**Whole Portfolio Response**).

(together, **the Responses**)

21. We consider that the Responses indicate that super funds are at risk of greenwashing in respect of their net zero commitments, including in circumstances where claims of "active ownership" are not supported by evidence of effective engagement and/or consistent voting practices.

Active Ownership Response

22. Within the context of climate-related statements, "active ownership" refers to the position that the most compelling way for investors to effect change on climate-related issues is to hold shares in companies in order to exert influence over their net zero strategies by active engagement and by voting at company annual general meetings. Active ownership is said to be preferable to divestment because it ensures that the climate-conscious funds maintain a "seat at the table" to influence investee companies' climate action.

23. Accordingly, active ownership provides a justification for super funds' continued investments in fossil fuel companies on the basis that it is a means by which their *own* climate commitments can be achieved. However, where a fund claims to take an active ownership approach for the purpose of meeting its own climate commitments, there is a risk of greenwashing where there is no evidence of effective engagement in influencing investee companies to meet *their* climate commitments and/or the fund's voting practices are inconsistent with their *own* net zero commitments.

24. We note that ASIC is aware of the risk of greenwashing and has expressed its concerns relation to claims of active ownership. In that regard, we note Commissioner Danielle Press's comments, reported in the Australian Financial Review (**AFR**) on 15 March 2023 as follows:[14]

> *[ASIC is] expanding its scrutiny of whether super funds' direct investments involved greenwashing to whether its interactions with companies also aligned with promises they made members.*
>
> *"If a fund said they can influence a company by having a seat at the table, but their voting records showed they weren't voting at all, for example, then there's a mismatch and that starts to become a misleading statement."*
>
> *She said that funds needed to be able to back up such claims with evidence of how they were wielding that influence and whether it was effective*

25. We also note Deputy Chair Sarah Court's comments reported in the AFR on 12 September 2023:[15]

> *Funds promoting active ownership strategies need to disclose to members their strategy and approach relating to responsible investment issues in their portfolios…*
>
> *In circumstances where a fund makes statements that it is electing to invest in fossil fuel companies for the purposes of using its seat at the table to influence an environmental transition or other ESG decision of the company, and the evidence or the fund's voting record suggests this not to have been the case…then this could amount to greenwashing under the current laws.*

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[14] Australian Financial Review, *Super funds failing to engage with fossil fuel companies on net zero* (15 March 2023) available at: Market Forces finds that AustralianSuper, Australian Retirement Trust, Aware Super, AMP and Commonwealth Super Corporation are failing to engage with fossil fuel companies on net zero (afr.com).

[15] Australian Financial Review, *ASIC puts super funds on notice about active investment greenwashing* (12 September 2023) available at: ASIC warns that superannuation funds' active investment could be greenwashing risk; Market Forces report targets Santos and Woodside investments (afr.com).

26. We are concerned that, where a super fund commits to transition its portfolio to net zero by 2050, a risk of greenwashing arises where its statements in relation to active ownership are inconsistent with engagement and voting practices.

27. In that regard, we note a recent report published by Market Forces "Stewards of Climate Disaster: How Australia's biggest super funds are failing to deliver on climate claims through 'active ownership'" which found that five of Australia's largest super funds – AustralianSuper, Commonwealth Super Corp, Australian Retirement Trust, Aware Super and AMP - have failed to adopt effective active ownership practices according to principles set by major responsible investment initiatives, including the PRI (**Climate Stewardship Report**).[16]

28. As such, we consider that managed investment or superannuation funds would benefit from further guidance as to how representations in relation to active ownership may constitute greenwashing and what they should do to avoid it.

Engagement

29. At the relevant time, HESTA, UniSuper and Hostplus made representations in relation to their investments in Woodside and Santos that they undertake active engagement to ensure that those companies' net zero plans are Paris aligned.

30. We note that Hostplus in its Responsible Investment Policy links its engagement strategy with achievement of its *own* climate commitments as follows:[17]

> *…the Fund has made a commitment to transition the investment portfolio to net zero carbon emissions by 2050 and aims to achieve this outcome through engagement with external investment managers and portfolio companies…*

31. In terms of what an effective engagement strategy should consist of, Market Forces' Climate Stewardship Report distilled five requirements of effective engagement practices identified by major responsible investment initiatives to which funds typically refer as evidence of adherence to their own climate commitments, including the PRI, as follows (**Effective Engagement Requirements**):

    (a) investors identify and prioritise high climate-exposed companies or sectors targeted for engagement;

    (b) investors set time-bound engagement objectives for priority companies;

    (c) investors report on the progress towards priority company objectives;

    (d) investors identify consequences or escalation measures for companies failing to meet objectives; and

    (e) investors identify divestment and/or exclusions as the ultimate escalation measure for companies failing to meet their objectives.

32. In its analysis of the engagement practices of five of Australia's largest super funds, which measured their engagement practices against the Effective Engagement Requirements, the Climate Stewardship Report found that there was an almost complete failure by any of those super funds to set, and implement, an effective engagement strategy.

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[16] Market Forces, *Stewards of Climate Disaster: How Australia's biggest super funds are failing to deliver on climate claims through 'active ownership* (Website, accessed 22 November 2023) <Stewards of Climate Disaster - Market Forces>.

[17] Hostplus, *Responsible Investment Policy*, p 5 (Website, accessed 22 November 2023) <Responsible-Investment-Policy (2).pdf>

33. We consider that, where a super fund claims to use its position to engage with investee companies to influence those companies' net zero strategies, there should be evidence that engagement is effective. In the case of emissions-intensive fossil fuel companies such as Woodside and Santos, we consider that effective engagement should result *at least* in a commitment by those companies to comply with the UN Standards.

34. In relation to divestment, where a super fund represents that divestment will be considered if engagement is unsuccessful, we consider that it should be transparent as to what, precisely, constitutes "unsuccessful" (or words to that effect). This *at least* requires transparency in relation to the outcomes of engagement and a clear divestment policy.

35. Accordingly, if there is no evidence of effective engagement, then we consider that super funds must *either* refrain from representing that they engage with investee companies in order to exert influence over those companies' net zero strategies *or* divest their interest in those companies.

36. We consider that there is a risk of greenwashing if super funds maintain claims that engagement is an effective means to influence investee companies whilst those same investee companies continue to pursue a fossil fuel expansion strategy that is not consistent with achieving net zero.

37. Similarly, there is a risk of greenwashing if super funds represent that they will consider divestment where engagement is ineffective, but there is no evidence that they have, in fact considered divestment and there is no transparency around their criteria for divestment.

38. Hostplus' representations regarding engagement and divestment illustrate these issues. On 15 March 2022, Hostplus published a media statement to its webpage "Hostplus commits to transition to net zero emissions by 2050".[18] Incidentally, we note that, 19 months after publication, Hostplus has not published a plan setting out how it will meet its commitment despite ASIC Information Sheet 271 recommending that, to avoid greenwashing, funds should explain how stated sustainability targets will be measured and achieved.[19]

39. In relation to engagement Hostplus, in the same media statement, stated that:[20]

> *As one of Australia's largest industry superannuation funds, Mr Elia said Hostplus had an important role in the global transition to net zero emissions, being a major shareholder in a number of local and international assets.*
>
> *"Hostplus is in a position to be able to engage with the companies we are invested in, and we are keen to set strong expectations around adopted of lower-emission technologies, effective governance frameworks and more transparent corporate reporting as we strove to deliver on our commitment to reach net zero emissions by 2050."*

40. In relation to divestment, Hostplus published on its webpage "Our Responsible Investment Approach" the following statement:[21]

> *We believe Hostplus members are best served by an orderly transition to a low-carbon economy. Rather than divesting or selling holdings in particular sectors, Hostplus uses its*

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[18] Hostplus, *Hostplus commits to transition to net zero emissions by 2050* (Website, accessed 22 November 2023) <Hostplus commits to transition to net zero emissions by 2050 >.
[19] ASIC, Information Sheet 271 *How to avoid greenwashing when offering or promoting sustainability-related products (*June 2022).
[20] Hostplus, *Hostplus commits to transition to net zero emissions by 2050* (Website, accessed 22 November 2023) <Hostplus commits to transition to net zero emissions by 2050 >.
[21] Hostplus, *Our responsible investment approach*, (Website, accessed 22 November 2023) <Our responsible investment approach (hostplus.com.au)>.

influence as a shareholder to create change within companies by encouraging and supporting this orderly transition and by investing in climate solutions. However, divestment may be considered where engagement is unsuccessful and target companies have been unwilling or unable to adapt to meet emissions reductions expectations.

41. We note that Hostplus does not disclose the criteria it applies to determine which companies to target or the point at which it deems engagement with its target companies to be so unsuccessful as to trigger consideration of divestment. In that regard, we further note that Hostplus continues to invest in Santos and Woodside despite neither company appearing willing or able to "meet emissions reductions expectations" of Hostplus based on Hostplus' net zero commitments.

NGS Super - divestment

42. NGS Super provides an example of a super fund with a clear and transparent divestment policy which it actioned in relation to Woodside and Santos as part of its commitment to create a "carbon neutral" portfolio by 2030.[22]

43. In 2022, NGS Super divested $191 million from a number of oil and gas companies including Woodside and Santos.[23] This followed a change in its exclusion policy which extended exclusions to companies that generate more than 30% of revenue from thermal coal to companies in the oil and gas production and exploration sector.[24]

44. In relation to engagement, NGS Super states on its website that it engages with companies which have high emissions in order to influence those companies to:[25]

- *Set science-based targets and commit to meaningful scope 1,2 and 3 emissions reductions*
- *Assess and challenge the plans they have in place to meet the science-based targets*
- *Ensure they have contemplated appropriate adjustments to their business model as we head towards the low-carbon economy.*

45. When it "becomes clear" that a company will not transition to a low carbon economy, NGS Super considers divestment. It also states that, where a company makes improvements according to the above factors, then it may take them off the exclusion list.[26] As such, to that extent that NGS Super engaged with Woodside and Santos, it determined that engagement was ineffective and divested in line with its divestment policy.

Proxy voting

46. The second aspect of active ownership is proxy voting. We consider that super funds that justify holding positions in fossil fuel companies on the basis of active ownership should ensure that their voting practices are consistent with those claims. Whilst we understand that not all shareholder proposals warrant support, we consider that, where a super fund commits to transitioning its portfolio to net zero emissions by 2050, then it should vote in support of

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[22] NGS Super, *2030 super target: a carbon neutral investment portfolio* (Website, accessed 22 November 2023) <2030 Target: Carbon Neutral Investment Portfolio | NGS Super>.
[23] NGS Super, Media Release, (Website, accessed 22 November 2023) <divestment-media-release.pdf (ngssuper.com.au)>.
[24] NGS Super, Responsible Investment Policy, (September 2023).
[25] NGS Super, *NGS Super divests from Woodside, Santos and more* (Website, accessed 22 November 2023) <NGS Divests from Woodside, Santos and More | NGS Super>.
[26] NGS Super, *NGS Super divests from Woodside, Santos and more* (Website, accessed 22 November 2023) <NGS Divests from Woodside, Santos and More | NGS Super>.

proposals aimed at strengthening a company's climate action. We consider that voting against such proposals carries a risk of greenwashing.

47. In that regard, Market Forces recently published analysis of the voting activity of Australia's 30 largest super funds at Woodside's and Santos' 2022 and 2023 AGMs (**Voting Analysis**).[27] The voting practices of AustralianSuper and Hostplus illustrate the issues identified above in relation to voting.

