

HUMAN RIGHTS GRIEVANCE COMPLAINT

TO

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ANZ)

BY

PIRRAWAYINGI (MARIUS) PURUNTATAMERI

Munupi Senior Man, Mayor of the Tiwi Islands, Traditional Owner and senior Elder of the Munupi clan of the Tiwi Islands

PAULINA JEDDA PURUNTATAMERI

Tiwi Woman from the Munupi clan, a freshwater woman, and an Elder in her community

CAROL MARIA PURUNTATAMERI

Munupi Senior Woman, Traditional Owner and Elder of the Munupi clan of the Tiwi Islands

DENNIS MURPHY TIPA KALIPPA

Munupi Senior Law Man, Traditional Owner and leader of the Munupi clan of the Tiwi Islands

THERESE WOKAI BOURKE

Regional Councillor, leader of the Malawu clan of the Tiwi Islands

SIMON MUNKARA

Member of the Jikilaruwu clan of the Tiwi Islands

TIBBY QUALL

Larrakia Elder and Traditional Owner

4 APRIL 2023

Filed by Equity Generation Lawyers



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Development like this isn't pure - it shouldn't exist. It's about our songlines. Our songlines connect us to other clans, tribes and people. Our stories also provide protection for country and people. We need our environment to stay alive. That's part of Aboriginal education that is passed down from generation to generation. We are taught to respect the land.

You can't break the system of our sacred places. Because then you'll break the land, the water and break the people. The longer we maintain things, the longer we live. Our survival depends on our ceremonies, if one breaks, other tribes and people will also be affected. We have to keep it all in tact for our future generations. From here on Larrakia country, our system goes north. It travels across to South Alligator, Kakadu, Oenpelli and beyond. We're connected from there and to the Tiwi Islands and then it comes back. We have to maintain that. We have our ways through law and custom.

Tibby Quall

VOICES TO BANKS⁵

The banks are going to make money from this - that is what business is all about.

These banks have all breached their own human rights policies. They've ignored their human rights policies within their organisations.

Just like banks' human rights policies, we also have a duty of care.

Earthquakes happen when there's drilling. When the drilling happens, it happens on our bodies. When the drilling started, an earthquake under the water woke us up. We know why.

We are educating these banks to look at this from our perception - it's a good thing. They need that and they need to listen to us, the real people.

This is a good exercise for the banks to learn and understand and get a grip on who they are. Not what they are and what they work for. It's who they are as people - to listen to our side of the story. When you sit back and look at it, this is the exercise we go through.

This exercise is amazing, powerful, inspirational.

Pirrawayingi (Marius) Puruntatameri

The banks didn't listen to us - they still gave them money. That's wrong what they're doing.

Everything in the sea, we hunt. They're going ahead in ships 24/7. Turtles will die, fish, Barramundi. Something might happen like an oil spill and that might come to our shore. We can't eat our fish if oil comes here.

All animals in the sea have songlines and are spirituality connected to us. Ampiji is connected to us. She will destroy the pipeline.

Carol Maria Puruntatameri

Enough is enough. It's all about respect. Every stakeholder should have a human rights policy in place. Hopefully they will listen if they have human rights policies.

Stop getting the loans to Santos. We don't want them destroying our waterways – especially turtles, dugongs, fish, mudcrabs and mangrove worms. Enough is enough.

It is all about respect and we want the banks to respect us, and to respect Tiwi voices.

Dennis Murphy Tipakalippa

We depend on the sea. We live off the sea. We are its caretakers.

My aim is to stop whoever is supporting Santos with all the funds. It is our right to protect the sea and the land.

I strongly feel they shouldn't be giving funds to Santos. They should look at us. We're people of the sea. We need to stop these banks from giving money to Santos.

My main concern is that they'll be disturbing the sacred sites. We have to look after our sacred rights. They should not be disturbed.

Paulina Jemma Puruntatameri

We want the banks to re-think what they're doing and stop investing in companies that are destroying our world and environment.

When mining companies ask banks for money they should consult with First Nations people to see if we are ok with their lending.

Banks are enabling Santos to continue doing what they are doing without any care about our human rights and what they're doing to the environment we live in. They don't live here, we do. We have a right to protect and maintain our environment, our ancient cultural and spiritual practices and beliefs.

Therese Wokai Bourke

The banks have done to us exactly what Santos has done to us. It's wrong the way we've been completely ignored and not considered in this whole process of lending money to Barossa. It's something that will have a massive impact on all of us on the Tiwi Islands.

We deserve to be consulted. We have rights.

Simon Munkara

I. Summary

This human rights grievance is submitted by Pirrawayingi (Marius) Puruntatameri, Carol Maria Puruntatameri, Dennis Murphy Tipakalippa and Paulina Jedda Puruntatameri, Munupi Clan Elders, leaders and Traditional Owners; Therese Wokai Bourke, Malawu clan leader; Simon Munkara, Jikilaruwu clan member (the **Tiwi Claimants**); and Tibby Quall, Larrakia Elder and Traditional Owner (the **Larrakia Claimant**). Together, they are the **Claimants**.

This **Grievance** is submitted with the assistance of Equity Generation Lawyers.

This Grievance relates to the participation by Australia and New Zealand Banking Group Limited (**ANZ or the bank**) in a US\$1 billion loan to Santos Ltd (**Santos or the company**) that was finalised around August 2022 (the **Loan**).

We understand the Loan can be used for **Barossa** gas field developments in waters off the Northern Territory in Australia that is causing and will cause adverse human rights impacts on the Tiwi Claimants and their communities (**Impacted Tiwi Communities**). The Larrakia Claimant requests the financial institutions to not provide support for the Darwin LNG extension project (**DLNG**).

The Impacted Tiwi Communities have a long-standing spiritual and cultural connection with the ocean and the seabed. The sea country, the seabed and the surrounding environments are vital to cultural practices (such as story-telling, camping and dreaming), economic and social practices (such as fishing and hunting), food, health and identity. The Impacted Tiwi Communities have a responsibility to look after and protect sea country, including its marine life.

The Barossa project, including drilling and the construction of pipelines and other infrastructure, threatens several sacred sites, marine resources and the seabed. The project's impacts on these sites and the natural environment will have adverse and significant effects on the cultural survival, health and the lives of the Impacted Tiwi Communities. The Barossa project will violate the Impacted Tiwi Communities' economic, social and cultural rights.

Since the project puts at risk natural resources that are fundamental to the Impacted Tiwi Communities' cultural expression and way of life, international human rights law and norms require that the Impacted Tiwi Communities and Claimants grant their free, prior and informed consent (**FPIC**) for the Barossa project to proceed. In the circumstances, consent is a fundamental right. Consent is a cornerstone of the right to self-determination and is a critical safeguard for indigenous peoples to preserve their cultural resources, customs and way of life. It follows that, by proceeding with the Barossa project without consent, Santos is violating the right to FPIC and self-determination.

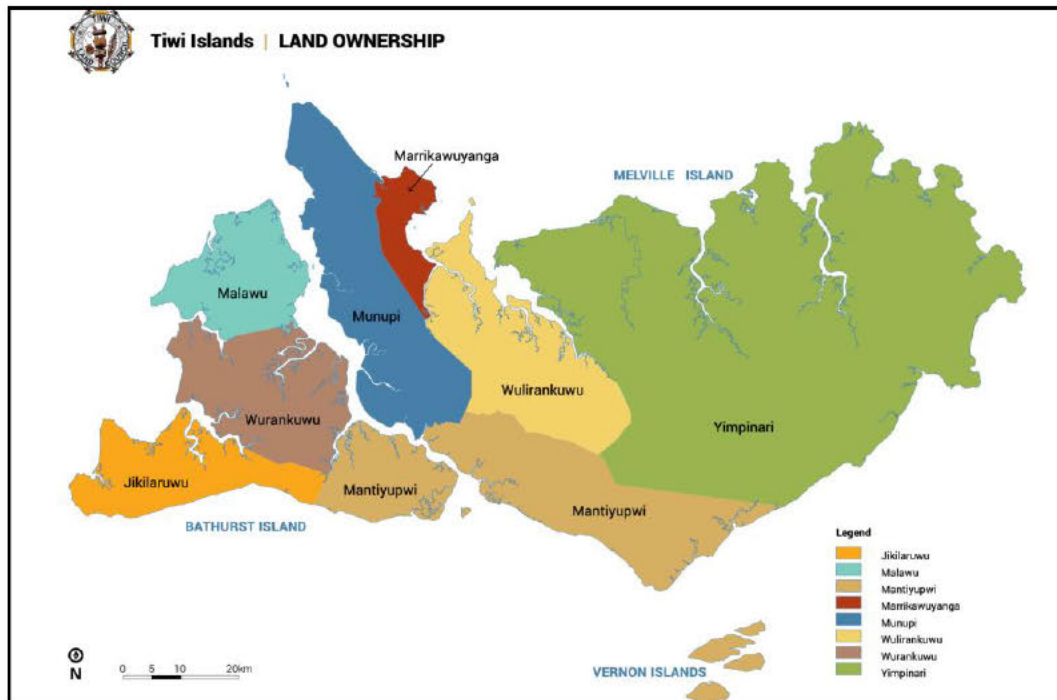
Businesses and export credit agencies have a responsibility to adhere to the United Nations Guiding Principles on human rights (**UNGPs**). The UNGPs incorporate relevant human rights standards which require Santos to obtain the Impacted Tiwi Communities' free, prior and informed consent. In circumstances where there is no consent, international standards require financial institutions to avoid contributing to the adverse human rights impacts, including by not providing financial support to Santos and the Barossa project. There is one overarching and appropriate remedy: to exit financial support to Santos.

