

# Santos sued for ‘clean fuel’ claims and net zero by 2040 target despite plans for fossil fuel expansion

Royce Kurlmelovs, Guardian. 26 August 2021 [Plaintiffs' press releases follow on pages 3 and 7.](#)

A shareholder activist group is taking Australian oil company Santos to court over its claims it produces “clean fuel” and plans to reach net zero emissions by 2040.

Papers were filed against Santos – Australia’s second largest independent oil company – on Thursday by the Environmental Defenders Officers acting on behalf of the Australasian Centre for Corporate Responsibility.

Court documents ( <https://www.comcourts.gov.au/file/Federal/P/NSD858/2021/actions> ) make two claims against the company; the first concerning statements Santos made in its 2020 annual report where it claimed natural gas is a “clean fuel” that provides “clean energy”.

ACCR argues this is a misrepresentation as the extraction of natural gas involves the release of “significant quantities of carbon dioxide and methane into the atmosphere”.

The second part of the lawsuit takes aim at statements by Santos that it had a “clear and credible” plan to achieve net zero emissions by 2040 by relying on carbon capture and storage (CCS).

ACCR argues reliance on CCS to achieve net zero is not credible as Santos has made “a range of undisclosed qualifications and assumptions about CCS processes” while also seeking to massively expand the extraction of fossil fuels over time.

Dan Goucher, ACCR’s Director of Climate and Environment, said the litigation was important to challenge oil and gas companies where it appears they are trying to “greenwash their operations”.

“We read annual reports and sustainability reports from a range of companies every day. And some of these claims are completely unjustified,” Gocher said. “The key point for us I guess is that it’s become very difficult for any investor to differentiate between companies making genuine claims and companies that are not genuine.”

“This litigation is trying to debunk those more spurious claims.”

Gocher said that both institutional investors and retail investors implicitly trust statements made by companies in their corporate documents and that it was important these are truthful.

“I’d say there’s a fairly significant number of Santos shareholders that are convinced its actions are genuine. We don’t believe they are genuine,” Gocher said. “They intend to produce oil and gas beyond 2040.”

Santos was contacted for comment but a spokesperson for the company said “it would not be appropriate for Santos to comment on matters before the court”.

Dr Laura Schuijers, a senior research fellow with the University of Melbourne, said the direct challenge to Santos makes it “one to watch” following a [string of recent climate change related litigations](#).

“Big oil and gas companies are in the spotlight at the moment,” Dr Schuijers said. “The risk of being sued, litigation risk, is already significant enough. People don’t want to invest in companies that are potentially seen to be a liability.”

As the legal pressure mounts others are now calling on the finance sector to step up.

On Thursday, environmental finance group Market Forces published an [analysis](#) showing Australian super funds have pulled \$2.5bn from high carbon emitting companies like BHP, Woodside and Santos since 2018.

The figure was obtained by calculations using disclosure documents from 10 of the largest 30 super funds to check their equity holdings for investments in 23 fossil fuel companies.

Extrapolated across the entire sector, it was estimated \$5bn had been pulled from oil companies since 2018 – a figure Wil van der Pol from Market Forces said was a good start but needed to happen faster.

“Any company pursuing fossil fuel expansion doesn’t deserve any support from Australian super funds,” van der Pol said. “We’d like to see the flight of capital from these companies turn from a solid trickle to a raging torrent.”



Media release

## **Australasian Centre for Corporate Responsibility files landmark case against Santos in Federal Court**

26th August 2021

In an historic claim, the Australasian Centre for Corporate Responsibility (ACCR) will challenge Santos' claims that natural gas provides "clean energy" and that it has a "credible and clear plan" to achieve "net zero" emissions by 2040 in the Federal Court of Australia.

This is the first court case in the world to challenge the veracity of a company's net zero emissions target, and a world-first test case in relation to the viability of carbon capture and storage (CCS) and the environmental impacts of blue hydrogen.

Acting on behalf of ACCR, lawyers from the Environmental Defenders Office (EDO) will claim that Santos is engaging in misleading or deceptive conduct in potential contravention of both corporate and consumer law. ACCR will be represented in court by Noel Hutley SC, Sebastian Hartford-Davis and Jerome Entwisle.

Some specific concerns raised by EDO on behalf of the ACCR include:

### **Clean Energy Representations**

In its 2020 Annual Report, Santos made statements that the natural gas it produces is a "clean fuel" and provides "clean energy";

ACCR claims these statements convey that the extraction of fossil gas, and the end use of that gas, does not have a material adverse effect on the environment;

ACCR alleges that the report failed to disclose:

- that the extraction and processing of fossil gas, including by Santos, involves the release of significant quantities of carbon dioxide (CO<sub>2</sub>) and methane (CH<sub>4</sub>) into the atmosphere;
- that the end-use of natural gas releases material amounts of CO<sub>2</sub> into the atmosphere;
- that there are alternative energy sources presently available, which Santos does not produce or intend to produce, that do not release any or any material greenhouse gas emissions.