AustralianSuper

48. AustralianSuper voted *with* management on every item at Woodside's and Santos' respective 2023 AGMs, after voting against Woodside's Climate Plan in 2022, despite making the following statements on its website:[28]

> *We focus our direct stewardship efforts on the major contributors to emissions within these portfolios. We are asking that they develop credible plans to achieve their net zero goals.*
>
> *…*
>
> *Through our ESG and Stewardship program we…[V]ote on climate change related resolutions, supporting those we believe will create or enhance investment value and/or will result in improved disclosures on climate change.*

49. We consider that AustralianSuper's voting record is inconsistent with its claim to support shareholder proposals resulting in improved climate disclosures. In particular, we note that AustralianSuper voted *against* Woodside's climate plan in 2022 but *with* the board on every Item in 2023, despite Woodside failing to increase its climate ambition and instead, reaching Final Investment Decision on the Trion oil project in Mexico.[29] As such, we are concerned that AustralianSuper has demonstrated no valid reason for supporting the board in 2023 when it did not in 2022, given that Woodside has not materially changed its business strategy.

Hostplus

50. In relation to Hostplus, we note that it voted *with* management on every item at Woodside's and Santos' 2022 and 2023 AGMs. This includes voting *for* Woodside's climate plan, which did not include Paris aligned targets and against which 48.97% of shareholders voted at the 2022 AGM.[30] Hostplus voted *against* a shareholder proposal at the 2023 AGM which requested information that demonstrates how Woodside's capital allocation to oil and gas assets will align with a net zero by 2050 scenario, despite making the following statement on its website:[31]

> *When company oversight or practices are insufficient, that prompts us to take further action, which may include voting for climate-related shareholder resolutions.*

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[27]Market Forces Super fund support for Woodside and Santos' climate-wrecking expansion plans (Website, accessed 22 November 2023) <Super fund support for Woodside and Santos' climate-wrecking expansion plans - Market Forces>.

[28] AustralianSuper, available at: Climate Change & Net Zero Carbon Emissions | AustralianSuper;

[29] Woodside, Trion (Website, accessed 4 December 2023) <Trion - Woodside Energy>

[30] Australasian Centre for Corporate Responsibility, Woodside Energy Group Ltd, (Website, accesses 22 November 2023) <Woodside Energy Group Ltd - ACCR>.

[31] Hostplus, (Website, accessed 22 November 2023) <Climate change (hostplus.com.au)>.

51. In addition to the above climate-related shareholder proposals, we note that Item 6(b) of Woodside's 2023 AGM[32] and Item 6(b) of Santos' 2023 AGM[33] - "capital protection" - was as follows:

> *Shareholders note the company's support for the climate goals of the Paris Agreement along with the publication of the International Energy Agency's Net Zero Emissions by 2050 Scenario and the Climate Action 100+ company assessment. Shareholders therefore request the company disclose, in subsequent annual reporting, information that demonstrates how the company's 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…*

52. We consider that Hostplus' voting record is inconsistent with its claim to consider voting for climate proposals when company oversight or practices are insufficient. This inconsistency is particularly evident in relation to Hostplus' vote for the re-election of Woodside directors, given the governance concerns expressed by the 49% shareholder vote against Woodside's climate plan.

<u>CareSuper</u>

53. CareSuper provides a further example of a super fund that has committed to achieving net zero emissions in its investment portfolio by 2050 but provides no evidence of effective engagement and whose voting practices are inconsistent.[34]

54. In relation to engagement, CareSuper made the following claim in a document titled "Getting to net zero by 2050":[35]

> *As a significant investor with $20 billion in assets, CareSuper seeks to constructively engage with the companies in which we invest. Some of these companies generate more emissions than others. As part of our Net Zero Roadmap, we're prioritising our engagement with companies in our Australian shares portfolio that materially contribute to our carbon footprint. Our aim is to influence these companies to develop credible net zero plans, set science-based targets aligned to the Paris Agreement, and then transparently report on their progress.*
>
> …
>
> *By engaging with our investee companies, we can use our 'seat at the table' to help drive sustainable behavioural change in a way that is consistent with reducing real-world emissions.*

55. CareSuper claims to target the "top 10 emitting companies across the portfolio" for engagement but does not disclose whether that is calculated by the proportion of shares it holds or the overall emissions of the target companies.[36] In any event, the criteria for target companies is unclear.

56. In relation to divestment, CareSuper's policy is that engagement is more likely to lead to a decarbonised economy but that:[37]

> *[I]f a company or asset doesn't have a solid strategy to transition to the low carbon economy, then we can consider divesting from these investments over time.*

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[32] Woodside Energy, Notice of Annual General Meeting 2023 (20 March 2020).
[33] Santos Ltd, Notice of Annual General Meeting (6 April 2023).
[34] CareSuper, *Getting to net zero by 2050*, available at: cs_netzero2050_vfinal-20230317.pdf (caresuper.com.au)
[35] CareSuper, *Getting to net zero by 2050*, p.10.
[36] CareSuper, *Getting to net zero by 2050*, p10.
[37] CareSuper, *Getting to net zero by 2050*, p10.

57. We note that lack of "solid strategy" is the sole criterion for divestment but that there is no clarity around what a "solid strategy" consists of. Taken at its highest, "solid strategy" may be taken to refer to a credible pathway to achieve net zero by 2050. Given that neither Woodside nor Santos have credible pathways according to the UN Standards, and that CareSuper invests in both, we are concerned that the lack of transparency on divestment may carry the risk of greenwashing.

58. In relation to voting on climate action, CareSuper states:[38]

> *Sometimes engagement is not able to achieve the outcomes that we expect from our investee companies. As an owner of shares in many different companies, we also have the ability to influence how they're managed through proxy voting…By exercising our voting rights, we can promote stronger action on climate change whilst always protecting our members' long-term financial interests.*

59. We further note that on its Climate Change Position Statement webpage, CareSuper states:[39]

> *Under our Proxy Voting Policy, we support reasonable proposals requesting companies to disclose their approaches to managing climate change and reducing greenhouse gas emissions.*

60. In relation to its voting practices, we note that CareSuper voted *with* the Board on every shareholder proposal at Santos' 2023 AGM. At the 2023 Woodside AGM, it recorded a *split* vote on Woodside's climate plan, it voted *for* the re-election of two Board members and voted *against* the capital protection resolution. With respect to the capital protection resolution, we consider that its aim directly corresponds to CareSuper's Proxy Voting Policy given that this proposal would reasonably enhance Woodside's disclosure of its management of climate change and reducing emissions.

61. As such, we consider that CareSuper's engagement and voting practices actions are potentially inconsistent with its relevant statements and this illustrates our concerns in relation to the Active Ownership Response.

62. We consider the issues raised above are compounded by a lack of transparency around voting policies in relation to climate-related resolutions. In that regard, we note that Hostplus does not indicate what constitutes "insufficient company oversight or practices" in relation to climate action such that a vote for climate-related resolutions would be considered. That it voted *for* the re-election of Woodside's board notwithstanding its oversight of Woodside's climate plan and its rejection by 49% of shareholders, suggests that the threshold of insufficiency is high, although confirmation is not possible precisely due to the lack of transparency. Similarly, CareSuper does not identify what a "reasonable proposal" is; again, that it did not support the capital protection resolution at either Woodside's or Santos' AGM suggest that the threshold of reasonableness is high. As such, we consider that greater transparency around super funds' voting policy in relation to climate-related proposals is required.

63. In relation to the use of proxy advisory services we consider that, where the super fund engaged a proxy advisory service to provide a report recommending voting on company resolutions, a greenwashing risk could arise were the super fund adopted recommendations not aligned with its climate commitments and/or policy on voting in relation to climate-related proposals.

<u>Request for further guidance</u>

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[38] CareSuper, *Getting to net zero by 2050*, p10.

[39] CareSuper, *Climate Change Position Statement*, available at: [Climate Change Position Statement | CareSuper.]

64. We note that ASIC Information Sheet 271 "How to avoid greenwashing when offering or promoting sustainability-related products" recommends the following in relation to managed investment or super funds:[40]

> *If you have adopted a stewardship investment approach to achieve your sustainability-related targets, you should:*
>
> - *explain to investors the rationale for engaging with particular companies to influence changes in their corporate behaviour*
> - *provide regular updates on your progress with those companies, including stewardship activities and outcomes, such as voting and engagement activities.*

65. To the extent that the above correlates with the Effective Engagement Requirements, we note that *none* of the five super funds in the Climate Stewardship Report have adopted those elements. In relation to super funds providing updates on progress made with companies in relation to their sustainability related targets, including on voting activities, we note the inconsistent voting practices identified at [43]-[49] above and that a number of super funds analysed in the Voting Analysis did not disclose how they voted in relation to Woodside and Santos.

66. In light of the above, we consider that there is a need for ASIC to provide super funds with further clarity on the requirements of an effective and transparent engagement strategy, including transparency in relation to divestment policies. In relation to voting, we consider there is a need for ASIC to provide super funds with guidance as to claims they make in relation to their voting policies and/or practices, in particular that they must not be inconsistent with claims made in relation to their own climate commitments. As such, we request that ASIC issue updated guidance to ensure that super funds are clear on how they should demonstrate effective climate-related active ownership practices to justify their broad climate-related statements.

PRI Response

67. We also observe a trend across the superannuation industry for super funds point to their membership of the PRI as evidence of their stated climate credentials, including taking an active ownership approach to support their net zero commitments.

68. As discussed above at [43]-[49], super funds typically justify their investment in fossil fuel companies by claiming to take an active ownership approach whilst consistently voting *against* shareholder proposals for stronger climate action. Furthermore, where engaging with those companies is identified as a means to influence stronger climate action, there is little evidence that engagement is effective. As such, we are concerned that super funds may be using the fact of their signatory to the PRI as a vehicle for greenwashing.

69. AustralianSuper,[41] Hostplus[42] and CareSuper[43] all cite their membership of the PRI as evidence of their stated climate credentials.

<u>Relevant principles</u>

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[40] ASIC, Information Sheet 271 *"How to avoid greenwashing when offering or promoting sustainability-related products* (June 2022).
[41] AustralianSuper, (Website, accessed 22 November 2023) <ESG Management & Responsible Investing | AustralianSuper>
[42] Hostplus, (Website, accessed 22 November 2023) <Our responsible investment approach (hostplus.com.au) >
[43] CareSuper, (Website, accessed 22 November 2023) <Climate Change Position Statement | CareSuper>

70. The PRI is a UN-supported investor initiative to promote sustainable investment through the adoption and implementation of six responsible investment principles.

71. Active engagement is codified as the second of the six PRI Principles. Principle 2 states that "We will be active owners and incorporate ESG principles into our ownership policies and practices."

72. To implement Principle 2, the PRI recommends actions including filing shareholder resolutions consistent with long-term ESG considerations and engaging with companies on ESG issues.

73. The PRI itself is concerned over an inadequate implementation of Principle 2 and has commenced a program to encourage higher standards of active ownership.[44]

74. EDO is concerned by the apparent lack of implementation of Principle 2 by Australian super funds in circumstances where super funds highlight the fact of their signatory to the UN PRI to support their climate commitments. This further demonstrates the need for guidance from ASIC.

Breach of Duties Response

75. A theme that emerged from the Correspondence is trustees' obligation to act in the best financial interests of members.[45] In that regard, some super funds pointed to their continued investment in Santos and Woodside as evidence of trustees' discharge of that obligation; another stated that adherence to its own climate commitments according to UN Standards would entail a breach of trustee obligations because it would force an inflexible approach to investment.