In light of the bank's policies and information publicly available immediately prior to ANZ participating in the Loan in or around August 2022, the bank should have conducted human rights due diligence. As a result of that process, the bank should not have participated in the Loan. For ANZ to act consistently with its own policies, and in accordance with the wishes of the Tiwi Claimants, it must exit the Loan and not participate in any future facilities for the Barossa project. The Larrakia Claimant requests that ANZ not fund DLNG.

II. THE BAROSSA PROJECT AND FINANCING ARRANGEMENTS

A. The Tiwi Islands and Barossa Project

1. The traditional lands of the Impacted Tiwi Communities are located in the Tiwi Islands in the Timor Sea, approximately 80 km north of Darwin. The traditional lands of the Malawu and Jikilaruwu clan groups are on Bathurst Island and the traditional lands of the Munupi clan are approximately 4.4 km to the north of the northernmost point of Melville Island. These are the lands of the Tiwi Claimants. A map is below:⁶

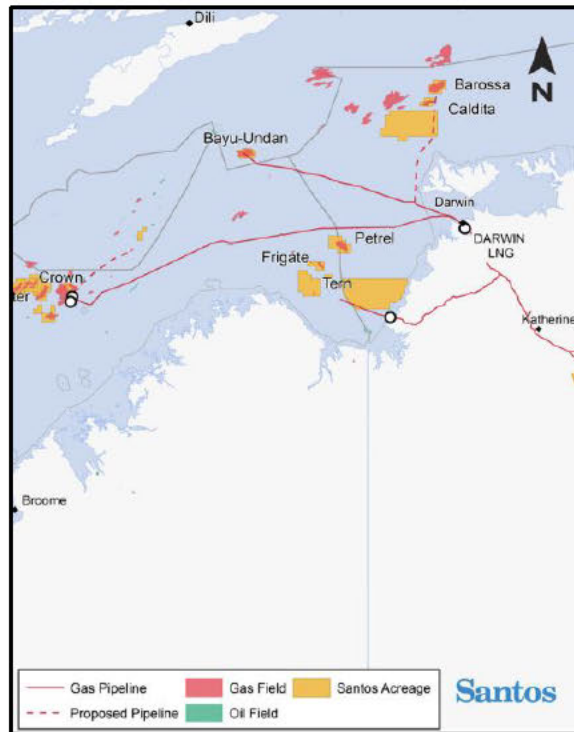


2. Santos Limited is a gas and oil company listed on the Australian Securities Exchange (ASX). The company proposes to develop and operate the Barossa gas field in northern Australian waters. Three projects are proposed by Santos and its joint venture partners to extract and process gas from the Barossa gas field:
 - (a) the **Barossa** project, which includes Barossa gas field subsea production wells and subsea infrastructure, a Floating Production, Storage and Offloading (**FPSO**) vessel at the field, the Barossa export pipeline, otherwise referred to as the **Barossa Gas Export Pipeline**, and the Darwin Pipeline Duplication project or **DPD**;⁷
 - (b) the Darwin LNG life extension project or **DLNG** project which will upgrade the existing LNG processing facility on Larrakia country at Wickham Point near Darwin to process gas from

Barossa starting in 2027. The facility currently processes LNG from the Bayu-Undan field which is expected to cease production in 2024;

- (c) the **Bayu-Undan CCS** project which proposes to convert the Bayu-Undan offshore gas field located in Timor-Leste waters from a gas producing field to one that receives and stores CO₂ from LNG processed at Darwin from the Barossa field. The existing pipeline between Bayu-Undan and Darwin will stop transporting gas and carry CO₂ in the opposite direction.⁸

3. A diagram of the location of the Barossa field is below:⁹



4. Santos has suspended drilling operations since the time of the first instance decision of *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority (No 2)* [2022] FCA 1121 (*Tipakalippa (No 2)*) in September 2022.¹⁰ In November 2022 Santos stated, somewhat ambiguously, that the suspended drilling activities were “not on the critical path” for the Barossa project.¹¹ In early December 2022 Santos said the project “remains on track to be delivered in the first half of 2023”.¹²
5. On 13 January 2023, NOPSEMA, the offshore petroleum regulator, suggested it had raided Santos’ corporate offices on 21 and 22 December 2022. NOPSEMA stated that it had gathered evidence of Santos’ plans to commence construction of the Barossa Gas Export Pipeline by late January 2023. NOPSEMA ordered Santos not to commence construction and to obtain further information about the “risks of the activity to any underwater cultural heritage places along the Barossa Gas Export Pipeline Route to which people, in accordance with Indigenous tradition, may have spiritual and cultural connections.”¹³ Relevantly, by August 2022, Santos had withdrawn a revised application for that pipeline because it might not survive legal challenge¹⁴ leaving the company to rely on years-old documentation to assess pipeline impacts and risks.¹⁵ NOPSEMA noted Santos’ Environment Plans must cover the full extent of known environmental risks.¹⁶
6. Santos’ recent disclosures state that the Barossa project is 55% complete.¹⁷ The company is now attempting to undertake a consultation process in the manner required by Australian regulations but is facing significant criticism for its attempts.¹⁸

B. Corporate timeline & joint venture partners

7. SK E&S, an energy company from the Republic of Korea (**ROK**), acquired a 37.5% stake in the Barossa project in June 2012.¹⁹
8. Santos announced its acquisition of ConocoPhillips' share of Barossa, Darwin LNG and Bayu-Undan on 28 May 2020.²⁰ The acquisition meant that Santos' total share of each asset increased relative to other joint venture partners. As a result, Santos gained operational control of each of the assets and took charge of developing the Barossa gas field. Santos and its joint venture partners hold the 'Petroleum Production Licence NT/L1' for the Barossa gas field.²¹
9. Santos announced a Final Investment Decision or **FID** to proceed with developing the Barossa project and DLNG in March 2021.²²
10. On 30 March 2021, SK E&S announced its plans to export gas from the Barossa field to ROK:

SK E&S, which has a 37.5% share in the gas field, plans to invest USD 1.4 billion, which is equivalent to its share of the total of USD 3.7 billion in investment costs for the next 5 years. Thus, it plans to introduce 1.3 million t of LNG annually in Korea for 20 years from 2025.²³
11. On 30 April 2021, SK E&S acquired a further 25% interest in each of Darwin LNG and Bayu-Undan.²⁴
12. JERA, a Japanese company, acquired a 12.5% interest in the Barossa project in or around April 2022.²⁵
13. The Barossa project is owned by three joint-venture participants: Santos (50% interest), SK E&S (37.5%) JERA Co. Inc. (12.5%).²⁶
14. The Darwin LNG facility is owned by Santos (43.4%), SK E&S (25%), INPEX Corporation (11.4%), Eni S.p.A (11%), JERA (6.1%) and Tokyo Gas Co. Ltd. (3.1%). Santos is the operator of Darwin LNG.²⁷
15. The Bayu-Undan facility is owned by Santos (43.4%), SK E&S (25%), INPEX Corporation (11.4%), Eni S.p.A (11%), JERA (6.1%) and Tokyo Gas Co. Ltd. (3.1%). Santos is the operator of Bayu-Undan.²⁸

C. Financiers of the Barossa project

Loans to Santos

16. Santos' 2022 Annual Report dated 22 February 2023 (p30) states:²⁹

Santos' business and, in particular, the development of large-scale projects, relies on access to debt and equity financing.
17. Santos borrowed US\$750m in the form of a bridge loan to fund the acquisition of ConocoPhillips' share of the Barossa gas field on or around 28 May 2020.³⁰ We understand Australia and New Zealand Banking Group (**ANZ**) and the Commonwealth Bank of Australia (**CBA**) reportedly each provided US\$375 million for the bridge loan.
18. The bridge loan was refinanced five months later in October 2020 by a syndicated loan for US\$750m in two tranches.³¹ We understand that the Australian banks participating were ANZ (US\$50m), CBA (US\$50m), the National Australia Bank Limited or **NAB** (US\$50m) and **Westpac** Banking Corporation (US\$25m). Japanese banks **Mitsubishi UFJ** Financial Group (US\$50m) and Sumitomo Mitsui Banking Corporation (**SMBC**) (US\$50m) also contributed. We understand that other contributors were **DBS** Bank Limited (US\$50m), the Royal Bank of Canada or **RBC** (US\$15m), **DNB** ASA (US\$50m) and **ING** Bank NV (US\$40m). The arrangers ANZ, Mitsubishi UFJ, CBA reportedly each earned US\$1.88m in fees.