## Net Zero Representations

In its 2020 Annual Report, Santos made statements that it had a “clear and credible” plan to achieve “net zero” scope 1 and 2 greenhouse gas emissions by 2040. A large amount of this reduction is anticipated to come from future CCS processes and blue hydrogen.

ACCR claims these statements are potentially misleading because:

- Santos has firm plans to increase its greenhouse gas emissions through the expansion of its natural gas operations, and has not yet decided whether to proceed with its net zero plans; and
- Santos’ net zero plans depend upon a range of undisclosed qualifications and assumptions about CCS processes.

In light of these matters, the EDO, acting on behalf of ACCR, has commenced proceedings in the Federal Court of Australia seeking to resolve the issues in dispute.

**Commenting on the Federal Court proceedings, Dan Gocher, Director of Climate and Environment, said:**

“Santos’ audacious ‘clean energy’ and ‘net zero’ claims must be challenged in a court of law.

“Santos has perfected the art of greenwashing, and shareholders continue to be misled by Santos’ clean energy claims.

“Santos’ ‘clean energy’ and ‘net zero’ claims pose a major risk to investors as it becomes increasingly more difficult to differentiate between companies taking genuine action versus those relying largely on offsets or unproven technologies.

“More than 80% of Santos’ net zero plan relies on carbon capture and storage (CCS). The promise of CCS technology has been used by the fossil fuel sector to justify business as usual for decades.

“Whilst Santos claims it will produce zero emissions hydrogen, recent research has highlighted the carbon intensity of blue hydrogen production, demonstrating that CCS is not a cure-all for the emissions associated with hydrogen produced with fossil gas.

“To date the majority of CCS projects have failed. The technology is expensive and unreliable. As demonstrated by the Gorgon CCS project, even operating projects struggle to meet CO2 capture targets.

“Santos is planning to increase production by more than a third by 2025-26, which will come at the expense of emissions reductions in the critical decade to 2030.

“Santos has provided no detail on the completeness and permanence of CO2 capture at Moomba, along with how it will manage long term leakage risk.

“Santos has previously made multiple statements around its intention to use injected CO2 for enhanced oil recovery (EOR) in the Cooper Basin, which is known to have high CO2 leakage rates. The exact role of EOR in Santos’ strategy must be disclosed to investors.”

**Elaine Johnson, EDO Director of Legal Strategy said:**

“Our client is taking this action to ensure Santos and other gas companies are held to account for the claims they make about their product and its future in a highly carbon-constrained global economy.

“There are serious questions about the future of the gas industry in the face of the global energy transition. The gas industry has a legal responsibility to be upfront with investors about that.

“Given the seriousness of the risks of continued fossil fuel use, gas companies must be completely transparent about their future planning. Plans should be robust, detailed and open to scrutiny.

“Instead we see ‘net zero’ plans that contain very little detail and which are often contingent for their success on unproven processes, such as carbon capture and storage.

“New gas projects are entirely at odds with what the science says is required to tackle climate change. Greenhouse gases generated from new gas projects are dangerous pollutants which, acting cumulatively, pose real and existential threats to people and our environment.

“Claims like those made by Santos need to be based on solid foundations. If companies are telling investors they have a credible pathway to net zero emissions, they need to have robust, sound plans to back them up.

“Companies have a legal obligation to be upfront and honest with investors in their annual reports. This is particularly important to investors who are trying to assess which companies will survive and thrive in a rapidly changing global energy economy.”

## Background

ACCR claims that by making the above representations, Santos has engaged in conduct that was misleading or likely to mislead in contravention of s 1041H of the Corporations Act 2001 (Cth) and s 18 of the Australian Consumer Law (ACL) (Schedule 2 of the Competition and Consumer Act 2010 (Cth)). Further, in making representations that gas is a 'clean' fuel or energy source, ACCR claims that Santos engaged in conduct that was liable to mislead the public as to the nature, characteristics, suitability and quality of Santos' primary product - being 'natural' gas – contrary to s 33 of the ACL.

## About EDO

Environmental Defenders Office (EDO) is the largest environmental legal centre in the Australia Pacific, dedicated to protecting our climate, communities and shared environment by providing access to justice, running groundbreaking litigation and leading law reform advocacy.

We are an accredited community legal service and a non-government, not-for-profit organisation that uses the law to protect and defend Australia's wildlife, people and places.