76. We understand that trustees must act in the best financial interests of members; however, we do not consider that clarity and transparency in relation to a super fund's engagement policy and practices, including on divestment, or transparency on its climate-related voting policy and practices necessarily entails a breach of trustees' obligations. To the contrary, we consider that effective engagement and voting on climate-related issues is required to mitigate the increasing climate-related risks associated with investing in fossil fuel companies which do not have credible net zero plans in circumstances where the IEA projects that demand for fossil fuels peaks by 2030.

77. We further note AustralianSuper's vote against the proposed acquisition of Origin Energy by Brookfield and EIG, which committed to invest $20-$30 billion in renewable energy, on account of index benchmarks introduced by the Your Future, Your Super Performance Test in 2021. According to a recent op ed in the AFR authored by Climate Energy Finance, the benchmarks are aligned to Australia being a major fossil fuel producer which allowed AustralianSuper to rely on the superannuation "sole purpose" test to maximise near-term profits to justify its opposition to the acquisition.[46] According to the op ed, the benchmarks should be adjusted to prioritise low-carbon investments.

<u>NGS Super</u>

78. We note NGS Super's statement in relation to its divestment from Woodside and Santos (and other oil and gas companies) in 2022 which addresses whether the divestments were inconsistent with trustees' duties:[47]

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[44] UNPRI, (Website, accessed 22 November 2023) <https://www.unpri.org/pri-blog/stewardship-is-failing-us-yet-remains-our-best-hope/5126.article>

[45] *Superannuation Industry (Supervision) Act 1993* (Cth): s 52(2)(c).

[46] AFR, *Keating attack on Origin bid ties big super to petrostate of old* (3 December 2023) (Website, accessed 4 December 2023) <Brookfield Origin takeover: Keating's attack on Origin bid ties big super to Australia's petrostate of old (afr.com)>

[47] NGS Super, *Annual Report 2021-22*, p 4.

It is important for members to understand that our focus on sustainability does not come at the expense of investment returns. We will always act in the best financial interests of members and work to deliver the best possible returns. But when our research shows that continued investment in companies, managers and sectors that are not willing or able to transition to a low carbon economy poses a threat to future returns — we will make decisions to divest. The extensive research undertaken by our investment team supported the decision we made earlier this year to divest from companies involved in oil and gas exploration and production. This research also supported the decision to bring assets such as precious metals and commodities into the portfolio, contributing to offsetting the short-term opportunity costs presented by excluding oil and gas exploration and production companies. Further to this we have capitalised on opportunities to combat climate change through investments in infrastructure and private equity. The benefits of having a diversified portfolio means we can solve for sources of return in more than one sector.

79. As such, NGS Super provides an example of a super fund whose adherence to its own climate commitments does not entail a breach of trustees' duties and which does not consider that its trustees' duties require continued investment in oil and gas companies.

<u>Further guidance</u>

80. Given the concerns raised by super funds in relation to trustees' duties, we consider there is a need for clarification that active ownership does not necessarily entail a breach of those obligations. We consider that, where a super fund is concerned that acting consistently with its climate-related commitments claims entails breaching those obligations, then it should not make those claims at all. As such, we request that ASIC consider issuing clarification and/or guidance in relation to the Breach of Duties Response.

Whole Portfolio Response

81. A further trend that emerged from the correspondence is that a net zero commitment, properly understood, is in relation to the *totality* of the super fund's investments and/or portfolio and not in relation to individual investments contained within its portfolio.

82. As you are aware, in determining whether a person has engaged in misleading or deceptive conduct, the central question is whether the impugned conduct, viewed as a whole, has a sufficient tendency to lead a person exposed to the conduct into error.[48] If the conduct in question is directed to the public, the Court will consider the likely effect on an ordinary and reasonable person in the relevant class to whom the conduct is directed.[49]

83. The relevant class to whom net zero commitments are directed are members, or potential members, of super funds who are concerned about climate change and are seeking to join a super fund which is committed to reducing its emissions to net zero.

84. We consider that those members, or potential members, would take a net zero commitment to mean that the relevant super fund would not include in its portfolio pure play fossil fuel companies whose strategy is to significantly *expand* their production leading to an *increase* in its emissions profile, without a credible net zero plan. As such, we consider that super funds that make net zero commitments should provide a clear qualification that the net zero commitment

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[48] *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* (2020) 278 FCR 450, 458 (the Court).
[49] *Campomar Sociedad, Limitada v Nike International Ltd* (2000) 202 CLR 45, 85 (the Court).

does *not* exclude investment in individual companies whose strategy is to expand fossil fuel production.

85. Please contact Kirsty Ruddock at kirsty.ruddock@edo.org.au or Clare Saunders at clare.saunders@edo.org.au if you wish to discuss these issues further.

Yours faithfully

Environmental Defenders Office

Kirsty Ruddock
Managing Lawyer
Safe Climate (Corporate)

Clare Saunders
Solicitor
Safe Climate (Corporate)

Annexure A

Fund	Commitment to net zero	Date commitment made	Investment in Woodside as at Decembe
Active Super	2050	October 2020	Y
AMP	2050	April 2021	Y
Australian Retirement Trust	2050 (QSuper)	December 2020 (QSuper)	Y
AustralianSuper	2050	November 2020	Y
Aware Super	2050	November 2020	Y
CareSuper	2050	November 2021	Y
Cbus	2050	July 2020	Y
Colonial First State	2050	October 2021	Y
Commonwealth Bank Group Super	2050	August 2021	Y
Equipsuper	2050	July 2021	Y
ESSSuper	2050	October 2022	Y
GESB	2050	June 2021	Y
HESTA	2050	July 2020	Y
Hostplus	2050	March 2022	Y
Mercer	2050	March 2021	Y
NGS Super	Carbon neutral by 2030	March 2021	N - divested in 2022
Rest	2050	November 2020	Y
Russell Investments	2050	April 2021	Y
State Super	2050	December 2021	Y
Super SA	2050	February 2022	Y
Telstra Super	2050	March 2021	Y
UniSuper	2050	September 2020	Y

Annexure A

Investment in Santos as at Decem	Reference to active ownership
Y	activesuper.com.au/doc/governance/active-ownership-policy/
Y	https://www.amp.com.au/content/dam/amp-au/documents/investments/general/proxy-voting-policy.pdf
Y	Responsible Investing | Australian Retirement Trust
Y	https://www.australiansuper.com/investments/how-we-invest/esg-management
Y	Engagement and advocacy – driving change through action | Aware Super - Australian Superannuation Fund
Y	https://www.caresuper.com.au/sites/default/files/2023-04/responsible-investing-policy-version-9-20230412.pdf
Y	Investing Responsibly | Sustainability ESG | Cbus Super
Y	Active ownership (cfs.com.au)
Y	ESG-policy.pdf (oursuperfund.com.au)
Y	Climate change (equipsuper.com.au)
Y	Responsible investment: Environmental, social and governance (ESG) - ESSSuper
Y	Responsible investing - GESB
Y	Investment excellence with impact - Super with Impact | HESTA
Y	Climate change (hostplus.com.au)
Y	CSD_Sustainable_Investments_InformationBooklet.pdf (mercersuper.com.au)
N - divested in 2022	responsible-investment-policy-1023.pdf (ngssuper.com.au)
Y	rest-sustainability-responsible-investment-climate-change-supplement.pdf
Y	Responsible investing | Russell Investments
Y	STC-Stewardship-Statement.pdf (nsw.gov.au)
Y	Responsible Investing (supersa.sa.gov.au)
Y	Our commitment to sustainable investment and stewardship | TelstraSuper
Y	Responsible investment | UniSuper

Annexure A

UN PRI Signat	Australian Asset Owner Stewardship Code
Y	Y
Y	N
Y	N
Y	Y
Y	Y
Y	Y
Y	Y
Y	N
N	N
N	Y
Y	N
N	N
Y	Y
Y	Y
Y	N
Y	Y
Y	N
Y	N
N	Y
Y	N
Y	Y
Y	Y

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.

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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

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[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

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[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 $MtCO_2e$ (**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.

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[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]

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[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:

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[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;

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[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:

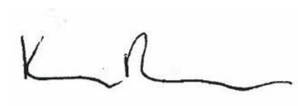
        i. the basis on which HESTA considers that continued investment in Woodside and Santos (in light of the issues raised in this letter) is not a breach of Trustee and Director duties; and

        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)

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[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”

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[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-
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2Bhesta&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

Environmental Defenders Office

29 August 2022

The Trustee for Unisuper
Level 1, 385 Bourke Street
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Dear Unisuper Trustees,

RE: UNISUPER'S INVESTMENTS IN SANTOS MAY AMOUNT TO A BREACH OF THE LAW

1. The EDO acts on behalf of Rachel Davies who is a member of Unisuper.

Summary of member concerns

2. The purpose of this letter is to set out our client's concerns that by continuing to invest members' funds in oil and gas companies (namely Santos), the Trustees of Unisuper 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. Unisuper's own climate plan may not be Paris Agreement[2]-aligned (**Paris-aligned**) because it focuses on "a well below 2 degrees" warming limit rather than 1.5 degrees, and it fails to include Scope 3 emissions (**Issue 1**);

    b. Unisuper has failed to adequately interrogate the net zero claims/emissions reduction representations made by companies in which member funds are invested, namely Santos (**Issue 2**);

    c. Unisuper has recently voted against shareholder proposals requesting Santos to disclose plans for how it will align its capital allocation to oil and gas assets with a net zero by 2050 and Paris-aligned scenario[3] (**Issue 3**);

    d. According to its latest portfolio holdings disclosure,[4] Unisuper had $163.8 million invested in Santos, with over $110 million of this invested through the "Balanced" option, which is Unisuper's default Mysuper option. Unisuper has failed to divest from Santos (**Issue 4**) despite the fact that it knew, or ought to have known, that:

[1] Subsections (2),(6),(8)(a).
[2] United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc. No. 102-38.
[3] As voted on in the Santos 2021 and 2022 AGMs.
[4] Dated 31 December 2021.

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i. Santos is expanding its oil and 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 companies such as Santos pursuing new oil and gas projects is an investment in a stranded asset that creates an unreasonable financial risk to members in the long term.

3. Our client is also concerned that Unisuper 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. Unisuper is a leader on climate action;

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

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

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

   e. Unisuper is committed to reducing its environmental impact; and

   f. Unisuper has been engaging with those companies in which it is invested (including 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. Unisuper's own emissions reduction plan may not be Paris-aligned in circumstances where it is aligned to a "well below 2 degrees" rather than 1.5-degree scenario and where it fails to include the Scope 3 emissions of the companies in which it invests in;

   b. Unisuper continues to invest in Santos, which is a major contributor to global warming;

   c. Santos' net zero pathway fails to include a Paris-aligned reduction in scope 3 emissions[5] in circumstances where scope 3 emissions amount to over 85% of the company's total emissions;

   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 its apparent net zero representations, Santos has plans to significantly increase oil and gas production, including by pursuing new projects, leading to increased emissions. Such actions are contrary to the International Energy

[5] 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.