19. On 30 August 2022, Santos announced a US\$1 billion syndicated loan to Santos was finalised to amend and extend the October 2020 syndicated loan for the Barossa gas field.³² ANZ, CBA and Mitsubishi UFJ Financial Group reportedly arranged the loan. The Australian banks contributing to the amend & extend facility were ANZ (US\$65m), CBA (US\$50m), NAB (US\$50m) and Westpac (US\$25m). Mitsubishi UFJ contributed US\$65 million. SMBC contributed US\$55m and **Mizuho Bank Ltd** contributed (US\$56.5m). We understand that DBS (US\$60m), RBC (US\$35m) and Citigroup (US\$10m) contributed. Arrangers ANZ, CBA and Mitsubishi UFJ reportedly each earned US\$2.56m in fees.
20. Also in August 2022, a finance industry publication reported that Santos was seeking bank financing for the DLNG project (**DLNG Loan**). According to the report, selected lenders were expected to attend a project workshop with Santos in mid-September 2022 with term sheets (documents that set out the key terms of potential loans) due around that time. SMBC reportedly has a key role in arranging the DLNG Loan. We understand the terms and participants for the DLNG Loan have not been finalised.
21. Santos' Investor presentation dated 8 November 2022 revealed that the company had drawn US\$150m of the US\$1bn facility maturing in 2028.³³ In February 2023, Santos disclosed that it did not have any undrawn amounts in that facility, but the loan still was available for use.³⁴

Republic of Korea financial support

22. KEXIM reportedly made an internal decision in May 2022 to provide a loan of US\$330 million to SK E&S for the Barossa project.³⁵ We understand that the loan documents have not yet reached financial close.
23. We understand that KEXIM's loan approval will expire on 31 May 2023.
24. The Korea Trade Insurance Corporation (**K-SURE**) is set to provide US\$330m in financial support for the Barossa project (**K-SURE Facility**).³⁶

Loans to JERA

25. JBIC reportedly provided a loan of US\$346 million to Japanese owned JERA's Australian subsidiary, JERA Barossa around December 2021. The loan was to finance JERA Barossa's acquisition of its 12.5% stake in the Barossa project (which occurred in April 2022) and the development of the Barossa gas field.³⁷

III. THE LONG-STANDING CONNECTION TO SEA COUNTRY

26. The Impacted Tiwi Communities are the traditional custodians of the land and the sea. They have the responsibility to look after both. [REDACTED]
27. Songlines run through both land and sea country and there are dreaming sites and sacred sites under water.⁴⁰ [REDACTED]
28. The Tiwi people are deeply connected to country and the sea, otherwise known as sea country, through their totems and skin names. [REDACTED]

Any negative impact on the totems has a physical impact on individuals in the community – both on their physical health and emotional well-being.⁴³

29. Spiritually, the Tiwi people's ancestors live in the sea. [REDACTED]
30. Marine animals such as dolphins, sharks, dugong, varieties of fish and turtles are very important to the Tiwi people.⁴⁷ [REDACTED]
31. Turtle nesting sites are critically important to Tiwi customs and tradition. [REDACTED]
32. Any disturbance to the sea country will deeply harm the physical, emotional and cultural well-being of the Impacted Tiwi Communities. [REDACTED]

IV. DESKTOP ANALYSIS OF IMPACTS OF THE BAROSSA PROJECT

33. In this section we refer to Santos' environmental planning documents and maps which assess risks and impacts of the Barossa project. We do so to provide an indication of the impacts, however it is important to note that the Claimants do not accept or concede as to the accuracy or completeness of Santos' surveys, mapping or assessments. Santos' documents might be considered to provide a minimum baseline of the magnitude of physical impacts. Many further impacts are expected to be recognised by reviews and surveys, such as impacts on underwater cultural heritage.⁵⁰
34. Songlines and movement of sea animals and birds are not restricted to lines on a map.⁵¹ For the Tiwi people, the spiritual and cultural impacts of the Barossa project are immense. The documents featured in this section, and NOPSEMA's apparent remit,⁵² are deficient in this regard.
- A. Impacts from Drilling and Pipeline installation
35. As detailed in *Tipakalippa (No 2)* and in the Barossa Development Drilling and Completions Environment Plan dated 11 February 2022,⁵³ or **Drilling EP**, Santos proposes to drill and complete up to eight production wells between 2022 to 2025 (which would be one phase of the larger Barossa project). The operational area for the drilling is approximately 138 km north of the Tiwi Islands.⁵⁴

36. The Drilling EP provides the following map outlining the “environment that may be affected” (**EMBA**) by the drilling activities and activities relating to the Barossa Gas Export Pipeline. The map below shows the area of the EMBA. The Barossa Gas Export Pipeline comes within 7 kilometres of the Tiwi Islands.⁵⁵ The map below is extracted from Santos’ documents.⁵⁶

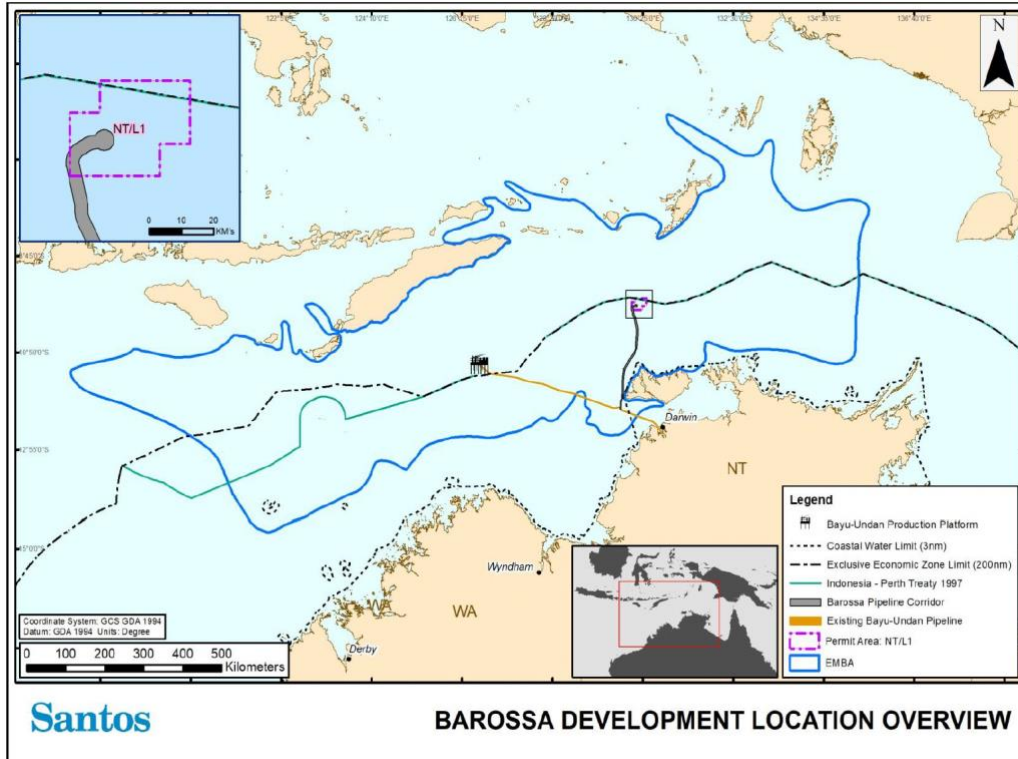


Figure 1-1: Location of permit area (NT/L1) and the pipeline route corridor

37. The EMBA, according to Santos, represents “the largest possible spatial extent that a worst-case spill event affects.”⁵⁷ Two spill event scenarios were modelled for the EMBA:
- loss of well control event from development drilling at the Barossa field;
 - vessel collision resulting in a loss of marine diesel along the pipeline route corridor.⁵⁸
38. The modelling scenarios on this map are therefore restricted to development drilling as well as installation of the Barossa Gas Export Pipeline, as vessel collision is related to vessels laying the pipeline.
39. The Drilling EP also noted (as cited at paragraph [205] of *Tipakalippa (No 2)*) that the EMBA includes “**significant sea country for Traditional Owners**”.⁵⁹ As detailed in the appendix to the Drilling EP, the EMBA extends across sea country and marine sources that are of cultural and spiritual significance to the Impacted Tiwi Communities:

Aboriginal and Torres Strait Islander peoples have a strong ongoing association with the area that extends from the beginning of human settlement in Australia some 50,000 years ago. The close, long-standing relationship between Aboriginal and Torres Strait Islander peoples and the coastal and marine environments of the area is evident in indigenous culture today. The Aboriginal and Torres Strait Islander peoples of the northwest continue to rely on coastal and marine environments and resources for their cultural identity, health and wellbeing, as well as their domestic and commercial economies (DEWHA, 2008a). **Within the EMBA, the Tiwi**

Islands have a long history of occupancy by Aboriginal and Torres Strait Islander peoples and the marine areas, particularly the Arafura Marine Park, are significant sea country for Aboriginal and Torres Strait Islander peoples.

