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FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

VID 555 of 2022

**SANTOS NA BAROSSA PTY LTD**
**(ACN 109 974 932)**

Appellant

**DENNIS MURPHY TIPAKALIPPA**

First Respondent

**NATIONAL OFFSHORE PETROLEUM SAFETY AND ENVIRONMENTAL MANAGEMENT AUTHORITY**

Second Respondent

# SECOND RESPONDENT'S OUTLINE OF SUBMISSIONS


Filed on behalf of the Second Respondent

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## I. INTRODUCTION

1. The ultimate issue in this appeal is whether it was open to NOPSEMA's delegate, in making a decision under reg 10(1)(a) read with reg 10A(g)(i) of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the **Regulations**), to be reasonably satisfied that the environment plan (the **Drilling EP**) prepared by Santos demonstrated that Santos had carried out the consultations required by reg 11A.

2. The key elements of the factual context in which the issue arises are:

   2.1. the Drilling EP identified that a geographic area known as the "EMBA"[1] contained "significant sea country" for "Traditional Owners" of the Tiwi Islands; [2]

   2.2. the Drilling EP described the Tiwi Land Council (**TLC**) as having the "function" of "represent[ing] indigenous residents of the Tiwi Islands", and identified it as a "relevant person" that had been consulted;

   2.3. the Drilling EP did not identify the first respondent, Mr Tipakalippa, or any other traditional owner, as a "relevant person" who had been consulted.

3. In ground 1 of his amended originating application, Mr Tipakalippa contended that: the Drilling EP indicated that "significant sea country" for traditional owners exists in the EMBA (particulars (f) and (g)); that information indicated that he and other members of the Munupi clan are "relevant persons" as defined in reg 11A(1) (particulars (h) and (i)); but the Drilling EP did not demonstrate that he or any member of the Munupi clan had been consulted ((j) and (k)); the delegate therefore was or ought to have been aware that the Drilling EP did not demonstrate that Santos had carried out the consultations required.

4. Mr Tipakalippa, appropriately,[3] did not impugn the decision on the basis that the Drilling EP did not demonstrate that Santos had carried out consultations required by reg 11A by

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1 The description of the relevant environment in the Drilling EP included "the operational area (OA) of the activity which [was] defined as the entire permit area in which activities may occur, and an extended Environment that May Be Affected (EMBA) which [was] conservatively defined based on stochastic modelling for an unmitigated worst case oil pollution incident to low exposure values consistent with the matters set out in NOPSEMA Bulletin — Oil spill modelling": Statement of Reasons at paragraph 26(c) (**AB Part C, Tab 10, p 8**).

2 Further, the "Assessment Findings" recorded that the Drilling EP "*identifies that sea country is valued for indigenous cultural identity and indigenous people have been sustainably managing their sea country, including the Arafura Marine Park, for tens of thousands of years. Despite limited information and uncertainty, areas have been assumed to be of significance for Traditional Owners*": Assessment Findings, third page, first para (**AB Part C, Tab 30**). See also Statement of Reasons at paragraph 26(e)(v) (**AB Part C, Tab 10, p 9**).

3 See, by analogy, *Ellis v Central Land Council* (2019) 267 FCR 339 at [162]: "a third party cannot generally complain of a breach of procedural fairness which is owed to some other person". See also, more generally, *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 96 ALJR 234 at [84]-[86] (Edelman and Steward JJ).

reference to any other putative "relevant person" or category thereof (i.e., other than traditional owners of the Tiwi Islands).

5. The primary judge upheld ground 1 on two alternative bases (PJ [173]).

6. The **first** basis, which his Honour characterised as a "methodological flaw", was that the Delegate was bound to conduct what his Honour called "the universe of relevant persons inquiry", but was disabled from so doing because the Drilling EP did not contain "the information necessary to demonstrate that each person within the universe of persons who met the description in reg 11A(1)(d) was identified as a relevant person" (PJ [155]-[156], see also [82]). The necessary information was information "demonstrating that the methodological exercise of identifying each and every relevant person conducted by Santos had been correctly undertaken" (PJ [127]). His Honour also characterised that information as a mandatory relevant consideration (PJ [156]).