Agency (IEA)'s projections under its Net Zero Emissions scenario (**NZE**) that to achieve net zero by 2050 no new oil or gas fields should be approved for development from 2021.[6]

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*

[6] 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

52A(2)(b) in relation to due care, skill and diligence, s 52A(2)(c) in relation to the best interests of beneficiaries and at s 52A(2)(f) in relation to ensuring the corporate trustee carries out the s 42 covenants."[7] 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.[8] 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."*[9]

Misleading or deceptive conduct

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, Unisuper:

    a. "deals in a financial product" within the meaning of s 1041H(2)(a) and s 1041H(2)(b)(vi) and (x)[10]; and

    b. provides a financial service within the meaning of s 12BAB(1)(g) of the ASIC Act[11] in relation to a financial product within the meaning of s 12BAA(7)(f) of the ASIC Act.[12]

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

[7] 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].

[8] 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].

[9] Ibid, at [7].

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

[11] Ibid at [44].

[12] Ibid at [43].

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

Trustee and Director Breaches

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

Issue 1: Unisuper's climate plan may not be Paris-Aligned

14. In its August 2021 Climate risk and investments report, Unisuper stated that:

> *"while there are several pathways to demonstrate alignment, our targets encourage the following ambition:*
>
> > *To have an even chance of achieving well below 2-degrees ambition, global emissions need to fall by 45% by 2030, and be net-zero carbon by 2050"*

15. We consider it may be misleading or deceptive for Unisuper to represent that its emissions reduction path/climate change plan "Paris-aligned" in circumstances where:

    a. Unisuper's target is based on a "well below 2-degree warming" scenario in circumstances where there has been a refocusing of international and scientific efforts to the 1.5-degree warming goal of the Paris Agreement. Clause 16 of the Glasgow Pact *"Recognizes that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C, and resolves to pursue efforts to limit the temperature increase to 1.5 °C."* Further, as of July 2021, the Science-Based Targets Initiative (**SBTi**) refuses to accept targets relying on a "well below 2 degrees" scenario and require targets to be set based on a 1.5 degree scenario;[13] and

    b. Unisuper's does not include the Scope 3 emissions of those companies it invests in its carbon footprint calculation.[14] For the reasons set out in paragraphs 24 and 25 below, we consider this to be flawed and not Paris-aligned.

16. See paragraphs 19 and 20 as to further details on what we argue "science-based" and "Paris-align" mean.

Issue 2: Unisuper's failure to interrogate Santos' net zero claims/emissions reduction representations

Santos' net zero/emissions reduction representations

17. 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 $MtCO_2e$ (**Santos Baseline**);

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

    c. achieve net-zero Scope 1 and 2 emissions by 2040;

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[13] https://sciencebasedtargets.org/news/sbti-raises-the-bar-to-1-5-c#:~:text=The%20Science%20Based%20Targets%20initiative,'%20above%20pre%2Dindustrial%20levels

[14] See page 56 of the Unisuper Climate risk and Investments report dated August 2021.

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

e. 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' (an apparent Scope 3 emissions reduction target).

Unisuper's failures

18. Our client is concerned that Unisuper has failed to interrogate the veracity of Santos' Climate Representations, and that it has incorrectly and unreasonably concluded that Santos has *"already set a science-based net zero target that is aligned with the objectives of the Paris Agreement."*[15]

19. According to the SBTi, a target is "science-based" if it is in line with what the latest climate science deems necessary to meet the goals of the Paris Agreement"[16] i.e. being "Paris-aligned.

20. In circumstances where there is no Australian statutory definition of "Paris-aligned," the general principles of construction apply such that the phrase will need to be interpreted in its context. How other jurisdictions or schemes define "Paris-aligned" may be illustrative. Examples include:

a. **EU Paris-Aligned Benchmark:** an emission pathway which is consistent with 1.5°C with no or limited overshoot (IPCC SR15 scenario). An entity's emissions reduction plan must include Scope 3 emissions. [17]

b. **Science-based Targets Initiative (SBTi):** a 1.5ºC aligned pathway which stays within the 500 GT carbon budget. This requires a 42% reduction in emissions by 2030 from 2020 level and reaching net-zero CO2 at the global level by 2050.[18] An entity's emissions reduction plan must include Scope 3 emissions.[19]

c. **International Energy Agency (IEA)'s Net Zero Roadmap (IEA):** which states that:

i. natural gas demand will decline by 55% in 2050;[20] and

ii. no new oil and gas fields can be approved for development after 2021.[21]

21. Case law provides that if a statement in its context is likely to be taken as implying that there is an adequate foundation in scientific knowledge for it to be made, then proof that there is no such foundation may render the statement misleading or deceptive.[22] There is significant controversy amongst the scientific community as to whether the use of "negative emission technology" such as Carbon Capture and Storage is able to facilitate Paris-aligned decarbonisation. This is currently the subject of Federal Court Proceedings.[23]

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[15] Page 6 of Unisuper's Responsible Investment Report 2022.
[16] https://sciencebasedtargets.org/how-it-works
[17] https://finance.ec.europa.eu/system/files/2019-12/192020-sustainable-finance-teg-benchmarks-handbook_en_0.pdf
[18] https://sciencebasedtargets.org/resources/files/Pathway-to-Net-Zero.pdf
[19] Ibid.
[20] IEA, 2021, 'Net Zero by 2050: A Roadmap for the Global Energy Sector.' Available at: https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf Page 12.
[21] Ibid.
[22] *Janssen Pharmaceutical Pty Ltd v Pfizer Pty Ltd* (1986) ATPR 40-654 at 47, 293 per Burchett J.
[23] See https://www.edo.org.au/2021/08/26/world-first-federal-court-case-over-santos-clean-energy-net-zero-claim

22. **Santos' Climate Representations are <u>not</u> science-based or Paris-aligned** for the following reasons:

    a. they fail to include a NZE or Paris-aligned Scope 3 emissions reduction target (discussed at paragraphs 24 to 26);

    b. they are heavily reliant on the use of Carbon Capture Utilisation and Storage (CCUS) and blue hydrogen, and therefore may be misleading or deceptive (discussed at paragraphs 28 to 31); and

    c. rather than reducing emissions, Santos is expecting to increase emissions as it invests a significant proportion of its capital to highly-emitting new and expanding gas projects (discussed at paragraphs 32 to 36).

23. Curiously, Santos is notably absent from the table at pages 18 and 19 of its latest August 2021 Climate Risk report setting out Unisuper's consideration of the climate action undertaken by companies in which it invests.[24]

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

24. Scope 3 emissions are far and away the largest source of emissions for fossil fuel producers. Santos and Oil Search's Scope 3 emissions represented 86.8% of their total emissions in 2021. A failure to have a Paris-aligned Scope 3 emissions plan will render any other action on climate largely meaningless.

25. This is recognised by key metric setting organisations. For instance, 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.[25] 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."*[26] 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).

26. Contrary to Unisuper's allegation at page 6 of its Responsible Investment Report, **Santos does not have a target of net zero Scope 3 emissions by 2040**. Santos' net zero by 2040 target is limited to scope 1 and 2 emissions only. Santos has a *2030* target to work with customers to reduce their emissions by 1.5 MtC02e by 2030. This amounts to a mere 3.84% of Santos' 2020-21 Scope 3 equity emissions[27] (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

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[24] https://www.unisuper.com.au/-/media/files/investments/climate-risk-and-our-investments-2021.pdf?rev=7806e3e0de694bbbae294092937485dc&hash=C9A07DC44DB9D1D0C75EB709BD6F28D6
[25] 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
[26] 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
[27] Santos reported Scope 3 equity share emissions (use of sold products) in 2020-2021 of 39 MtCo2e.

Agreement, a reduction target of 45% in CO2 scope 1, 2 and 3 emissions by 2030 relative to 2010 was required.[28]

27. Further, rather than committing to a percentage reduction in Scope 3 emissions as per the industry guidance, Santos 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 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 SBTi 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."*[29]

<u>Santos 'reliance on CCS and blue hydrogen</u>

28. Santos relies on unproven CCS technology and blue hydrogen (which it has controversially referred to as "clean energy") to achieve its emissions reduction targets. These representations are currently the subject of Federal Court proceedings, alleging that Santos' statements are misleading or deceptive. Contrary to the representations made by Santos that blue hydrogen is a clean technology, it is a technology that is marred in controversy.

29. First and foremost, the claim that CCS is "low emissions" or carbon-neutral is robustly contested. A 2021 study found that the greenhouse gas footprint for blue hydrogen was more than 20% greater than burning natural gas or coal for heat,[30] without even factoring in methane emissions associated with producing blue hydrogen or the Co2 and methane generated from the combustion of natural gas when ultimately used by the end-user. This study even adopted a generous capture efficiency of 85% - that is, that the plant has the ability to capture 85% of the Co2 emissions generated during the steam methane reforming process (SMR), being the process of using heat and pressure to convert methane in natural gas into hydrogen and Co2. Actual data from one of only 2 commercially operating blue hydrogen facilities shows a mean capture efficiency of only 78.8%, with daily rates varying from 53% to 90%. The world's largest CCS facility – the Gorgon facility in Western Australia – missed its 80% capture efficiency rate by approximately 50% during its first 5 years of operation.[31] Even the "gold standard" of capture efficiency – 90% - would mean that every tonne of blue hydrogen would still produce a ton of Co2.[32] Again, neither of these efficiency rates include capturing GHG emission from end use of the natural gas.

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[28] 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,[28] and this was ultimately the order that was made.
[29] Science Based Targets Initiative (2021) SBTi Corporate Manual, at page 30.
[30] Robert W. Howarth, Mark Z. Jacobson. How green is blue hydrogen? Energy Science & Engineering, 2021; DOI: 10.1002/ese3.956.
[31] Robertson and Mousavian, Institute for Energy Economics and Financial Analysis, 'Gorgon Capture and Storage: The Sting in the Tail.' Available at: https://ieefa.org/wp-content/uploads/2022/03/Gorgon-Carbon-Capture-and-Storage_The-Sting-in-the-Tail_April-2022.pdf at page 7.
[32] https://www.forbes.com/sites/jamesmorris/2021/09/25/is-carbon-capture-another-fossil-fuel-industry-con/?sh=70aef7e65ef3

30. Second, the cost of blue hydrogen production and CCS has made it commercially unviable - currently the costs remain higher than US 50tCo2. [33] The cost of just the Co2 injection system for the Gorgon CCS facility was $3.1 billion to the mid-2020s, without including the cost to capture the Co2 itself.[34] As noted above, there are currently only 2 commercial blue hydrogen plants, and neither of these plants capture the Co2 produced from burning the natural gas in the SMR process.[35] Expanding out more broadly to all CCS facilities, the 28 existing facilities capture only 0.1% of Co2 emissions annually.[36] Of that 0.1% captured, the vast majority is captured to produce more fossil fuels (a process known as Carbon Capture and Use, or CCU). Even "pure" CCS has significant geological and engineering limitations.[37]

31. Given these significant issues with CCS, it is deeply concerning that in assessing Santos' decarbonisation approach, Unisuper has assessed Santos' *"demonstrating some progress with carbon capture and storage"*[38] to be aligned with a broader decarbonisation strategy. In fact, Unisuper itself recognises that CCS as a mitigation strategy for the Barossa expansion project is a technology *"yet to be proven in the field at scale."*[39] It is inconsistent and even potentially misleading for Unisuper to recognise these issues with CCS/blue hydrogen and yet still accept them as tenable emissions reductions/emission mitigation pathways.

Santos' capital allocation to new gas projects is not Paris-aligned

32. When assessing Santos for alignment with the Paris Agreement, Climate Action 100 found that, as at 31 December 2021, Santos failed to meet any of its criteria in relation to capital allocation, being 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.