Marine resource use by Aboriginal and Torres Strait Islander peoples is generally restricted to coastal waters. Fishing, hunting and the maintenance of maritime cultures and heritage through ritual, stories and traditional knowledge continue as important uses of the nearshore region and adjacent areas. However, while direct use by Aboriginal and Torres Strait Islander peoples deeper offshore waters is limited, many groups continue to have a direct cultural interest in decisions affecting the management of these waters. The cultural connections Aboriginal and Torres Strait Islander peoples maintain with the sea may be affected, for example, by offshore fisheries and industries. In addition, some Indigenous people are involved in commercial activities such as fishing and marine tourism, so have an interest in how these industries are managed in offshore waters with respect to their cultural heritage and commercial interests (DEWHA, 2008a).

A mapping exercise has been undertaken with the Tiwi Island Land Council to identify environmental and socioeconomic values along the Tiwi Islands coastline (ConocoPhillips, 2019). The mapping exercise focused on the northern, western and southern coastlines of the Tiwi Islands (within the EMBA). It included an initial desktop exercise to identify publicly available environmental, social, cultural and economic datasets. Preliminary maps were developed based on these datasets, and these maps were used during stakeholder engagement workshops held with Tiwi Islanders.

...

A search of registered Indigenous heritage sites did not identify any specific sites within the Western Australian portion of the EMBA. **However, in the Northern Territory portion of the EMBA there are a number of sacred and significant sites located on the Tiwi Islands. There are currently four registered sacred sites on the Tiwi Islands** (Aboriginal Areas Protection Authority, 2016). Another 56 sites of significance to Tiwi Islanders have been recorded, including two sites on the NT mainland (Tiwi Land Council, 2003). The Tiwi Islands sites hold importance as they have high spiritual and cultural history value (Tiwi Land Council, 2003).⁶⁰

[our emphasis]

40. Some of the so-called planned impacts of the drilling include noise emissions, light emissions, seabed disturbances, operational discharges and spill response operations.⁶¹ These discharges include 150 cubic metres of cement slurry.⁶² The so-called unplanned impacts of drilling that are described as “possible” include “non-hydrocarbons and chemical release (surface liquids)”, “hydrocarbon spill - marine diesel” and “minor hydrocarbon release (surface and sub-sea)”.⁶³
41. For the construction of the Barossa Gas Export Pipeline, the risk rating for “Vessel collision leading to loss of a single pipelay vessel fuel tank” was deemed “medium”.⁶⁴
42. The Drilling EP’s EMBA extends to significant portions of nesting and foraging areas for flatback turtles, as set out in the following Santos map.

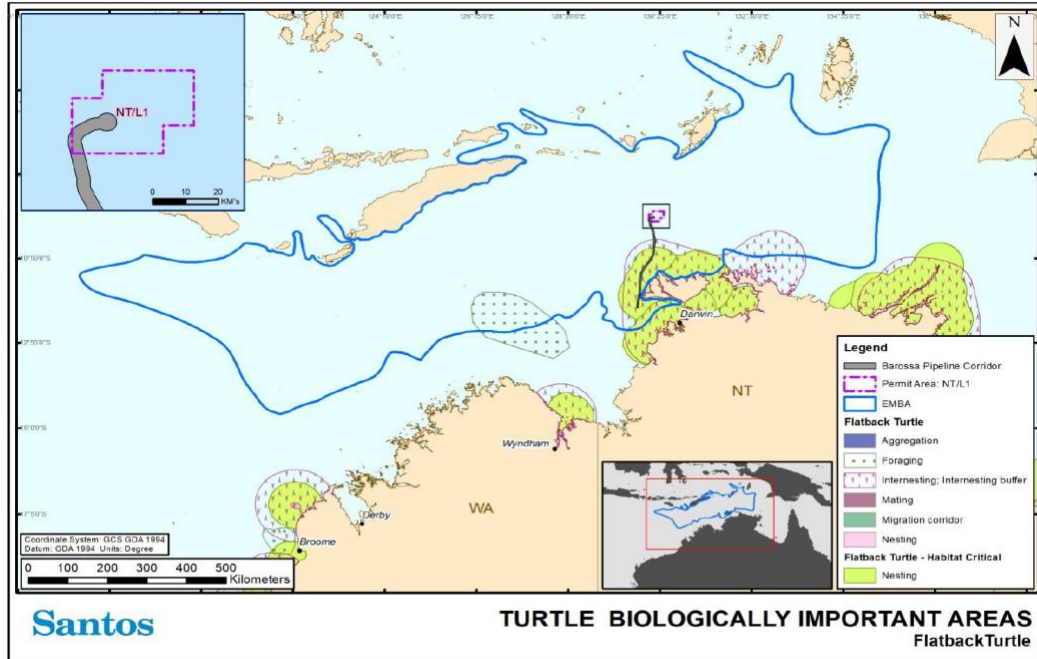


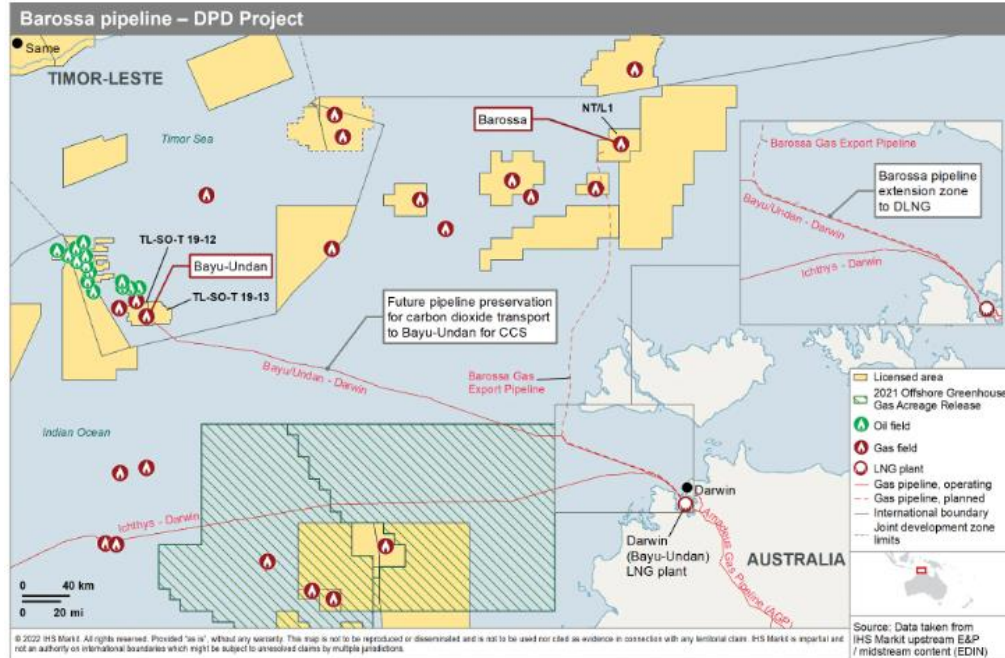
Figure 6-4: Biologically important areas and critical habitat – flatback turtle

43. The map shows critical habitats for flatback turtles to be located predominantly around the Tiwi Islands. While the drilling brings risks to turtle habitats, there are real risks of oil spills and pipeline ruptures throughout the lifetime of the Barossa project, as detailed in the following section, that would directly harm turtles and other marine animals.