## Our work

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### Climate & Environment

ACCR's climate program aims to accelerate Australia's transition to a low carbon economy in line with the Paris Agreement. We engage with ASX-listed companies on their climate risk disclosure and the need to set emissions reduction targets consistent with the Paris Agreement, and we also push for reviews by ASX-listed companies of their industry associations' climate policy advocacy.



AUGUST 26, 2021

# World-first Federal Court case over Santos' 'clean energy' & net zero claims

The Environmental Defenders Office, acting on behalf of the Australasian Centre for Corporate Responsibility (ACCR), has filed a Federal Court case against gas giant Santos over its claims natural gas is "clean fuel" and that it has a credible pathway to net zero emissions by 2040.

ACCR will argue the claims – contained in the company's 2020 Annual Report – constitute misleading or deceptive conduct under the *Corporations Act 2001* (Cth) and the *Australian Consumer Law*.

**This is the first court case in the world to challenge the veracity of a company's net zero emissions target, as well as the first in Australia raising the issue of climate greenwashing against the oil and gas industry.**

**It is also a landmark, world-first test case in relation to the viability of carbon capture and storage, and the environmental impacts of blue hydrogen, increasingly touted as a key element in gas companies' pathways toward net zero emissions.**

## Santos' claims – "Clean" gas & a "credible" net zero pathway

Santos Ltd is one of Australia's largest gas companies, and the biggest domestic gas supplier in the country.

In Australia its major projects include oil and gas extraction off the coast of Western Australia, as well as in the vast Cooper and Eromanga Basins that span South Australia and Queensland.

Santos is also a major player in coal seam gas, developing vast areas of the Surat and Bowen Basins in Queensland and planning a major new CSG project around the northern NSW agricultural hub of Narrabri.

In 2019-20, Santos was responsible for approximately 7.74 million tonnes of CO<sub>2</sub> equivalent emissions from its direct operations, with the end-use of the natural gas it supplied emitting an additional 28.6 million tonnes of CO<sub>2</sub> equivalent.

Despite this, Santos describes itself as a "clean energy" provider in its 2020 Annual Report, stating that natural gas is a "clean fuel".

It has also sought to assure investors and the public that it has a clear and credible pathway to achieve net zero emissions by 2040.

This pathway is heavily reliant on both carbon capture and storage (CCS) processes and the production of "blue hydrogen".

However, ACCR alleges that Santos failed to disclose that it has firm plans to *increase* its greenhouse gas emissions by developing new or existing oil and gas project including the Barossa, Dorado and Narrabri LNG projects. ACCR also alleges that Santos failed to disclose that its net zero plans depend upon a range of undisclosed qualifications and assumptions about CCS.

In addition, although blue hydrogen is increasingly touted as a **key element in gas companies' pathways toward net zero emissions, scientists and even key gas industry figures have raised questions over its environmental impacts in comparison to other energy sources.**



ACCR says that these issues call into question whether Santos had reasonable grounds to assert it has a “clear and credible” plan to reach net zero emissions by 2040.

On behalf of ACCR, we will argue that in making the above claims Santos potentially engaged in misleading or deceptive conduct under both the *Corporations Act 2001* (Cth) and the *Australian Consumer Law*.

We are asking the court to grant an injunction requiring Santos to correct the record publicly on these statements, and prohibit Santos from engaging in similar misleading or deceptive conduct in the future.

## The Impact of Greenwashing – Investors & Environment

**This case is about holding gas companies like Santos to account for the claims they make about their product and future in a low-carbon world.**

Our client, ACCR, is a shareholder advocacy organisation focused on how listed companies, industry associations, and investors are managing climate, labour, human rights and governance issues.

They are also investors in Santos, taking this action to ensure the company and others like it fulfil their legal responsibility to be transparent and open with shareholders like ACCR.

Companies have an obligation to be upfront and honest with investors – this is particularly important to investors who are trying to assess which companies will survive and thrive in a rapidly changing global energy economy.

Misleading information can have a dramatic effect on the market, on investors, and ultimately on the environment.

It can leave investors vulnerable to major losses. It can skew the market unfairly in favour of companies failing to adequately respond to the climate change, and unfairly away from companies that are acting responsibly.

In doing so, misleading information about natural gas and the transition towards a lower carbon economy can obstruct an effective and timely response to the climate crisis.

A genuine transition to a low-carbon energy economy is crucial if Australia is serious about meeting its commitments under the Paris Agreement and ensuring the world avoids the worst impacts of climate change.

It's essential that energy companies play their part and are upfront and honest about their role in this crisis and the challenges they face in adapting to a low-carbon economy.

This landmark case will help to ensure energy companies like Santos are held to account for the statements they make to investors and the public in the face of the global challenge of climate change.