33. Since December 2021 Santos has released a new capital allocation strategy. This strategy involves investing US$1.9 billion to $3.8 billion in hydrogen and ammonia hubs. Santos alleges that this investment is in line with the required level of investment in hydrogen and hydrogen-based fuels under the IEA Sustainable Development Scenario (SDS) and the NZE, being 3.7% under the SDS and 4.8% under the NZE. On this basis, Santos argues that its new capital allocation strategy is "Paris-aligned."

34. Santos' representation that their capital allocation is "Paris-aligned" is flawed and potentially misleading because it:

    a. fails to take into account the quantum or proportion of committed and sustaining capital to new oil and gas projects relative to investment in so-called "clean energy"; and

[33] Intergovernmental Panel on Climate Change (IPPC), Climate Change 2022 Mitigation of Climate Change (Report) WG111 at 6-38. <https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_FullReport.pdf>.
[34] https://www.smh.com.au/environment/climate-change/chevron-s-five-years-of-gorgon-carbon-storage-failure-could-cost-230-million-20211110-p597uf.html
[35] Robertson and Mousavia, at 1677,
[36] Centre for International Environmental Law (CIEL), 2021, 'Confronting the myth of carbon-free fossil fuels: Why carbon capture is not a climate solution.' Available at: https://www.ciel.org/wp-content/uploads/2021/07/Confronting-the-Myth-of-Carbon-Free-Fossil-Fuels.pdf
[37] IPCC WGIII report, Chapter 6, at 6-36.
[38] See page 5 of Unisuper's latest Responsible Investment Report.
[39] See page 6 of Unisuper's latest Responsible Investment Report.

b. relies on blue hydrogen and CCU/CCS – technologies whose net zero credentials are currently being legally challenged.

35. Climate Analytics' analysis shows that to be in line with the NZE, Australia's LNG exports will need to fall 25% below 2020 levels by 2030, and by 50% by 2035.[40] 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.[41] However, rather than moving to decarbonise and reduce production, Santos is ramping up oil and gas production and making major capital investment into new oil and gas projects with total capex costs reaching over US$10 billion.[42] It is estimated that between 2020 and 2027, Santos and Oil Search's annual oil and gas production will increase by over 17%. We set out how Santos is ramping up its production of oil and gas in paragraphs 40 to 42. This increase 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.

36. In addition to the above, Santos' capital allocation strategies relies heavily on blue hydrogen and CCU and CCS technology. As noted in paragraphs 28 to 29 above, there are serious concerns that such technologies are not, in fact, net-zero or carbon neutral.

Issue 3: Unisuper voting against shareholder proposals in relation to effective net zero strategies

37. Whilst publicly stating that *"we continue to regularly support shareholder resolutions asking for TCFD reporting or targets where companies are not reporting or acting to decarbonise their business"* [43]and that *"the totality of our actions will be consistent with the ultimate goals of the Paris Agreement"* [44](our emphasis), Unisuper:

    a. did not vote in favour of any ESG resolutions proposed at Australian companies in 2017 to 2020[45];

    b. voted against two of Market Forces' Capital Protection resolutions proposed in 2021 and 2022 seeking that Santos disclose how its capital expenditure, operations and capital allocation are NZE and Paris-aligned;

    c. voted in favour of Santos' Climate Report which set out Santos' emission reduction commitments and transition plan notwithstanding that:

        i. Santos' plan (as set out in its Climate Report) is not Paris-aligned for the reasons set out in paragraph 18 to 36 above and paragraphs 40 to 42 below; and

        ii. Santos is scaling up oil and gas production.

    In its latest Responsible Investment Report, Unisuper stated that it supported the resolution approving the Climate Report because Santos had *"demonstrated some*

[40] https://climateanalytics.org/media/gas_is_new_coal_nov_2021_1_1.pdf
[41] https://productiongap.org/wp-content/uploads/2021/11/PGR2021_web_rev.pdf
[42] https://www.santos.com/wp-content/uploads/2021/11/211111-Oil-Search-and-Santos-merger-update-Court-approves-distribution-of-Scheme-Booklet-and-convening-of-Scheme-Meeting.pdf
[43] Page 36, Unisuper's Climate risk and Investment report August 2021.
[44] Page 3, Unisuper's Climate risk and Investment report August 2021.
[45] Australian Centre for Corporate Responsibility (ACCR), 2021, 'Super Votes: How Australia's Largest Superannuation Funds voted on ESG Resolutions in 2020.' Available at: https://www.accr.org.au/downloads/accr-supervotes-202109-final-5.pdf at page 33.

progress with Carbon Capture and Storage (CCS) technology,"[46] including as part of the Barrossa Project notwithstanding:

i. the substantive criticism of CCS (discussed at paragraphs 28 to 31 above), and the fact that Santos' reliance on such technologies is currently the subject of a Federal Court challenge; and

ii. the fact that Unisuper itself acknowledges that Co2 emissions from Barrossa will be significant, higher than other fields, and even higher than Woodside's Scarborough project.[47] The Barossa project is a new gas project that will extend for 15 - 29 years and is estimated to release 15.45 million tonnes of carbon dioxide annually. The NZE is equivocal that to achieve net zero by 2050, no new gas fields projects should be approved for development beyond those that were already committed as of 2021. It is unclear to us how Unisuper can say that the increase of Co2 emissions and expansion of fossil fuel capability is NZE or Paris-aligned; and

d. adopted wholly contradictory positions by voting 'for' a shareholder resolution on climate-related lobbying and decommissioning on the apparent basis that it believed that Santos should not be *"lobbying for new projects until (or unless) they can provide detailed justification as to how they are Paris-aligned"*[48] (which therefore implies that Santos is not currently Paris-aligned), whilst at the same time voting 'against' a resolution requiring Santos implement a science-based net zero target because Unisuper believed that Santos had *"already set a science-based net zero target that is aligned with the objectives of the Paris Agreement."* [49]

38. We consider that by voting in the way set out above, Unisuper is potentially in breach of its Trustee Obligations and Director Obligations. We also consider that such conduct is inconsistent with its representations, which potentially amounts misleading and deceptive conduct.

Issue 4: Unisuper's failure to divest from Santos

39. Our client is of the view that Unisuper's failure to divest from Santos could amount to a Trustee Breach and/or Director Breach in circumstances where:

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

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

Santos' scaling up of gas production

40. 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. [50]

[46] See Pages 5 and 6 of Unisuper's Responsible Investment Report 2022.
[47] Pages 5 and 6 of the Responsible Investment Report 2022.
[48] Page 6 of the Responsible Investment Report 2022.
[49] Ibid.
[50] 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

41. As the holder of the largest number of offshore exploration permits, and the largest offshore area under exploration,[51] Santos has announced that it will be spending US$1.15billion - $1.3billion on new oil and gas projects,[52] including, relevantly:

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.[53] 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.[54] 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.[55]

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.[56]

d. **Derado oil project,** off the coast of WA is estimated to produce up to 350 barrels of oil over 20 years from 2024 amounting to an estimated 165 million tonnes of Co2 (equivalent to 46 years of operation of the Muja power station in WA)[57]. According to Carbon Tracker, this project is incompatible with even the IEA's net-zero by 2070-aligned Sustainable Development Scenario (SDS), let alone the far more constrained demand profile imposed by the NZE.[58]

42. 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.[59]

Stranded assets likely to cause negative member returns

43. 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

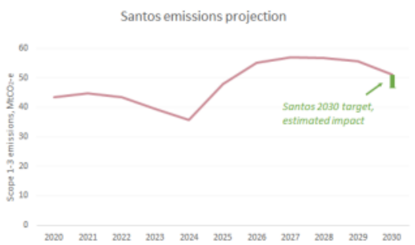
[51]Ibid at page 2
[52]Ibid at page 1.
[53] NS Energy, 'Narrabri Gas Project', https://www.nsenergybusiness.com/projects/narrabri-gas-project/
[54] See www.stopbarossagas.org
[55] See https://www.edo.org.au/tiwi-islands-barossa-gas-drilling-challenge/
[56] See https://ntindependent.com.au/santos-agrees-to-pay-400k-to-rallen-over-beetaloo-basin-gas-wells/
[57] https://www.boilingcold.com.au/santos-oil-dorado-is-a-lode-of-scope-3-emissions/
[58] https://www.marketforces.org.au/wp-content/uploads/2022/03/2022-03-STO-WPL-investor-briefing.pdf at page 6.
[59] 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/

policies.[60] This then prompts a reduction in the value of equity in gas companies such as Santos in circumstances where future revenue generated by these companies is reduced.[61]

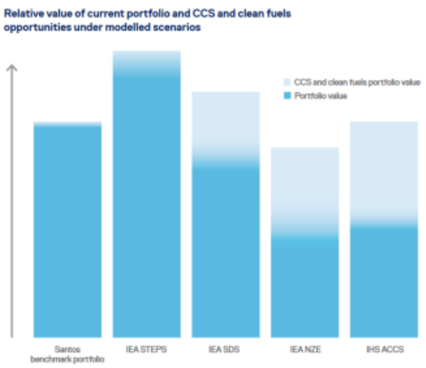
44. According to the NZE, supply of natural gas is estimated to peak in the mid-2020s, and thereafter continue to fall, with an annual average decline of just under 3% from 2020 to 2050,[62] with natural gas use 55% lower in 2050 than in 2020.[63] As a result of the reduction in use and demand, the IEA estimates that between 2020 and 2050 natural gas traded as LNG will fall by 60% and trade by pipeline will fall by 65%, with declines of 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 or built beyond that which is already approved as of 2021.[64] 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".*[65]

45. Santos' Climate Change report shows that Santos itself predicts that the value of its oil and gas portfolio would drop by around 50% under the IEA's Net Zero by 2050 pathway (see charts below).



Source: Market Forces analysis of Grant Samuel Independent Expert's Report, contained in Santos and Oil Search merger Scheme Booklet; 2022 Climate Change Report



Source: Santos 2022 Climate Change Report, pg 40

<u>Unisuper's position on divestment is contradictory</u>

46. Unisuper seems to have contradictory statements about divestment from fossil fuels. Whilst its Climate Change Position Statement states that Unisuper states that "*divestment of ownership, while always an option, will reduce the influence we have over companies"* and that *"the greatest impact we have is owning stakes in companies. Ownership provides us with scope to directly influence companies through engagement or exercise our voting rights"*

[60] IEA (2021) net zero by 2050 A Roadmap for the Global Energy Sector, First Edition, May 2021 at page 102.
[61] IEA (2021) net zero by 2050 A Roadmap for the Global Energy Sector, First Edition, May 2021 at page 102.
[62] Ibid at page 57.
[63]Ibid at page 101.
[64] Ibid at 1102 – 103.
[65] 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.

(**Divestment Position**), it also (in the same document) states that *"a prudent approach to portfolio management will involve the avoidance of assets that are most likely to be stranded"* and that *"ultimately, in circumstances when we believe that the strategy of a company is not aligned with our long-term aims, we have the option of divesting."*

47. The Divestment Position is inconsistent with Unisuper's actions in the following respects:

    a. Unisuper's history of voting on shareholder resolutions as part of its "engagement" strategy is not consistent with Paris-alignment for the reasons set out in paragraphs 37 and 38 above;

    b. contrary to its Divestment Position, Unisuper has nevertheless sought to de-carbonise its investments, having reported that it reduced its fossil fuel exposure across the fund from 2.55% down from 5.05%, that it has divested from companies that generate greater than 10% of their revenue from the extraction of thermal coal, and that it is in the process of incorporating an effective cap on fossil fuel exposure. Such divestment actions are contradictory to its Divestment Position; and

    c. it is unclear how continued investment in Santos follows Unisuper's strategy of the "avoidance of assets that are most likely to be stranded" and how Santos' core business of oil and gas exploration and increasing production could be Paris-aligned and therefore aligned with Unisuper's long-term aims.