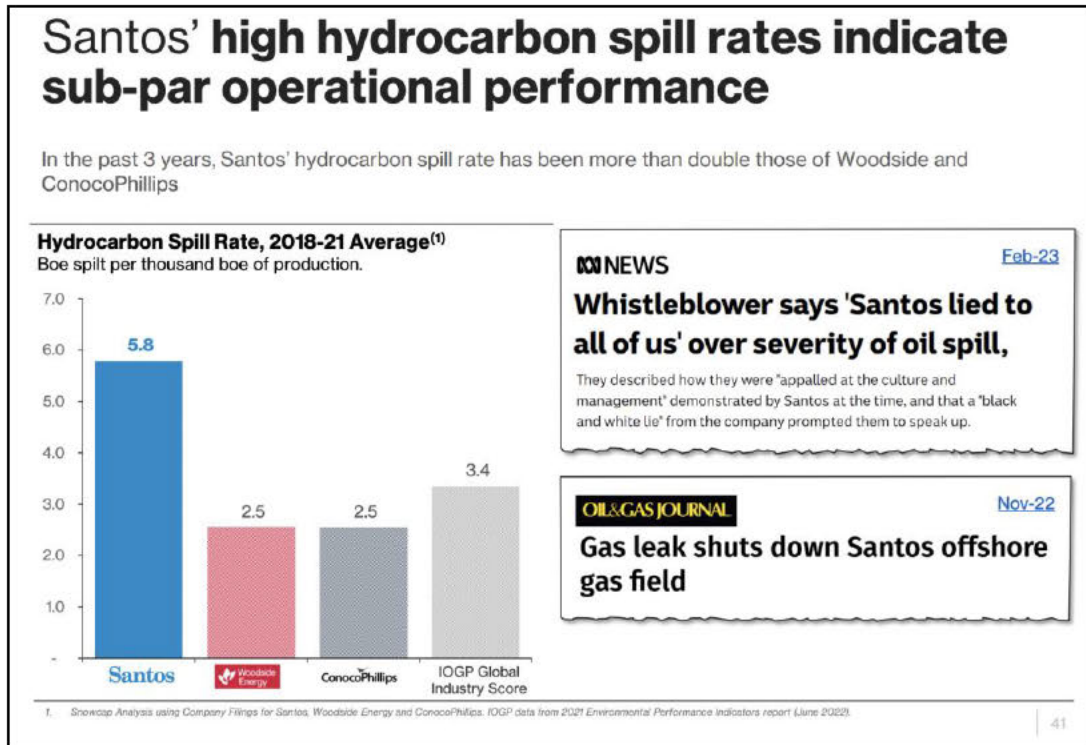
B. Impacts beyond the Drilling EP & EMBA

44. The EMBA relates only to the limited risks of development drilling in the Barossa field and the Barossa Gas Export Pipeline installation, being the risk vessel fuel tank ruptures as a result of vessel collision.
45. The Drilling EP does not deal with the risks and impacts associated with the:
- ongoing drilling operations and well maintenance for the Barossa field wells;
 - operation of the FPSO;
 - physical installation and existence of the Barossa Gas Export Pipeline;
 - decades-long operation and ongoing maintenance of the Barossa Gas Export Pipeline;
 - physical installation, existence, operation and maintenance of the Pipeline Duplication Project.
46. All are included in the Barossa project.
47. Other project documents describe three oil spill scenarios, all rated as “medium risk”, for drilling operations and the FPSO:⁶⁵
- vessel collision leading to a loss of a single FPSO facility condensate storage tank which would cause a spill on the surface that lasts 6 hours;
 - long-term well blowout which would cause a subsea oil spill for at least 80 days; and

- (c) vessel collision leading to loss of an offtake tanker fuel tank which would lead to a heavy fuel oil spill on the surface that would last 6 hours.
48. Project documents also describe the atmospheric emissions associated with the project at its operational stage through combustion emissions, the periodic flaring of gas or other fugitive emissions to include oxides of nitrogen, CO₂, sulphur dioxide, carbon monoxide and methane.⁶⁶
49. Relevant to the unassessed impacts of the Barossa Gas Export Pipeline, and as referred to above, the regulator, NOPSEMA, on 13 January 2023, said Santos must undertake underwater cultural heritage surveys along the pipeline route for the Barossa Gas Export Pipeline before it could commence pipeline construction.⁶⁷
50. In the operations phase of the Barossa Gas Export Pipeline there are real risks of pipeline rupture and resulting impacts from spills.⁶⁸ There are also risks of incidents and impacts relating to the ongoing maintenance of the pipeline and presence of ships.
51. The Darwin Duplication Pipeline (DPD) project is an additional pipeline to the Barossa Gas Export Pipeline. The DPD joins the southern tip of the Barossa gas export pipeline to Darwin. It was first proposed on 18 January 2022.⁶⁹ The map below shows its location.⁷⁰



52. Like the Barossa Gas Export Pipeline, the DPD's impacts and risks include those related to the installation, operation and maintenance of the pipeline. Risks include vessel collision and resulting fuel tank rupture, as well as rupture of the pipeline itself in areas around the pipeline. There will be impacts relating to the construction and location of the pipeline.
53. The Barossa Gas Export Pipeline (262 km) and DPD (123km) have a combined length of 385 km.⁷¹ In 2011, when Australia had 1135 km of subsea pipelines, modelling commissioned by AMSA following the Montara oil spill concluded that every year there was a 6% chance of a pipeline rupture that would release a minimum of 1 tonne of spill.⁷²
54. Of further concern is that Santos' spill rates are over twice that of its industry peers.⁷³



C. Accepted magnitude of social and environmental impacts

55. In December 2021, K-SURE designated the Barossa project as "Category A".⁷⁴
56. "Category A" is the accepted categorisation by financial institutions of projects that have the most severe social and environmental impacts and risks.⁷⁵ According to its definition, including under the Equator Principles and OECD Common Approaches, a "Category A" project has potential significant adverse environmental and social risks and/or impacts that are diverse, irreversible or unprecedented.
57. K-SURE relevantly stated that in assessing the project, it would apply the IFC Performance Standards, Equator Principles, OECD Common Approaches and the World Bank Group EHS Guidelines.⁷⁶

V. HUMAN RIGHTS IMPACTS OF THE BAROSSA PROJECT

A. Economic, social and cultural rights

58. The Barossa project will impact the sea country and marine ecosystems that Tiwi people have spiritually relied upon for tens of thousands of years of physical and cultural existence. The project breaches the economic, social and cultural rights of the Impacted Tiwi Communities.
59. The Barossa project will breach the **right to manifest, practise, develop and teach spiritual and religious traditions** (UNDRIP, Articles 12 and 15), the **right to enjoy their own culture** (ICCPR, Article 27) the **right to maintain and strengthen their distinctive spiritual relationship with traditionally owned territories, waters and coastal seas** and other resources (UNDRIP, Article 25):
 - (a) The Impacted Tiwi Communities, as well as other clan groups of the Tiwi Islands, have sea country in the Timor Sea to the north of the Tiwi Islands, extending to and beyond the EMBA

outlined in the map above.⁷⁷ The Impacted Tiwi Communities have a responsibility to look after and protect the marine environment, including sacred sites, as part of their culture and traditions. The Drilling EP states that at least four registered sacred sites fall within the EMBA for the drilling operations. There are numerous other unregistered sacred sites that are within the EMBA. The pipeline and the ongoing operation of the project would also disturb numerous other registered and unregistered sacred sites, including underwater sites of cultural heritage.

- (b) Other than sacred sites, disturbances to the seabed in any part of the deep waters would break the Impacted Tiwi Communities' songlines and spiritual connections. The ecological well-being of the ocean is intrinsically tied to the spiritual wellbeing and traditions of the Impacted Tiwi Communities.
 - (c) The Impacted Tiwi Communities maintain maritime culture and heritage through ritual, storytelling and traditional knowledge in the nearshore region and adjacent areas. By disturbing sacred waters and marine resources, the Barossa project would disrupt the ability of the Impacted Tiwi Communities to keep their country, dreamings and traditions for future generations. It will ultimately breach the right of the Impacted Tiwi Communities to manifest, practise and develop their unique traditions.
 - (d) Beyond the drilling, any spills of heavy fuel, condensate and distillate would destroy the Tiwi Impacted Communities' spiritual and cultural resources in both sea country and on shore. An oil spill would decimate the marine ecology that the Impacted Tiwi Communities rely on for their cultural and spiritual traditions, such as the collection of sea turtle eggs at nesting sites, fishing and hunting activities.⁷⁸
60. The Barossa project will breach **the right to cultural institutions, ancestral lands, natural resources and traditional knowledge** (UNDRIP, Article 31; ICESCR, Article 27) and the broader **right that Indigenous peoples have to territories and resources which they have traditionally owned or occupied** (UNDRIP, Article 26; ICCPR, Article 1(2)). Article 1(2) of the ICESCR embraces Indigenous peoples' right to own their lands and to freely dispose of their natural resources.⁷⁹ This right to ancestral lands and natural resources extends to marine natural resources and waters.⁸⁰ The right of Indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions relies on non-interference by third parties with the exercise of cultural practices and access to cultural goods.⁸¹ In the present case:
- (a) Not only will the drilling interfere in the Impacted Tiwi Communities' ability to fulfil their cultural and spiritual links with deep offshore waters, the "planned" and "unplanned" impacts of drilling (including seabed disturbances and operational discharges, as outlined above) will harm culturally critical activities such as fishing and hunting. The Impacted Tiwi Communities also have strong cultural and subsistence links to sea turtles and the threat posed by the Barossa project to critical habitats of flatback turtles could devastate the heart of the Impacted Tiwi Communities' culture.
 - (b) Any vessel collisions, oil spills (which, as detailed above, have been categorised a "medium" risk), and pipeline ruptures over the course of the Barossa project's construction and operation would have large impacts on the marine ecosystem, the natural resources and the ancestral waters that the Impacted Tiwi Communities are highly dependent on for their livelihoods and culture. Shipping oil and heavy fuels, when spilled, smother marine animals and birds.⁸²
 - (c) Any planned and unplanned discharges throughout the construction and operation of the Barossa project, including the real risk of oil spills, will break the Impacted Tiwi Communities' unique symbiotic relationship with the marine environment. The consequences of this will entail an irretrievable loss of Tiwi traditional knowledge and practices. The Barossa project presents a real and foreseeable threat of the complete loss of the Impacted Tiwi Communities' culture. Ultimately, the Barossa project interferes with the right of the Impacted Tiwi Communities to use and protect their marine resources and territories which they have held for tens of thousands of years.