7. The **second** basis, which his Honour characterised as a "failure to consider" error, was that the Delegate did not consider the "sea country material" in the Drilling EP. His Honour found that the sea country material was "probative" of whether the plan demonstrated that each and every "relevant person" had been consulted (PJ [213]-[218], [223]). Essentially, this was because the "sea country material" was "relevan[t] to a fact in issue in the universe of relevant persons inquiry"; "[t]he material suggests the existence of values or sensitivities which may be 'functions, interests or activities' of traditional owners that may be affected by the Activity, including the 'functions, interests or activities' of the traditional owners of the Tiwi Islands" ([216]).[4] His Honour held that the delegate "had to appreciate the relevance of the sea country material" ([218]). His Honour held that the delegate "failed to engage with the sea country material sufficiently to have appreciated its relevance to [the universe of relevant persons inquiry]" (PJ [226]). Notably, however, his Honour held that delegate was satisfied that the TLC was "consulted in its own right and by virtue of the function it was seen to have which may be affected by the Activity" (PJ [252]).

8. The second respondent, NOPSEMA, seeks to participate in this appeal in a confined way (as it did below: PJ [14]), by making certain submissions as to its "powers and procedures".[5] As "the repository of the powers and responsibilities conferred on it by the legislative scheme under which it made the relevant decision", NOPSEMA had and has "a unique

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4 In this way, there is a relationship between the two bases on which his Honour identified legal error by the Delegate.

5 *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13 at 35-36. The High Court's acknowledgement that a "tribunal" may appropriately make submissions about its "powers and procedures" has not been applied narrowly. See, e.g., Groves, "The *Hardiman* Rule" (2012) 33 Adel LR 371 at 382-387.

contribution" to make to the proceedings, being "the only party … whose participation is governed exclusively by the aims and objectives of the statutory scheme".[6]

9. NOPSEMA makes submissions on issues of construction that may bear on the disposition of the appeal, and certain flaws in the primary judge's reasoning in that respect, being:

9.1. **first**, the proper construction of the limb of the definition of "relevant person" reg 11A(1)(d) (*Who has to be consulted?*);

9.2. **second**, the proper construction of the criterion for acceptance of an environment plan (**EP**) in reg 10A(1)(g) that the plan "demonstrates" that the titleholder has carried out the consultations required by reg 11A (*How does a plan demonstrate that relevant persons have been consulted?*); and

9.3. **third**, the proper construction of the expression "reasonably satisfied" in reg 10(1)(a) (*What is the standard of satisfaction?*).

## II Reg 11A(1)(d): definition of "relevant person"

10. Before turning to the meaning of the key expression in reg 11A(1)(d), it assists to identify the broader features of the consultation obligations of a titleholder under reg 11A in relation to an EP, and to compare these with the requirements of the public comment process under Part 1A in relation to an offshore project proposal (**OPP**).

***Features of the consultation obligations in reg 11A in relation to an EP***

11. There are two key features of the consultation obligations in reg 11A:

11.1. **First**, the titleholder must consult "each" relevant person: subs (1). Thus, the titleholder's obligation is strict and unqualified. The obligation is not, for example, qualified on the basis: (a) that the titleholder must make "reasonable efforts" to consult each relevant person; or (b) that the titleholder must consult with persons who "in its opinion" are relevant persons.

11.2. **Second**, the titleholder must comply with particular prescriptions as to how the consultation is to be performed: see subs (2)-(4). In particular, the titleholder must "give" each relevant person sufficient information to allow them to make an informed assessment of the possible consequences of the activity under the plan on their functions interests or activities.

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6 *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422 at [31] (Warren CJ, Maxwell P and Ormiston AJA). Those observations were made in the context of participation in a merits review process, but they also have force in a judicial review context: *Zaitsev v Building Appeals Board* [2019] VSC 455 at [46] (Quigley J). See also, e.g., *Vincentia MC Pharmacy Pty Ltd v Australian Community Pharmacy Authority* (2020) 280 FCR 397 at [5] (Perry and Stewart JJ).

12. Accordingly, the scheme in reg 11A operates on the premise that a titleholder will be able with reasonable diligence: to identity each relevant person (the proactive **identification step**); and then to discharge its obligation to consult each such person in the prescriptive manner required (the prescriptive **consultation step**).