48. 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 Santos' equities may amount to a breach of Trustee and Director Duties.

Misleading or deceptive conduct

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

    a. Unisuper is a leader on climate action;

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

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

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

    e. Unisuper is committed to reducing its environmental impact; and

    f. Unisuper has been engaging with those companies in which it is invested (including Santos) to transition them in line with the Paris Agreement.

    (collectively, the **Representations**).

50. The Representations are misleading or deceptive or likely to mislead or deceive members or potential members for the reasons set out in paragraphs 18 to 45 above, being (in summary):

    a. Unisuper continues to invest in Santos, which is a major contributor to global warming;

    b. Santos' net zero pathway does not involve a Paris-aligned reduction in scope 3 emissions;

c. Santos' net zero representations are dependent on CCS and blue hydrogen; and

d. notwithstanding their apparent net zero representations, Santos has plans to scale up and/or expand its fossil fuel projects, leading to increased emissions. Such actions are contrary to the IEA's statements under the NZE that to achieve net zero by 2050 no new oil or gas fields could be approved for development from 2021.[66]

Requested action

51. In light of the above, our client considers that the appropriate way in which Unisuper 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 Santos.**

52. As interim steps, our client requests that no later than **COB on 16 September 2022**, pursuant to s 1017C of the Corporations Act, Unisuper 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 Unisuper considers that continued investment in 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 Unisuper makes the Representations.

53. 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)

[66] 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: Unisuper representations

Responsible Investment Report Jan – June 2022

- That Santos' decarbonisation approach included "net zero scope 1, 2, and 3 by 2040".

Annual Report 2021

- *"In October 2020, Unisuper made the important step of committing to net zero carbon emissions for our investment portfolios by 2050, in alignment with the Paris Agreement."*
- *"Unisuper aims to be at the forefront of the superannuation industry as it transitions to a low carbon world"*

Climate risk and our investments – August 2021

- *"The Paris Agreement of 2015 committed its signatories to a set of actions that would limit the rise in temperature to well below 2 degrees Celsius above pre-industrial levels by the second half of the century. Accordingly, we fully support the Paris Agreement and intend to play our part in ensuring Australia fulfills its commitments as a signatory"*
- *"The totality of our actions will be consistent with the ultimate goals of the Paris Agreement"*
- *"By 2050, we fully expect that all economies and companies operating in the world will have achieved net-zero emissions. Accordingly, having a net-zero portfolio will not place undue constraints on our investment universe."*
- *"We'll contribute a 45% reduction in Australia's emissions by 2030 through company engagement, advocacy and investing capital in companies needed to achieve a net-zero future"*
- *"We expect that all portfolio investments …proactively mitigate and manage climate change risks in their business and supply chains"*
- *"our ability to vote on company resolution is reinforced by direct and regular engagement with company management and boards to support a Paris-aligned decarbonization transition."*
- *"In relation to climate change, our expectation of Portfolio Companies include…a proactive approach to reducing emissions aligned with the Paris Agreement"*
- *"Engaging with our portfolio companies is our primary strategy for addressing climate-related risks"*
- *"We continue to regularly support shareholder resolutions asking for TCFD reporting or targets where companies are not reporting or acting to decarbonize their business"*

Climate Change position statement

- *"In line with our status as a leading superannuation fund, UniSuper aims to be at the forefront of the industry in transitioning to a low carbon world"*
- *"The Paris Agreement of 2015 committed its signatories to a set of actions that would limit the rise in temperature to well below two degrees above pre-industrial levels by the second half of the century. Accordingly, UniSuper is fully supportive of the Paris Agreement and intends to play its part in ensuring that Australia fulfills its commitments as a signatory."*
- *"A prudent approach to portfolio management will involve the avoidance of assets that are most likely to be stranded."*
- *"We are aiming for 100% of Australian companies held in our actively managed portfolios to have publicly stated Paris-aligned commitments by the end of 2021. As a first step we want*

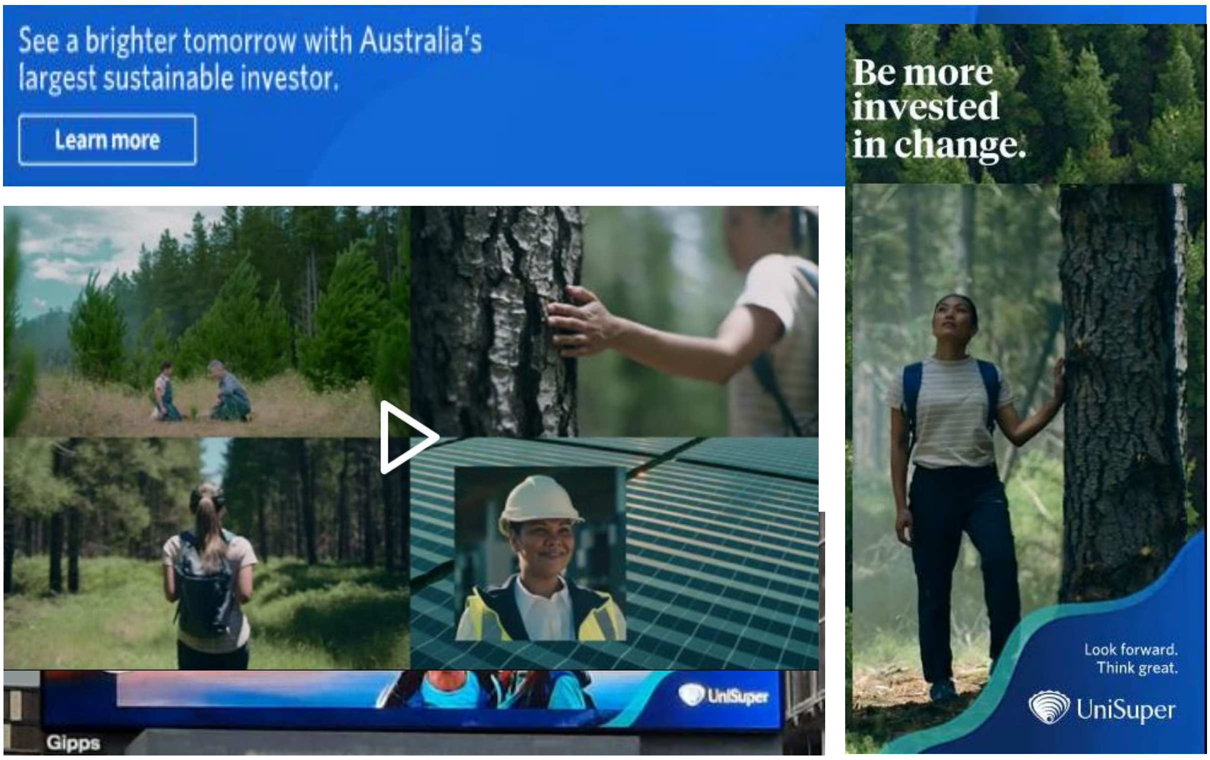
companies to disclose emission footprint and targets in a manner consistent with the framework designed by the Taskforce for Climate-related Financial Disclosures (TCFD)."

- *"The UniSuper Board and Management believe that the above set of commitments places the fund as one of the leaders in demonstrating alignment with the ultimate goal of the Paris Agreement."*

Website

- *"UniSuper is committed to achieving net zero absolute carbon emissions in our investment portfolio by 2050, in alignment with the Paris Agreement."*
- *"As Australia's fund for the higher education sector, aligning with the Paris Agreement reinforces our long-held commitment to incorporate environmental, social and governance (ESG) factors into all investment decisions."*
- *"In line with our status as a leading fund, we aim to be at the forefront of the transition to a low-carbon world"*

Unisuper advertising



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Environmental Defenders Office

12 September 2023

David Elia
Chief Executive Officer
Hostplus
Locked Bag 5046,
Parramatta NSW 2124

By email: delia@hostplus.com.au

Dear Mr Elia

RE: Potentially misleading or deceptive conduct

1. The EDO acts on behalf of Morgan Johnson who is a member of Hostplus.

2. The purpose of this letter is to set out our client's concerns that Hostplus has potentially engaged in misleading or deceptive conduct under s 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**), ss 12DA, 12DB(1)(a) and (e) of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**)m the *Australian Consumer Law* (Schedule 2 of the Competition and Consumer Act 2010 (Cth)) (**ACL**) by making a number of statements (set out in **Annexure A**) which our client considers that, alone or in combination, convey that:

   a. Hostplus' corporate and investment strategy are aligned with the Paris Agreement;

   b. Hostplus is reducing its portfolio emissions and aims to reach net zero by 2050;

   c. Hostplus' investment strategy (including its consideration of climate) will help deliver long-term value for Hostplus members; and

   d. Hostplus has been engaging with its investee companies to influence their strategies to align with the Paris Agreement.

   (collectively, the **Representations**).

3. Our client considers that the Representations are potentially misleading or deceptive or likely to mislead or deceive members or potential members of Hostplus in circumstances where:

   a. Hostplus's emissions reduction plan may not be Paris-aligned because it is aligned to a "well below 2°C" rather than a 1.5°C scenario and because it fails to include the Scope 3 emissions of its investee companies;

b. Hostplus continues to invest in Chevron, BHP, Newcrest Mining, Origin Energy, Santos, and Woodside Energy, which are major contributors to global warming;

c. Hostplus continues to invest in infrastructure such as air and sea ports which are currently major contributors to global warming; and

d. Hostplus has consistently voted *against* shareholder proposals in relation to effective net zero strategies of its investee companies.

Applicable law

Misleading or deceptive conduct

4. Section 1041H of the Corporations Act 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.*

5. 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.*

6. 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.*

Overall impressions created by Hostplus' representations

7. When considering a series of representations during an online process or presentation (as is the case with Hostplus), the court looks to the overall impression having regard to these cumulative representations, rather than analysing the separate effect of each representation.[1] It is also necessary to look to the intended audience of the representation,[2] and what general impression the representation(s) may convey to persons of this class.

[1] *ACCC v Google (No 2)* [2021] FCA 367 at [88].
[2] *Taco Co of Australia Inc v Taco Bell Pty Ltd* (1982) 42 ALR 177 at 202.

8. Our client considers that the relevant conduct may constitute a breach of the above provisions in circumstances where:

   a. the target audience for the Representations are current and potential members of Hostplus;

   b. the Representations are potentially misleading or deceptive for these classes of persons, for the reasons discussed below; and

   c. the Representations are made:

      i. by Hostplus as a company that "deals in a financial product" within the meaning of s 1041H(2)(a) and s 1041H(2)(b)(vi) and (x) of the ASIC ACT[3]; and provides a financial service within the meaning of s 12BAB(1)(g) of the ASIC Act[4] in relation to a financial product within the meaning of s 12BAA(7)(f) of the ASIC Act;

      ii. in relation to a financial product for the purposes of section 1041H of the Corporations Act as they are made in relation to Hostplus' funds which constitute financial products.