61. The Barossa project will breach **the right to food (Article 11, ICESCR)**. The UN's Food and Agriculture Organization (UN FAO) has said that Indigenous peoples' right to food has a cultural dimension in terms of food choices, preparation and acquisition. The cultural appropriateness of food is part of the normative content of the right to food.⁸³ In the present case:
- (a) The Impacted Tiwi Communities hunt for fish, crabs, oysters, mangrove worm, turtles, stingrays and dugongs. As identified in the extract from the Drilling EP above, the coastlines and the waters which the Impacted Tiwi Communities and other Tiwi Islanders use for food collection, hunting and fishing may be contaminated by the planned discharges and emissions associated with the Barossa project. Critical turtle habitats also face a real and foreseeable threat and a change in the migration patterns of turtles would generate the loss of a critical food source for the Impacted Tiwi Communities.
 - (b) The implications of an oil spill or other similar event would be immense for the Impacted Tiwi Communities' collective right to food. Not only would this destroy the availability of fish, mangrove worms and other sources of subsistence, it would harm the Impacted Tiwi Communities' right to culturally appropriate food. As outlined above in this Grievance, there are real and foreseeable risks of oil spills and pipeline ruptures which would endanger the availability of food collection, fishing and hunting activities.
62. The Barossa project threatens the **right to health (Article 12.1, ICESCR)**. The UN Committee on Economic, Social and Cultural Rights states "in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health." In the present case:
- (a) The disruption to the Impacted Tiwi Communities' spiritual connections caused by drilling activities will harm their health and wellbeing.⁸⁴ Drilling will disrupt spiritual connections and threaten the mental and physical health of the Impacted Tiwi Communities.
 - (b) Seabed disturbances, discharges, oil spills or other contamination of the waters during the construction and operation of the Barossa project will generate immense anxiety and distress to the Tiwi Claimants.
 - (c) UN Special Rapporteurs have observed that oil spills are frequent and devastating.⁸⁵ The aromatic carcinogens released from spills can remain in the water and sediments of streams for long periods of time, increasing exposure to toxic substances.⁸⁶ The proximity of the Barossa Gas Export Pipeline to the coast of the Tiwi Islands, the frequency of ships carrying heavy fuel oil along this path, and the real and foreseeable risk of pipe ruptures and spills threatens the Impacted Tiwi Communities' right to health.
 - (d) The use and carriage of fuel oil by ships poses an immediate threat to the health of the Impacted Tiwi Communities from spills. Marine fuel, and especially heavy fuel oil, can be dangerous to human health.
 - (e) Emissions and pollutants during the operational phase of the Barossa project such as oxides of nitrogen, CO₂, sulphur dioxide, carbon monoxide and methane also pose a serious threat to the health of the Impacted Tiwi Communities. The UN Special Rapporteur on Toxics and Human Rights concludes that emissions from gas flaring in offshore oil and gas projects can cause reproductive abnormalities, asthma and cancer.⁸⁷

B. The right to FPIC and self-determination

63. Under ordinary principles of international human rights law (detailed below), the Impacted Tiwi Communities have a right to FPIC with respect to the sea country and marine resources that the EMBA extends to.
64. The rights of indigenous peoples are encapsulated in the Indigenous and Tribal Peoples Convention 1989 (No. 169) (**ILO Convention 169**) and UNDRIP. The UNDRIP is the most comprehensive instrument detailing the rights of indigenous peoples in international law and policy, and it has been regularly used as a guide by States, UN bodies and international courts. A cornerstone of the ICESCR and the UNDRIP is the right to self-determination, by virtue of which indigenous people may “freely determine their political status and freely pursue their economic, social and cultural development.”⁸⁸ The UNDRIP has explicitly recognised the principle of FPIC in several of its provisions.⁸⁹ FPIC is a part of, and a complement to, the right to self-determination.⁹⁰
65. In most circumstances affecting the rights and resources of indigenous peoples, FPIC is a right to affirmative *consent*. This has been confirmed in several authoritative commentaries by bodies such as the UN Human Rights Committee (in its interpretation of the ICCPR),⁹¹ the Inter-American Court of Human Rights,⁹² UN Special Rapporteurs,⁹³ the Committee on Economic, Social and Cultural Rights (in its interpretation of the ICESCR)⁹⁴ and others.
66. Based on principles of international human rights law, the Impacted Tiwi Communities’ right to FPIC is enlivened in the context of the Barossa project for the following reasons:
- (a) Consent is required where there is a “large-scale exploitation of natural resources including subsoil resources”⁹⁵. The Barossa project falls within the definition of such a project, in that it proposes to exploit, at a large scale, subsea gas;
 - (b) Consent is required where the project has “a direct bearing on areas of cultural significance”.⁹⁶ As detailed in the sections above, the Barossa project would disrupt sacred sites in sea country and areas containing culturally significant marine resources;⁹⁷
 - (c) Consent is required where the project “[depletes] resources necessary for physical and cultural survival...”⁹⁸ As detailed above, the marine ecology and resources that are central to both the physical and cultural survival of the Impacted Tiwi Communities, whether it is for traditional food collection, customary practices, songlines or totems. These resources are threatened by the Barossa project and the real risks of oil spills and contamination;
 - (d) Consent is required to protect “the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources”.⁹⁹ In the context of ILO 169, “lands” and “resources” include marine resources such as the sea (the surface as well as the subsurface).¹⁰⁰ The UNDRIP reinforces this broad definition of “land” by explicitly recognizing indigenous peoples’ “right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, **waters and coastal seas and other resources**”.¹⁰¹ Therefore, the right to *consent* in FPIC is not limited to only those instances where there is interference with land rights. The UNDRIP and ILO 169 provide clear grounds for the right of indigenous peoples (and especially indigenous peoples in the Pacific) to govern the ocean.¹⁰² In the present context, this includes sea country and marine resources that the Impacted Tiwi Communities have long-standing spiritual connections with; and
 - (e) Consent is required where “cultural resources, especially those associated with their way of life and cultural expression, are at risk” and more broadly with respect to the rights of Indigenous peoples, consent is required “in all matters covered by their specific rights”.¹⁰³ The UN Committee on Economic, Social and Cultural Rights has made it clear that any interference with the cultural values associated with indigenous peoples’ ancestral lands, natural resources and relationship with nature should not take place unless FPIC has been obtained.¹⁰⁴ Cultural rights “may include such traditional activities as *fishing or hunting*...”¹⁰⁵ By way of example, the Human Rights Committee found in *Apirana Mahiuka et al v New Zealand* that fishing was

a fundamental aspect of Maori culture and religion.¹⁰⁶ As detailed above, the Barossa project has the potential to seriously harm activities that are fundamental to the Impacted Tiwi Communities' culture (such as fishing and hunting) and their deep spiritual connection with sea country (such as totems connected to marine animals).

67. As part of the corporate responsibility to respect human rights under the UNGPs, businesses must also respect the right to FPIC:
- (a) Although the UNGPs do not explicitly refer to FPIC, the principles are intended to cover the spectrum of internationally recognised rights.¹⁰⁷ The UNGPs add that "business enterprises may need to consider additional standards...[I]n this connection, United Nations instruments have elaborated further on the rights of indigenous peoples."¹⁰⁸ On a natural reading, this would include the right to self-determination and FPIC as declared in both ILO 169 and the UNDRIP.
 - (b) Various international authorities including the UN Expert Mechanism on the Rights of Indigenous Peoples (**EMRIP**)¹⁰⁹ and the UN Committee on Economic Social and Cultural Rights¹¹⁰ have confirmed that businesses should respect the principle of FPIC in relation to all matters that could affect the rights, lands, territories and resources of indigenous people.
 - (c) The UN Global Compact, which is the largest corporate sustainability initiative, has noted that although FPIC is ordinarily understood to fall within the responsibility of governments, companies should obtain FPIC in order to avoid complicity in violations of human rights.¹¹¹ The Global Compact emphasized that consultation and consent together are a special requirement safeguarding a number of substantive human rights that are firmly established in international law.¹¹²
68. Prior to the *Tipakalippa* proceedings, Santos had never undertaken consultation with the Impacted Tiwi Communities for the Barossa project let alone sought the Impacted Tiwi Communities' consent.
69. The Impacted Tiwi Communities have never given their free, prior and informed consent for the construction of the Barossa project's pipeline and any other related developments in the Barossa gas field. The continued development of the Barossa project and gas field is in breach of the rights of the Impacted Tiwi Communities to FPIC and their right to self-determination.