13. Put simply, if each person might – by virtue of their cultural connections to sea country in the EMBA – have "interests" in activities to be carried out under a plan within the meaning of reg 11A(1)(d), which appears to be contemplated by the primary judgment, that would be unworkable. For this putative category of relevant persons alone, it is obvious that it would include many individuals, but that there is no ready means by which the titleholder could identify all of those persons for the purposes of consultation (who would not necessarily reside in one or a small number of locations) let alone "demonstrate" they had done so.[7] The workability problem is apt to compound if other large, variable and indeterminate groups with putative "interests" held in common are added (e.g., traditional owners in Western Australia, recreational fishers or sailors etc).

14. The primary judge held that "[t]he description of a relevant person given by reg 11A(1)(d) can raise substantial complexity in the exercise of identifying each and every person falling within that description", including because "the number of persons falling within that description may be very large and in numerous categories" (PJ [137]). In particular, his Honour contemplated the possibility that each traditional owner might reasonably be regarded as a "relevant person" upon a due consideration of the "sea country material".

15. That involved a tacit construction of reg 11A(1)(d), or at least a tacit rejection of NOPSEMA's construction (despite his Honour's purported disavowal of any construction: PJ [137]).

16. Upon a proper construction of reg 11A(1)(d), it is not the case that Mr Tipakalippa and each and every member of the Munupi clan (or each clan of the Tiwi Islands) could reasonably have been considered by the delegate to be a "relevant person" on the basis of any common connections to sea country. If this construction is correct, then the delegate's satisfaction that the Drilling EP demonstrated that Santos had complied with reg 11A, despite the Drilling EP not indicating that each clan member had been consulted, cannot have been affected by a material legal error.

***Features of the public comment scheme in Part 1A in relation to an OPP***

17. The scheme of the Regulations is that a description of a proposed "activity" of a titleholder, for which an EP must be in force in order for the titleholder lawfully to undertake it (reg 6), will also have been set out in an OPP (reg 5A(5)(b)) in respect of which NOPSEMA will have previously sought public comment (reg 5C(3)), which comment will have been

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7 There is no reason to suppose that all traditional owners reside in the Tiwi Islands.

adequately addressed by the proponent before the proposal was accepted (reg 5D). As well as describing the activity, the OPP will also have included a description of the existing environment that may be affected by the project, and the details of the particular relevant values and sensitivities (if any) of that environment (reg 5A(5)(c), (d); reg 5C(2)(d)); and the OPP will have been assessed by NOPSEMA as appropriately identifying and evaluating the environmental impacts and risks of the project (reg 5C(2)(a)).

18. In this way, Part 1A the Regulations provides an opportunity for broad participation in decision-making as to whether a project will proceed. Part 1A thereby requires a broad but "passive" model of consultation in relation to an OPP,[8] as distinct from the narrow but proactive and prescriptive model of consultation required by reg 11A in relation to an EP.

19. The public comment process under Part 1A in relation to an OPP is a significant feature of the scheme of the Regulations, which was not considered at all by the primary judge in his reasons. It is significant, not only because it reinforces what was plainly intended to be a more narrowly-targeted (proactive and prescriptive) consultation in relation to an EP under reg 11A, but also because it is capable of fulfilling some of the functions regarded by his Honour as achieved by reg 11A and as justifying his Honour's tacitly broad construction of that provision. For example, the proposition that "people who may be affected by the petroleum activity are well placed to assist in informing an assessment process" (PJ [88]) might be correct, but might be more apt to explain the (relevantly workable) requirements of Part 1A, and it also does not reflect the statutory language in reg 11A(1)(d).

***Proper construction of reg 11A(1)(d)***

20. Informed by the context of the Regulations as a whole, we turn to consider the meaning of reg 11A(1)(d).

21. As to the meaning of "functions" and "activities", NOPSEMA agrees with Santos' submissions (AS [51]-[55]). As to "interests", NOPSEMA submits as follows.