9. Our client considers that the overall impression that the Representations made by Hostplus gives to the ordinary or potential fund members are that:

   a. Hostplus is taking action that is consistent with the goals of the Paris Agreement and is complying with what the latest climate science deems necessary to meet the goals of the Paris Agreement. Statements that create this impression include:

      i. "***Paris Agreement and Net Zero 2050 Commitment*** *The Fund supports the objectives of the Paris Agreement to limit global warming to well below 2 degrees and move towards a low carbon economy…*"[5]

      ii. "*We've committed to transition our investment portfolio to net zero emissions by 2050, in line with Australia's commitment to the Paris Agreement.*"[6]

   b. Hostplus actively engages with investee companies to influence them to align their strategies with the Paris Agreement. Statements that create this impression include:

      i. "*Hostplus is in a position to be able to engage with the companies we are invested in, and we are keen to set strong expectations around adoption of lower-emission technologies, effective governance frameworks and more transparent corporate*

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[3] *Australian Securities and Investments Commission v MLC Nominees Pty Ltd* [2020] FCA 1306 at [40].
[4] Ibid at [44].
[5] Hostplus, Responsible Investment Policy – Super (December 2022) p5 available at: https://hostplus.com.au/content/dam/hostplus-program/site/resources/governance/investment-governance-/Responsible-Investment-Policy.pdf.coredownload.pdf.
[6] Hostplus, Annual Report 2022, (30 June 2022), p 30 available at: https://hostplus.com.au/about-us/company-overview/annual-reports.

reporting as we strive to deliver on our commitment to reach net zero emissions by 2050."[7]

ii. "*Our approach to reducing portfolio emissions favours company engagement over divestment, where we can be positioned to influence corporate climate strategy and play a role in the future of investee companies.*"[8]

Meaning of 'net zero'

10. The term 'net zero' is derived from Article 4.1 of the Paris Agreement and requires "*a state by which the greenhouse gases going into the atmosphere are reduced as close to zero as possible and any residual emissions are balanced by permanent removals from the atmosphere by 2050.*"[9]

11. According to the Report from the United Nations High Level Expert Group on Net Zero Emissions Commitments of Non-State Entities released in October 2022 (**UN Expert Report**), to be consistent with this definition, corporate net zero pledges should, among other things:

    a. not support new supply of fossil fuels;

    b. include all Scope 1, 2 and 3 emissions, including end-use emissions and emissions from operations along its value chain in all jurisdictions;

    c. contain steppingstone targets every five years, and set out concrete ways to reach net zero in line with Intergovernmental Panel on Climate Change (**IPCC**) or International Energy Agency (**IEA**) pathways that limit warming to 1.5°C with no or limited overshoot;

    d. prioritise urgent and deep emissions reductions of emissions across value chains and only use carbon credits for residual emissions;

    e. ensure operations and supply chains do not contribute to deforestation and the destruction of natural ecosystems; and

    f. non-state actors should lobby for positive climate action and not against it.

12. The UN Expert Report also sets out that a non-state actor should be considered 'net zero aligned' when:[10]

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[7] Hostplus, Our Investment Governance, available at: https://hostplus.com.au/about-us/company-overview/investment-governance.

[8] Hostplus, Annual Report (30 June 2022), p30 available at:https://hostplus.com.au/about-us/company-overview/annual-reports.

[9] Report from the United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions' (**UN Expert Report**), p15, available at: hfps://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf

[10] UN Expert Report, p16.

a. its pledge, targets and pathway to net zero are generated using a robust methodology consistent with limiting warming to 1.5°C with no or limited overshoot verified by a third party;

b. its pledge and progress reporting cover all scope emissions and all operations along its value chain in all jurisdictions; and

c. it is demonstrating progress by achieving or exceeding its interim targets with reports that are verified by a credible, independent third party based on publicly available data.

13. The UN Expert Report provides specific details for net zero targets pledged by financial institutions (such as superannuation funds) relevantly as follows:[11]

a. On coal for power generation, net zero targets and transition plans of all financial institutions must include an immediate end of:

i. lending;

ii. underwriting, and

iii. investments in any company planning new coal infrastructure, power plants, and mines.

b. Coal phase out policies from financial institutions must include a commitment to end all financial and advisory services and phase out exposure, including passive funds, to the entire coal value chain no later than 2030 in OECD countries and by 2040 in non-OECD countries.

c. Coal investments that remain in the portfolios of financial institutions must adopt phase out plans with facility-by-facility closure dates that include just transition plans for workers.

d. On oil and gas, oil and gas phase-out policies from financial institutions must include a commitment to end financing and investing in support of:

i. exploration for new oil and gas fields,

ii. expansion of oil and gas reserves, and

iii. oil and gas production.

14. According to the IEA's report 'Net Zero by 2050' (**IEA Net Zero Report**), in order to meet net zero by 2050 two-thirds of total energy supply in 2050 must come from renewable sources. The report stated that there should be no new gas fields approved for development beyond 2021 and huge declines in the use of fossil fuels by 2050.

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[11] UN Expert Report, page 24.

Why Hostplus' representations are potentially misleading

Issue 1: Hostplus' corporate and investment strategy is not aligned with the Paris Agreement

15. As at 31 December 2022, Hostplus held positions in BHP Group and New Hope Corp,[12] both of which are companies planning new coal infrastructure, power plants and/or mines.[13] As at 31 December 2022, Hostplus held positions in Chevron, Santos and Woodside Energy,[14] all of which are involved in the exploration of oil and gas fields, expansion of oil and gas reserves, and/or oil and gas production. According to the Australian Conservation Foundation's calculations, Hostplus has $2.11 billion invested in the companies listed above which are expanding in coal, oil or gas.[15]

16. As at 9 January 2023, 50% of Hostplus' $100 billion holdings are in unlisted assets including infrastructure such as sea and airports,[16] including Adelaide Airport, NSW Port Property Holdings, and significant holdings in IFM Investors Pty Ltd (36.58% of the asset class). IFM has holdings in Adelaide, Brisbane, Melbourne, NT, Perth and Sydney airports, Ports Kembla and Botany, Ausgrid, and numerous pipelines, LNG and ports globally. These infrastructure assets are significant contributors to scope 1, 2 and 3 emissions and, whilst these companies have set net-zero targets for scope 1 and 2 emissions,[17] none have included scope 3 emissions in their

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[12] Hostplus, Investment Holdings by investment option (accessed 7/5/23) available at: https://hostplus.com.au/about-us/company-overview/investment-governance/investment-holdings-by-investment-option-#accordion-eb759e23fd-item-915d5a90fe.

[13] See investment into Malabar Resources, whose principal asset is the Maxwell Coal Mine and Bengalla thermal coal mine mentioned in New Hope, Annual Report 2022 (2022), p 4 and 9, available at: https://newhopegroup.com.au/wp-content/uploads/2022/10/J1796-NHG-Annual-Report_WEB3.pdf. See also BHP seeking federal approval to build a new mine at Blackwater South in a joint venture with Mitsubishi Development noted in the Australian Financial Review, BHP asks to mine Queensland coal for 90 years by Peter Ker (11 August 2022) available at: https://www.afr.com/companies/mining/bhp-asks-to-mine-queensland-coal-for-90-years-20220811-p5b93p#:~:text=BHP%20has%20sought%20federal%20approval,shut%20a%20NSW%20mine%20early.

[14] Hostplus, Investment Holdings by investment option (accessed 7/5/23) available at: https://hostplus.com.au/about-us/company-overview/investment-governance/investment-holdings-by-investment-option-#accordion-eb759e23fd-item-915d5a90fe

[15] Australian Conservation Fund, Is your super funding climate solutions or climate chaos? (17 April 2023), https://www.acf.org.au/super-disclosure-analysis .

[16] Investment Magazine, Hostplus spurns investment internalisation push: Sicilia (9 January 2023), https://www.investmentmagazine.com.au/2023/01/hostplus-spurns-investment-internalisation-push-sicilia/ (accessed 7/5/23). See also Hostplus, Investment Holdings by investment option 'HC Infrastructure-Class A Option csv, https://hostplus.com.au/about-us/company-overview/investment-governance/investment-holdings-by-investment-option-#accordion-eb759e23fd-item-9a30d817de (accessed 7/5/23).

[17] Adelaide Airport Integrated Review, https://www.adelaideairport.com.au/corporate/wp-content/uploads/2021/10/2021-Adelaide-Airport-Ltd-Integrated-Report_29.10.pdf; NSW Port Property Holdings (controls Ports Kembla and Botany) FY22 Sustainability Report, https://www.nswports.com.au/sites/default/files/NSW-Ports_Sustainability-Report-22_WEB.pdf; Brisbane Airport Corporation, Annual Report 2022, https://www.bne.com.au/sites/default/files/no-index/BAC-Annual-Report_2022.pdf; Melbourne Airport, Carbon Management Strategy https://assets-au-01.kc-usercontent.com/be08d7b0-97a1-02f9-2be6-a0c139c3c337/2f8126b3-789c-454e-b7dd-

targets. Given that the majority of their emissions are scope 3 emissions (being end-use emissions produced by airlines), our client considers that their net zero plans are not Paris aligned according to the UN Expert Report. We further note that in its 2022 Annual Report, Brisbane Airport stated that, 'less than one per cent of BAC's [Brisbane Airport Corporation] total emissions (Scope 1, 2 and 3) is attributed to Scope 1 and 2'.[18]

17. In relation to its portfolio, in IFM Investors' 2021 Carbon Footprint Report[19], IFM reported that:

> *For the year ending 31 December 2021, the absolute financed emissions associated with assets in the portfolio totalled 5.04 million tonnes of CO2e. This is an increase of 64% from 31 December 2022… Emissions intensity per US$M of Net Asset Value increased by 34%...*

18. We note that Hostplus does not indicate how scope 1, 2 or 3 emissions are factored into its net zero target and how it will ensure its investments align with this target.

19. With reference to its alignment with the requirements of Paris alignment according to the UN Expert Report, our client considers that Hostplus has failed to:

    a. Ramp up its engagement with investee companies in the fossil fuel industry, including those building new coal infrastructure, power plants, gas production and exploration and mines;

    b. include all Scope 1, 2 and 3 emissions in its net zero target, including end-use emissions and emissions from operations along its value chain in all jurisdictions;

    c. include stepping stone targets for every five years, and set out concrete ways to reach net zero in line with IPCC or IEA pathways that limit warming to 1.5°C with no or limited overshoot; and

20. In relation to the inclusion of Scope 3 emissions, we note that Spirit Super has set a target to reduce its attributable CO2 emissions by 50% by 2030 compared to a 2021-22 baseline, and a 50% reduction in its attributable fossil fuel reserves by 2030 compared to a 2021-22 baseline.[20]

9035b9ead571/APAC_Carbon_Management_Strategy_FY23_FINAL.pdf; Perth Airport, Sustainability Report 2022, https://www.perthairport.com.au/Home/corporate/about-us/reports-and-publications; Sydney Airport, Sustainability Report 2022, https://assets.ctfassets.net/v228i5y5k0x4/6xifKAhXFEnQr7SrgY98MQ/6c4791ef089dc0fea048d8a11a991190/Sydney_Airport_SR_2022.pdf; Ausgrid, FY22 Sustainability Report, https://cdn.ausgrid.com.au/-/media/Documents/sustainability/Sustainability-Report-2022.pdf?rev=2391ff515b224beb915c53f3e3ede5c3&hash=238351BCF2C45C8DDA664F09B4D4D4AA.

[18] Brisbane Airport Corporation, Annual Report 2022, https://www.bne.com.au/sites/default/files/no-index/BAC-Annual-Report_2022.pdf,page 52.