VI. HUMAN RIGHTS IMPACTS OF THE DARWIN LNG LIFE EXTENSION PROJECT

70. The planned DLNG project and the DLNG Loan will enable the DLNG facility to process gas from the Barossa gas field from 2027. The DLNG project, like the Barossa project and in particular the Darwin Pipeline Duplication project, is expected to adversely impact the economic, social and cultural rights of the Larrakia people. As such, any plans for the life extension of DLNG must not occur without the consent of the Larrakia Claimant and Larrakia Traditional Owners.

VII. HUMAN RIGHTS PRINCIPLES FOR FINANCIAL INSTITUTIONS

71. The United Nations Guiding Principles on Business and Human Rights 2011 (**UNGPs**) requires businesses to identify both *actual* and *potential* human rights impacts that they may be contributing to.¹¹³
72. The *actual* and *potential* human rights impacts of the Barossa project include:
- (a) the breach of the Impacted Tiwi Communities' economic, social and cultural rights; and

- (b) the breach of the Impacted Tiwi Communities' right to free, prior and informed consent (**FPIC**) and the right to self-determination.
73. According to the UNGPs, financial institutions risk *contributing* to adverse human rights impacts on the Impacted Tiwi Communities by providing a loans to companies engaging in risk activities.¹¹⁴
74. The UN Office of the High Commissioner for Human Rights (**OHCHR**) elaborates on circumstances when financial institutions will *contribute* to adverse impacts:¹¹⁵

A bank can **contribute** to an adverse impact through its own activities (actions or omissions) – either directly *alongside other entities, or through some outside entity*, such as a client. Contribution implies an element of 'causality,' for example that the bank's actions and decisions influenced the client in such a way as to make the adverse human rights impact more likely. This element of causality may in practice exclude activities that have only a 'trivial or minor' effect on the client, which may thus not be considered as 'contribution.' For example, a bank that provides financing to a client for an infrastructure project that entails clear risks of forced displacements may be considered to have facilitated – and thus contributed to – any displacements that occur, if the bank knew or should have known that risks of displacement were present, yet it took no steps to seek to get its client to prevent or mitigate them.

(references omitted)

VIII. KNOWLEDGE OF FINANCIAL INSTITUTIONS

75. Financial institutions should have known about the adverse human rights impacts of the Loan and Santos' activities before and after entering into or approving the relevant facilities because of:
- (a) the publication of Santos' Barossa Development Drilling and Completions Environment Plan or Drilling EP, dated 11 February 2022 that referred to three emails being sent to the Tiwi Land Council and stated that Santos believed consultation was adequate under the relevant regulations;¹¹⁶
 - (b) the court case in South Korea and associated reported in March 2022 regarding KEXIM's loan approval that brought into question the adequacy of Santos' consultation of indigenous people impacted by the Barossa project;¹¹⁷
 - (c) the 3 June 2022 filing of the proceeding *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority* VID 306/2022, and subsequent reporting including on the impacts on the Tiwi Islander indigenous peoples and the inadequate of consultation under the EP;
 - (d) the court's decision in *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority* [2022] FCA 838 on the interim injunction handed down 14 July 2022 which confirmed the Barossa project impacted indigenous people's social and cultural human rights;¹¹⁸
 - (e) the first instance hearing in the trial of the Tipakalippa proceedings from 22 to 26 August 2022 and subsequent reporting, which dealt with the evidence of consultation as set out in the EP;¹¹⁹
 - (f) the decision and related reporting of *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority (No 2)* [2022] FCA 1121 (21 September 2022);
 - (g) the decision and related reporting of the subsequent appeal *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193 (2 December 2022);
 - (h) this Grievance.

76. The above directly suggest that the requirements for consultation under Australian law, which includes consultation of persons whose functions, interests and activities were to be affected by the activities, had not been complied with.¹²⁰ As discussed in the Drilling EP¹²¹ and documents before the regulator, which were provided to the parties in the *Tipakalippa* proceeding around 25 June 2022, Santos' activities would broadly impact the Tiwi Islanders.¹²² The *Tipakalippa* proceedings should therefore have alerted financial institutions to the human rights impacts of the Barossa project.

IX. POLICIES AND CONTRIBUTION TO HARMS

A. ANZ's human rights policies

77. In its Human Rights Statement dated May 2022, ANZ states that it “supports and respects the human rights of our employees, customers and communities in line with international standards, our Code of Conduct and our Values.”¹²³ The scope of ANZ's commitment to avoid involvement in adverse human rights impacts includes its own activities as well as those arising from its “business relationships”.¹²⁴ Footnote 2 in the Human Rights Statement defines ‘business relationships’ as “business customers, suppliers and partners.” It is clear that the Loan to Santos falls within the type of “business relationship” envisioned by this policy.
78. In its Land Acquisition Position Statement, ANZ enumerates a number of other processes to uphold human rights standards in its business relationships:
- Our commitment to internationally-recognised standards aims to avoid involvement in adverse human rights impacts through our activities or through our business relationships.
- We commit to evaluating the social, environmental and economic impacts of our decisions. Our decision makers and our customers must be aware of impacts on the environment, on communities and other stakeholders, and we also expect our customers to avoid and address involvement in adverse human rights impacts in line with international standards including the UN Guiding Principles on Business and Human Rights.¹²⁵
79. Similarly, in correspondence with the OECD Australian National Contact Point (**AusNCP**), ANZ made the following statements, amongst others, about its internal processes to uphold human rights in its business relationships:
- Our standards articulate our commitment to monitor and manage our customers' performance in protecting and promoting human rights, and for us to consider human rights impacts when evaluating prospective clients.
- Our human rights standards are embedded in our client screening tools, our “sensitive sector” lending policies and training initiatives that support and guide our business lending decisions.
- Social and environmental risk training is mandatory for all relevant employees who have approval to make credit decisions.
- ANZ's “sensitive sector” policies ensure social and environmental considerations are incorporated into our financing and lending decisions.¹²⁶
80. In a later report by the AusNCP in February 2020, ANZ made a commitment to “...review and strengthen its human rights policies, including its customer social and environmental screening processes, and specific grievance mechanism accessible to Impacted Communities.”¹²⁷
81. ANZ appears to operationalise its human rights commitments by incorporating due diligence in line with the UNGPs.

We use risk-based due diligence to identify human rights risks and impacts associated with our business relationships.

We expect business relationships to operate in line with the UNGPs including respecting human rights and demonstrating a high degree of governance.

Business customers are also expected to:

- establish or participate in effective grievance mechanisms for affected individuals and communities;
- consent to the disclosure of a banking relationship to affected people who have submitted a human rights complaint through ANZ's grievance mechanism;
- ensure their land use is in line with our Land Acquisition Statement; and
- apply the Equator Principles and International Finance Corporation Environmental and Social Performance Standards where appropriate.¹²⁸

82. ANZ states it incorporates human rights risks in its broader customer due diligence and credit assessment process: "We conduct social and environmental screenings as part of our customer due diligence and credit assessment...This includes an assessment of our customers' human rights performance. We may prioritise for further screening those customers which are identified as being most at risk of involvement in adverse human rights impacts."¹²⁹

83. The various screening, training and human rights due diligence processes that are described in ANZ's policies mean the bank should have known about the human rights risks of the Barossa project at the time of entering into the Loan and Santos' position on consent. Given that there were no attempts or any discernible intention by Santos to obtain consent, ANZ should have avoided contributing to the harms caused by the Barossa project by not participating in the Loan. Before entering into the Loan, ANZ should have been aware of public information of two court cases on foot - one in South Korea and one in the Federal Court of Australia (the *Tipakalippa* proceedings), triggering the due diligence process.

84. By failing to conduct due diligence (or proper due diligence) and by failing to prevent or mitigate the human rights risks at the time of August 2022 loan to Santos, ANZ is contributing to the actual and potential human rights violations against the Impacted Communities (as detailed in the following section). Indeed, ANZ itself states that the failure to conduct proper due diligence may implicate the bank in the human rights violations:

If we fail to properly conduct due diligence we may contribute, or become directly linked to, significant impacts.¹³⁰

B. The Equator Principles

85. The bank is an Equator Principles Financial Institution, or EPFI, and is obliged to respect the right to FPIC. It is curious that the Loan was rolled over from two earlier loans from 2020 that were expressly for the acquisition of the Barossa project without an acknowledgement that funds would be used for the project. It might be that the loan structure is an attempt to avoid the EP classification.