22. First, it is apt to note that the expression "interests [that] may be affected by" conduct or a decision is precisely the formulation that courts have adopted as the presumptive criterion that triggers a right of a holder to be heard in relation to the conduct or decision.[9] Especially

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8 That is "receiving rather than seeking out information" proactively from particular persons. See Aronson et al, *Judicial Review of Administrative Action and Government Liability* (7th ed., 2022) at [8.150]. The learned authors also note that "[o]ften it is simply too expensive or impracticable to hear all persons affected", and a process of consultation that is commonly "passive" "can provide a more manageable way to offer participation for affected people".

9 See, e.g., *Minister for Immigration and Border Protection v SZMTA* (2019) 264 CLR 421 at [98] (Nettle and Gordon JJ) and the cases there cited: "as a matter of statutory construction, the common law will usually imply a condition that a power conferred by a statute on the executive branch be exercised with procedural fairness to those whose interests may be adversely affected by the exercise of that power".

in that light, well-established case law as to the limits to the concept of "interests" apt to engage a right to be heard or consulted assists in construing the scope of reg 11A(1)(d).

23. And that case law[10] recognises the significance of the practical difficulties that would flow from construing legislation as requiring a person to consult, or hear from, each person who holds a putative interest that is held in common with members of a class – especially where that class is large, variable and/or indeterminate. Some of that case law will be explored at the hearing. It is convenient to highlight two of the cases here.

24. In an influential judgment in *Castle v Director General, State Emergency Service*, Basten JA explained (emphasis added):[11]

> … **[O]ne limitation on the operation of the duty to accord procedural fairness arises from the need to identify the obligation by reference to an individual or class of persons. The obligation must be capable of identification and fulfilment, in a reasonable and practical sense, prior to the making of the decision.** Some guidance may be obtained by asking whether it was reasonable to expect the officer exercising a particular power to identify, in advance, the applicant as a person whose rights or interests may be affected and the way in which the proposed affectation would occur. **The larger the class of persons reasonably expected to be affected, the less the likelihood that procedural fairness will be attracted** and, if it is, the lower the likely content of the duty. **Similarly, even though the class of those affected may be small, the duty is less likely to be attracted if membership of the class is variable and not readily ascertained**: see, eg, *Comptroller-General of Customs v Kawasaki Motors Pty Ltd (No. 1)* [1991] FCA 519; 32 FCR 219 at 240-241 (Hill and Heerey JJ).

25. That principle was applied in the context of consultation obligations in *Newchurch v The Minister for Aboriginal Affairs and Reconciliation*, which concerned a statutory obligation of a Minister to "consult" with any particular Aboriginal organisation, and any traditional owners and other Aboriginal persons who, in the opinion of the Minister, has or have a "particular interest" in the question of whether a site or object is to be declared as an Aboriginal site or object, or whether such a declaration is to be revoked.[12] Doyle CJ held that the applicant was "one of an unknown number of traditional owners" of the relevant site, who had not been involved in any process "in such a way as to bring him to the notice

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10 See, e.g.: *Salemi v MacKellar (No 2)* (1977) 137 CLR 396 at 452 (Jacobs J); *Kioa v West* (1985) 159 CLR 550 at 584 (Mason J), 619-621 (Brennan J) and 632 (Deane J); *Botany Bay Council v Minister for Transport and Regional Development* (1996) 66 FCR 537 at 555; *Minister for Local Government v South Sydney City Council* (2002) 55 NSWLR 381 at [263] (Mason P, Ipp JA agreeing); *Castle v Director General, State Emergency Service* [2008] NSWCA 231 at [6] (Basten JA); *Apache Northwest Pty Ltd v Agostini (No 2)* [2009] WASCA 231 at [121] (Buss JA); *Newchurch v The Minister for Aboriginal Affairs and Reconciliation* [2011] SASC 29; *Director-General, Department of Trade & Investment, Regional Infrastructure and Services v Lewis* (2012) 301 ALR 420 at [58]-[61] (McColl JA); *Kassam v Hazzard* (2021) 362 FLR 113 at [223]-[224] (Beech-Jones CJ at CL); *Williams v Minister for Aboriginal Affairs & Reconciliation* [2018] SASC 163 at [8], [62] (Stanley J); *Disorganized Developments Pty Ltd v State of South Australia* [2022] SASCA 6 at [106]-140] (Livesey P, Doyle and Bleby JJA).

11 [2008] NSWCA 231 at [6].