[19] IFM Investments, IFM Investors Global Infrastructure Portfolio 2021 Carbon Footprint Summary (August 2022), p 2, https://www.ifminvestors.com/docs/default-source/default-document-library/ifm_global_infrastructure___2021_carbon_footprint_summaryb862b732-36fb-4f3f-86c7-a77acef9979d.pdf?sfvrsn=16e52405_1.

[20] Spirit Super, Investment guide (1 July 2023) p15 available at: Investment guide (spiritsuper.com.au)

21. We consider that the representation that Hostplus' corporate and investment strategy are aligned with the Paris Agreement and that Hostplus is reducing its portfolio emissions and aims to reach net zero by 2050 is potentially misleading in circumstances where:

    a. Hostplus maintains significant investments in companies that mine and produce coal, oil and gas; and

    b. Hostplus maintains significant investments, and is expanding investment in, infrastructure assets which are significant contributors to scope 1, 2, and 3 emissions, and for which financed emissions are increasing year on year.

<u>Issue 2: Hostplus consistently votes against shareholder proposals in relation to effective net zero strategies</u>

22. Our client considers that proxy voting is an integral part of company engagement which allows funds to give clear and transparent feedback to a company which should be governed by clearly defined principles and policies. In that regard, Hostplus represents that it favours engagement over divestment as a means to influence investee companies to align their strategy with the Paris Agreement. However, we note that Hostplus' proxy voting record discloses that, at the 2022 and 2023 Santos AGMs and the 2022 and 2023 Woodside AGMs, Hostplus voted *against* climate-related shareholder resolutions that would strengthen those companies' climate action.

23. At Santos' 2022 AGM held on 3 May 2022, Hostplus voted *against* the following shareholder resolutions:[21]

    a. 8.A - Shareholder Proposal Regarding Facilitating Nonbinding Proposals;
    b. 8.B - Shareholder Proposal Regarding Disclosure of Capital Allocation Alignment With a Net Zero by 2050 Scenario;
    c. 8.C - Shareholder Proposal Regarding Lobbying Activity Alignment with 1.5 Degree Scenarios; and
    d. 8.D - Shareholder Proposal Regarding Decommissioning Oil and Gas Infrastructure.

24. At the same AGM, Hostplus voted *for* the issuance of shares to Kevin Gallagher (CEO and MD) incentivising the completion of Santos' *growth* projects.[22] As explained at paragraph [14] above, according to the IEA, there must be no new gas fields approved for development beyond 2021 and there must be huge declines in the use of fossil fuels by 2050. Accordingly, our client considers that voting for Kevin Gallager to be incentivised to satisfy *new* gas field development is inconsistent with a strategy that aligns with the Paris Agreement.

[21]Santos, Notice of Annual General Meeting 2022, p4 available at: 220401-2022-AGM-Notice-of-Meeting.pdf (santos.com) Hostplus Australian Equities proxy voting, reporting date January – June 2022, available at: Australian-Proxy-Voting-Jan-June22 (2).pdf
[22] Item 5

25. At Santos' most recent AGM, held on 6 April 2023, Hostplus voted *against* resolution 6(b) regarding disclosure of capital allocation alignment with a net zero by 2050 scenario.[23]

26. At Woodside's 2022 AGM held on 19 May 2022,[24] Hostplus voted *against* the following climate-related shareholder resolutions:[25]

    a. 10.B (Shareholder Proposal Regarding Disclosure of Capital Allocation Alignment with Net Zero by 2050 Scenario);
    b. 10.C (Shareholder Proposal Regarding Lobbying Activity Alignment with 1.5°C); and
    c. 10.D (Shareholder Proposal Regarding Decommissioning Oil and Gas Infrastructure).

27. At Woodside's 2023 AGM held on 28 April 2023, Hostplus voted *against* proposal 6B regarding disclosure of capital allocation alignment with a net zero by 2050 scenario.[26]

28. As such, our client considers that the representation that Hostplus engages with those companies to influence their climate strategies in circumstances where Hostplus has consistently voted *against* shareholder proposals that would provide more effective engagement mechanisms to shareholders and would require accountability by investee companies on their net zero targets and their alignment with the Paris Agreement, is potentially misleading or deceptive. Our client considers that what Hostplus is representing is entirely inconsistent with how it is voting.

29. Our client further considers that, should Hostplus continue its policy of engagement it must have a clearer strategy which considers not only *whether* companies have a net zero target, but also undertakes analysis as to whether those targets are *consistent* with the UN Expert Report such that it can properly be described as "Paris aligned".

Hostplus' engagement strategy

30. In light of the above, our client considers that Hostplus' engagement strategy should, at minimum, include the following:

    a. identify a focus list of companies for engagement based on prioritisation criteria such as by highest emissions or by sectors such as oil and gas;

[23] Santos, Notice of Annual General Meeting, p3 available at: 2023-Notice-of-Meeting.pdf (santos.com); Hostplus Australian Equities Proxy Voting Record, reporting date January – June 2023 available at: HP-Australian-Equities-Proxy-Voting-Disclosure-Jan-Jun23 (1).pdf.
[24] Woodside, Notice of Annual General Meeting 2022 (8 April 2022), p6 available at: Notice of Annual General Meeting 2022 (woodside.com)
[25] Hostplus Australian Equities proxy voting, reporting date January – June 2022, available at: Australian-Proxy-Voting-Jan-June22.pdf
[26]Woodside, Notice of Annual General Meeting 2023 (20 March 2023), p5 notice-of-annual-general-meeting-2023.pdf (woodside.com)Hostplus Australian Equities Proxy Voting Record, reporting date January – June 2023 available at: HP-Australian-Equities-Proxy-Voting-Disclosure-Jan-Jun23 (1).pdf.

b. set minimum benchmarks, including targets and timeframes, against which each company is evaluated. Communicate benchmarks to the companies, provide clear guidance on what to respond to and by what date;

c. publish a proxy voting policy on climate issues; for example, that Hostplus will support shareholder proposals that call on companies to disclose more information on climate change and will vote against the re-election of directors, and against a company's remuneration report, where the company's climate change strategy is inadequate or where the benchmarks have not been met.

d. mobilise a range of communication strategies including:

   i. direct communication with the board of directors. Given that decarbonisation involves strategic questions about fossil fuel companies' long-term future, effective engagement requires that concerns are discussed with the board and that a full response be provided;

   ii. direct communication with the C-suite where expectations are clearly set out with follow-up; and

   iii. attend AGMs to voice concerns about a company's climate action.

e. take part in collaborative shareholder engagement through initiatives such as Climate Action 100+;

f. publish an escalation policy which sets out the actions that will be taken if engagement is of limited effect, including a policy on divestment where dialogue has not effected any change and the company remains committed to its current strategy.

Requested action

31. In light of the above, our client requests that Hostplus takes the following action:

a. immediately review its investments to ensure consistency with the recommendations of the UN Expert Report.

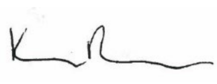
b. Where Hostplus continues to invest in high emitting fossil fuel companies, undertake effective engagement with those companies. Update Hostplus' engagement strategy accordingly (as outlined above) to provide clarity around how it intends to engage, including by providing benchmarks, a voting policy and an escalation strategy.

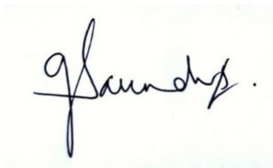
c. Vote in support of proposals that strengthen a company's climate action, including such as those set out at [22] and [23] above.

d. Refrain from representing that Hostplus is taking action to align its portfolio consistent with the Paris Agreement. If Hostplus implements the above actions, the more accurate representation would be that Hostplus is engaging with investee companies to influence *their* strategy to align with the Paris Agreement.

32. If you have any queries, please contact Kirsty Ruddock by email at kirsty.ruddock@edo.org.au.

Yours faithfully
Environmental Defenders Office





Managing Lawyer
Safe Climate (Corporate)

Solicitor
Safe Climate (Corporate)

Annexure A: Hostplus statements

<u>Annual Report 2022</u>

- *"**We're committed to net zero emissions by 2050***
  Since 2017, we've offered our Socially Responsible Investment (SRI) – Balanced option. It's designed to reflect members' values regarding fossil fuels, human rights, the environment, controversial weapons and other issues. I'm pleased that in March 2022, in line with community expectations and the Paris Agreement, we committed to transitioning our entire investment portfolio to net zero emissions by 2050."
- *"**Net zero emissions***
  We've committed to transition our investment portfolio to net zero emissions by 2050, in line with Australia's commitment to the Paris Agreement. To support this commitment, we've introduced a new strategic initiative to develop a detailed roadmap toward net zero. Read more about our commitment on page 33."
- *"**Our commitment to climate action and net zero 2050***
  We recognise that climate change is one of the most significant challenges facing the world today. We also acknowledge the financial risk it places on members' investments. That's why we're determined to transition our investment portfolio to net zero emissions by 2050.
- *We believe the potential physical and transition impacts of climate change present significant financial risks to global markets and economies over the longer term, and action is required now to ensure we protect our members' retirement savings and continue delivering them the best financial outcomes.*
- *Our approach to reducing portfolio emissions favours company engagement over divestment, where we can be positioned to influence corporate climate strategy and play a role in the future of investee companies. While this formal commitment to net zero 2050 is new, we've been managing climate risk for many years. We've been actively seeking investment opportunities in climate solutions that will not only support an orderly transition to a low-carbon future, but, more importantly, will provide investment opportunities that optimise your retirement savings. Through our venture capital and infrastructure portfolios, we've invested significantly in clean technology such as solar and wind power, waste-to-energy, battery storage, green hydrogen and fusion power.*

<u>Climate Change position statement</u>

- *"Climate change is one of the world's biggest challenges, and one we take very seriously. It's why we've committed to transition our investment portfolio to net zero emissions by 2050."*
- *"We've made this commitment to ensure our investment portfolio will be well-positioned as the world adapts to a lower-carbon future."*

<u>Website</u>

- *Hostplus commits to transition its investment portfolio to net zero emissions by 2050, in line with Australia's commitment to the Paris Agreement.*

- *"Climate change represents a significant financial risk to global markets and economies over the longer term. We have a responsibility to protect our members' retirement savings and deliver them the best financial outcomes, so it is important that we take further action now to ensure the investment portfolio remains well-positioned as the world adapts to a lower-carbon future."*
- *"We also believe that a net zero emissions commitment will present further investment opportunities in new technologies with strong growth potential. As a significant investor in new technologies via our venture capital and infrastructure portfolios, we're already contributing to the development of the technologies that will enable and empower an orderly transition and which will also deliver additional value for our members."*
- *"Hostplus is in a position to be able to engage with the companies we are invested in, and we are keen to set strong expectations around adoption of lower-emission technologies, effective governance frameworks and more transparent corporate reporting as we strive to deliver on our commitment to reach net zero emissions by 2050."*
- *"Hostplus believes that engagement helps to positively influence company behaviour and performance, contributing positively to long-term returns.*
  Engagement involves two-way constructive communication between us and investee companies on matters such as the organisation's performance, strategy, ESG issues, leadership, quality and level of reporting.
  Hostplus engages with companies primarily through its membership of the Australian Council of Superannuation Investors (ACSI) and service provider Hermes EOS, as well as directly and through investment managers.
  By taking a collective engagement approach, we are able to exert greater influence beyond our own shareholding in an investee company and to manage resources more effectively. As an ACSI member, Hostplus also actively influences ACSI's priority engagement themes and companies each year."[27]

[27] https://hostplus.com.au/about-us/company-overview/investment-governance#accordion-e2b9763c6d-item-39c1deb352 accessed 7/5/23.