86. In light of the loan structure, there is strong evidence that the bank is obliged respect FPIC under the for the financing for the Barossa project because;

- (a) The Barossa project has been categorised as a Category A project by K-SURE;
- (b) K-SURE said it would assess its financing of Barossa against the Equator Principles, IFC Performance Standards, and OECD Common Approaches; and
- (c) the Barossa project impacts, amongst other things, the critical cultural heritage of the Tiwi people which would enliven the requirement for FPIC under IFC Performance Standard 7.

87. The Equator Principles require Category A projects to “achieve outcomes that are consistent with IFC Performance Standard 7 (**IFC 7**)”.¹³¹ IFC 7 requires that:

Where a project may significantly impact on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives, priority will be given to the avoidance of such impacts. Where significant project impacts on critical cultural heritage are unavoidable, the client will obtain the FPIC of the Affected Communities of Indigenous Peoples.¹³²

88. The Barossa project threatens to have significant impacts on the critical sacred sites, cultural practices and traditions of the Impacted Tiwi Communities. The project threatens natural and marine resources that are of immense significance to the Impacted Tiwi Communities’ identity and ongoing cultural survival.

X. EXPECTED PROCESS, REMEDY AND TIMEFRAMES

A. Background to remedies

89. The UNGPs require that businesses “**avoid** causing or contributing to adverse human rights impacts through their own activities.” The UNGPs also note that where “a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to **cease or prevent** its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible.”¹³³ In order to “avoid” or “prevent” its contribution to adverse human rights impacts, KEXIM must cease financing the project (unless FPIC has been obtained).
90. We note the guidance of the United Nations Office of the High Commissioner for Human Rights that the primary purpose of a grievance mechanism is “to provide an early point of recourse to identify and address the concerns of directly affected stakeholders before they escalate or lead to otherwise preventable harm.”¹³⁴ A UN Working Group on Business and Human Rights report to the General Assembly on the question of “remedy” stated that in cases of “irremediable harm”, business enterprises “should take proactive measures to prevent or mitigate such harm, rather than continuing business as usual with a mindset of subsequently paying compensation to redress the harm.”¹³⁵ It is inconceivable how constructing the pipeline and the remainder of the Barossa gas field infrastructure can be done in a manner that will not cause irremediable harm to both the social and cultural rights of the Impacted Tiwi Communities. Prevention does not appear possible. ANZ must exit the Loan and not proceed with any future approval.
91. It is imperative that grievance mechanisms (or other approaches to resolve disputes) by businesses and export credit agencies must be culturally appropriate and shaped by the Claimants and the impacted communities.¹³⁶ Below we set out the process and requests as agreed and consented to by the Claimants.

B. Enabling the Impacted Tiwi Communities to understand ANZ’s conduct

92. This Grievance raises serious concerns about ANZ’s conduct and the integrity of its systems with respect to human rights commitments. To assist the Impacted Tiwi Communities understand the conduct to date, the Tiwi Claimants request copies of the following documents held by ANZ:
- (a) the Loan contract;
 - (b) relevant parts of Committee and Board Packs and corresponding minutes relating to the Loan;
 - (c) all correspondence exchanged between ANZ and Santos on the Barossa project;
 - (d) documents that describe ANZ’s internal policy framework, assessment process, guidance, and reviews, including any guidance notes current at the time of approving the Loan;

- (e) Loan assessments and reviews, including results of human rights due diligence processes;
- (f) any report prepared for the purposes of the Equator Principles.

C. Summary of requests and timeframes

93. The Tiwi Claimants request that ANZ:

- (a) publicly accepts it has contributed to adverse human rights impacts of the Impacted Tiwi Communities by way of the Loan and publicly apologise to the Impacted Tiwi Communities for the contribution to those impacts;
- (b) publicly announces it will exit the Loan;
- (c) pay profits earned from the Loan, including from any arranging fees, to the Impacted Tiwi Communities as compensation;
- (d) provides copies of the documents listed in the paragraph above to the Impacted Tiwi Communities.

94. The Larrakia Claimant requests that ANZ:

- (a) makes a public commitment not to participate in any future loans or facilities for the Darwin LNG project;
- (b) publicly announce, if relevant, that it has ceased, or will cease, any roles as an advisor or arranger of loans or guarantees that may be used to support the Darwin LNG project.

95. We ask that ANZ respond in writing to this Grievance by **16 May 2023** confirming its agreement to the requests above. We expect this timeframe will allow ANZ to put this Grievance to the next relevant Committee or Board Meeting, and to minimise the ongoing impacts and uncertainty on the Impacted Tiwi Communities and Larrakia Claimant.

96. If ANZ does not agree to the requests, we ask it to provide written reasons, and to enter into dialogue with the Impacted Tiwi Communities to explain its position.

97. In light of the requirement for the grievance process to be suitable for stakeholders, the Tiwi Claimants request that:

- (a) any dialogue should occur on country in the Tiwi Islands;
- (b) dialogue will be entered into with the free, prior and informed consent of the Impacted Tiwi Communities and in accordance with traditional laws and protocols;¹³⁷
- (c) dialogue will allow for discussion the broader human rights impacts of Santos, its joint venture partners and the Barossa project on the Impacted Tiwi Communities arising from Scope 1, 2, and 3 emissions and contribution to climate change;¹³⁸
- (d) all costs for the dialogue process will be paid by the financial institution;
- (e) any dialogue is public, transparent and open to all community members.

Equity Generation Lawyers
4 April 2023

Please respond to this grievance by email to:

David Barnden

Principal Lawyer

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Vidhya Karnamadakala

Associate

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Endnotes

- ¹ Affidavit of Pirriwayingi Puruntatameri, 6 July 2022 at [53],[59], [60], VID 306 of 2022
- ² Affidavit of Carol Maria Puruntatameri, 23 June 2022 at [9], [35]-[37],[39]-40], VID 306 of 2022
- ³ Affidavit of Dennis Murphy Tipakalippa, 6 July 2022 at [37]-[40], [45]-[46], [55], VID 306 of 2022
- ⁴ Affidavit of Paulina Jedda Puruntatameri, 23 June 2022 at [52]-[54], VID 306 of 2022
- ⁵ As told to Equity Generation Lawyers on Tiwi country on 30 and 31 March 2023.
- ⁶ Source: Tiwi Land Council: www.tiwilandcouncil.com/index.cfm?fuseaction=page&p=265&l=2&id=67&smid=194
- ⁷ Detailed company information on the scale and impacts of the Barossa project is found in a version of the “Barossa Development Drilling and Completions Environment Plan” (**Drilling EP**) accessed here: <https://docs.nopsema.gov.au/A831694>
- ⁸ S&P Global Commodity Insights, “Bayu-Undan, DLNG and Barossa – How the energy transition is shaping the future” www.spglobal.com/commodityinsights/en/ci/research-analysis/bayuundan-dlng-and-barossa-the-energy-transition.html
- ⁹ Source: Santos ASX release, www.asx.com.au/asxpdf/20220216/pdf/4560m1hhdc48fy.pdf (p35)
- ¹⁰ Santos Fourth Quarter Report for the period ending on 31 December 2022, at p 1, 9. Accessed at www.asx.com.au/asxpdf/20230119/pdf/45ks1v3cqt9vj9.pdf.
- ¹¹ www.asx.com.au/asxpdf/20221108/pdf/45hc9ldnr9t840.pdf p28
- ¹² Santos Media Release, “Full Federal Court Decision for the Barossa Gas Project” (2 December 2022): www.santos.com/news/full-federal-court-decision-for-the-barossa-gas-project/
- ¹³ Santos ASX Media Release (8 November 2022). Accessed at www.nopsema.gov.au/sites/default/files/documents/General%20Direction%201898.pdf
- ¹⁴ The Guardian, “Santos withdraws applications for NT gas pipeline approval over legal challenge risk” (3 September 2022). Accessed at www.theguardian.com/business/2022/sep/03/santos-withdraws-applications-for-nt-gas-pipeline-approval-over-legal-challenge-risk.
- ¹⁵ https://info.nopsema.gov.au/activities/353/show_public
- ¹⁶ NOPSEMA, “General Direction - s 574” - Direction No. 1898, (13 January 2021). Accessed at www.nopsema.gov.au/sites/default/files/documents/General%20Direction%201898.pdf.
- ¹⁷ Santos ASX Media Release (22 February 2021), at p 6. Accessed at www.asx.com.au/asxpdf/20230222/pdf/45lvrzdsq6dp1z.pdf.
- ¹⁸ ABC News, “Tiwi Islanders accuse Santos of leaving out Barossa gas project environmental risks from community consultations” (28 February 2023). Accessed at www.abc.net.au/news/2023-02-28/nt-tiwi-islands-consultations-barossa-gas-project-santos/102030454.
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