12 [2011] SASC 29. See in particular the consultation requirement set out at [13].

of the Minister as a traditional owner with an interest in the Revocation Decision any different from that of any other traditional owner". Accordingly at [114] (emphasis added):

> … **There was no basis for the Minister to conclude that Mr Newchurch was affected as an individual, as distinct from as a member of the class of traditional owners.** In *Kioa v West* (1985) 158 CLR 550 Mason J (at 584) and Deane J (at 632) referred to decisions that affect rights and interests of another in a "direct and immediate way" (Mason J) and in an individual capacity "… as distinct from as a member of the general public or of a class of the general public …" (Deane J). I conclude that the Minister was not obliged to notify Mr Newchurch of the application for revocation, or to seek comments from him in relation to the request.
>
> [115] Did procedural fairness require, in these circumstances, that the Minister inform the traditional owners of the request for a revocation, and invite them to comment on the request? It was not practically possible for the Minister to identify or to notify all of the traditional owners, or all who claimed to be traditional owners …

26. Doyle CJ went on at [115] to hold that, in these circumstances, the Minister was not required to consult with each traditional owner. "It was not practically possible for the Minister to identify or to notify all of the traditional owners, or all who claimed to be traditional owners". But his Honour held that the Minister could consult with an organisaton called the KNCHA on the basis that it appeared to represent traditional owners.

27. In the present context, that case law is apposite. A construction of reg 11A(1)(d) that admits of the possibility of including each and every member of a large, variable and indeterminate class of individuals who share interests in common (such as traditional owners, or those who claim to be traditional owners, of the Tiwi Islands) is unworkable, and is wrong. It may be that the TLC is a "relevant person" in its own right, on the basis that it is an "organisation" whose "functions"[13] may be affected by activities to be carried out under the Drilling EP, as Santos and the delegate considered. But even if Santos and the delegate were somehow wrong to consider that the TLC was a relevant person, that would be an immaterial legal error.

***Particular errors in the primary judge's reasoning***

28. There are two particular errors in the reasoning of the primary judge on construction.

29. **First**, his Honour appeared to seek to marginalise the workability issues arising from his tacitly broad construction of reg 11A(1)(d), reasoning that "those difficulties will largely have to be addressed for reasons other than the requisite consultation process", referring to regs 13(2) and (5)(b) (PJ [137]). However, his Honour erred in this respect.

    29.1. The requirements of reg 13(2) in relation to an EP perfectly mirror the requirements of reg 5A(5)(c) in relation to an OPP that is published at an earlier stage (referred to above). In neither context does the discharge of this obligation somehow require

[13] Including, under section 23(1)(b) of the *Aboriginal Land Rights (Northern Territory) Act 1976* to "protect the interests of traditional Aboriginal owners of … Aboriginal land in the area of the Land Council".

or entail the proponent proactively to identify (let alone prescriptively consult with) each and every individual that may be affected. Yet these are the almost inevitably unworkable consequences of his Honour's tacit construction of reg 11A(1)(d) (at least tacit rejection of NOPSEMA's construction).

29.2. The requirement of reg 13(5)(b) that an environment plan must include an evaluation of all the impacts and risks, appropriate to the nature and scale of each impact or risk, likewise does not require or entail this.

There was also no contention by any of the parties that the Drilling EP failed to comply with reg 13 in any way.

30. **Second**, as Santos has submitted (AS [69]), in that part of his Honour's reasons for judgment concerning the supposed "methodological demonstration" required in an EP, his Honour misconstrues reg 11A(1)(d) by treating it as governed by an "intersection" of functions, interests or activities with the environment including its values or sensitivities (PJ [138]-[139], [153]).

## III Reg 10A(1)(g): "demonstrates"

31. An essential step in the primary judge's reasoning as to the "methodological flaw" was that an EP must contain a "methodological demonstration" of how the titleholder has identified each and every "relevant person", and of how it has excluded others not identified as such: see, e.g., PJ [138]-[139], [144]-[145]. That step should not be accepted.

32. In part, that is for the reasons Santos has submitted and NOPSEMA embraces above at [30].

33. Further, Div 2.3 of the Regulations (regs 12 to 16) stipulates what an EP must contain, and is directly relevant to the question of what information an EP must contain in order to "demonstrate" to NOPSEMA that a titleholder has carried out the necessary consultations, within the meaning of the Regulations. The legislature may be taken to then presume that NOPSEMA will bring to bear its expertise and experience in assessing whether that content demonstrates compliance by the titleholder. (It is impossible for NOPSEMA to assess an EP in a vacuum; but it is not to be supposed that NOPSEMA must audit the titleholder's compliance by conducting its own parallel process of identifying "relevant persons", especially given the ordinary 30-day timeframe for decision-making.)

34. In particular, reg 16(b) provides that an environment plan must contain "a report on all consultations under regulation 11A of any relevant person by the titleholder" and stipulates, in reg 16(b)(i)-(iv), what that report must contain. As Santos has observed (AS [70]), that list does <u>not</u> include a requirement that the report contain the kind of methodological demonstration which the Primary Judge found was required. The present significance of that is reinforced by the history of the Regulations, which shows the interrelationship

between the contents of reg 16(b) and requirement that the EP demonstrate compliance with the consultation obligation.

34.1. Under the original Regulations,[14] reg 16(b) required that an EP contain "a report on any consultations between the operator and relevant authorities, interested persons and organisations in the course of developing the environment plan". (There was, at that stage, no separate requirement to consult relevant persons or for NOPSEMA to be satisfied that such consultation had occurred.[15])

34.2. In 2005, the criteria for the acceptance of an EP were amended to include that the Designated Authority must have reasonable grounds for believing that the plan "for the requirement mentioned in paragraph 16(b) – demonstrates that there has been an appropriate level of consultation with authorities, persons and organisations".[16] Regulation 16(b) was amended to refer to "all consultations" rather than "any consultations".

34.3. In 2012, amending regulations[17] introduced Division 2.2A, including the obligation of present significance, to consult "a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plan, or the revision of the environment plan". Regulation 11(1)(f) was correspondingly amended to provide: the "Regulator must accept the environment plan if there are reasonable grounds for believing that the plan …. for the requirement mentioned in paragraph 16 (b) — demonstrates that: (i) the operator has carried out the consultations required by Division 2.2A; and (ii) the measures (if any) that the operator has adopted, or proposes to adopt, because of the consultations are appropriate." Regulation 16(b) was replaced by the current form of the provision.

34.4. The present requirement, that NOPSEMA be reasonably satisfied that the EP meets the criteria in reg 10A, was introduced in 2014, when Division 2.2 was entirely repealed and replaced.[18] No change was made at that stage to reg 16(b).

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14 *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999* (Cth), made under the predecessor to the OPGGS Act, the *Petroleum (Submerged Lands) Act 1967* (Cth).

15 See reg 11, which required the Designated Authority to accept an EP if there were reasonable grounds for believing that the plan met the criteria listed in sub-paragraphs (a) to (f), which did not include any criterion relating to consultation.

16 *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999* (Cth) (compilation prepared on 20 December 2005), reg 11(1)(f). See also *Petroleum (Submerged Lands) (Management of Environment) Amendment Regulations 2005 (No. 1)* (Cth), Schedule 1, items 12 and 22 and the Explanatory Statement for those amendments, in particular at p 3.

17 *Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment Regulations 2011 (No. 1)* (Cth).

18 *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Environment Measures) Regulations 2014* (Cth).

35. That history reinforces the point that the Regulations, in reg 16(b), expressly provide for the necessary contents of an EP in so far as a titleholder's consultation obligations and NOPSEMA's assessment of that matter are concerned. There is no requirement in reg 16 or elsewhere for the methodological demonstration of the kind identified by his Honour as necessary.

## IV Reg 10 (1)(a): "reasonably satisfied"

36. NOPSEMA agrees with Santos' submissions (AS [38]-[44]) with respect to the primary judge's approach to the construction of the expression "reasonably satisfied" and the standard of satisfaction that it imposes on NOPSEMA in assessing an EP (PJ [72]-[78]).

## V. CONCLUSION

37. NOPSEMA makes the submissions outlined above to seek to assist the Court to determine the appeal. NOPSEMA intends to elaborate on these submissions at the hearing.

Dated: 17 October 2022

**NICK WOOD**
*Owen Dixon Chambers*

**FRANCES GORDON**
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