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**Senate Environment and Communication Legislation Committee**

[ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

**Re: Environment Protection and Biodiversity Conservation Amendment  
(Reconsideration of Decisions) Bill 2024**

Dear Senate Environment and Communications Legislation Committee

Santos Ltd is an Australian energy company with operations across Australia, Papua New Guinea, Timor-Leste and the United States. We are a domestic gas producer in Australia and a leading LNG supplier to Asia. Our purpose is to provide reliable and affordable energy to help create a better world for everyone.

Santos welcomes the opportunity to comment on the Environment Protection and Biodiversity Conservation Amendment (Reconsideration of Decisions) Bill 2024 ('the Bill'). This submission sets out in summary form, Santos' views on, and support for, the Bill as it relates to reconsideration of decisions under the *Environment Protection and Biodiversity Conservation Act 1999* ('the Act').

Santos understands the key proposals in the Bill are to:

- place a time limitation of 36 months on reconsideration requests made under s 78A(1) of the EPBC Act<sup>1</sup>; and
- limit a reconsideration request made after 36 months to a Minister of a State or self-governing Territory in which the action is proposed to be taken.<sup>2</sup>

Santos considers the proposals assist to create legal certainty through a clear point at which reconsideration must end, and an appropriate threshold for consideration of any information provided after that time.

**The Santos Experience – the Queensland Hunter Gas Pipeline**

Australia has very strong regulatory systems and processes, and this includes the framework provided by the Act. This incorporates appropriate stakeholder engagement which invites public comment.

Santos values effective, meaningful and genuine consultation to achieve the best available outcomes for the communities and environments where it operates, in accordance with the Act. Our operations have co-existed with farmers, Traditional Owners and other land users for decades. Santos is committed to partnering with communities to build respectful and mutually beneficial relationships and delivering positive outcomes. Understanding stakeholder issues and concerns enables both governments and proponents like Santos to manage impacts and risks and determine opportunities to create shared value. In the post-approval environment, stakeholder engagement continues.

Further, there are several avenues available for a stakeholder dissatisfied with government decisions around project approvals to challenge those decisions through the courts. Unlike

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<sup>1</sup> *Environment Protection and Biodiversity Conservation Amendments (Reconsideration of Decisions) Bill 2024*, Schedule 1 – Amendments, section 6.

<sup>2</sup> *Environment Protection and Biodiversity Conservation Amendments (Reconsideration of Decisions) Bill 2024*, Schedule 1 – Amendments, section 6.



the reconsideration request process under ss78-78A of the Act, these avenues are generally ventilated and resolved within timeframes of 2-3 years post approval.

Approvals given under the Act remain susceptible to challenge over uncertain and open-ended timeframes, as the reconsideration request process is not time limited. The decreased reliability of decisions and unquantified risk associated with this has significant consequences for sovereign risk.

Santos has first-hand experience with this. The Queensland Hunter Gas Pipeline (2008/4620) (HGP) was assessed under the Act on 23 December 2008 with a 'not a controlled action' decision. On 15 February 2022, the Lock the Gate Alliance requested reconsideration of the decision. Another request in almost identical terms was made on 15 May 2023 by the Australian Manufacturing Workers Union.<sup>3</sup>

As the basis for these reconsideration requests (made over 13 and 14 years post assessment respectively), 'substantial new information' and/or a 'substantial change in circumstances' is asserted under s 78A(1) of the Act, with specific reference to nationally-listed threatened species.

The Minister is yet to determine these reconsideration requests.

The Act, as it currently stands, has the potential to undermine investment certainty and public confidence. In the case of the HGP, a proposed critical piece of enabling infrastructure to supply gas to the east coast domestic market from the approved Narrabri Gas Project, there remains ongoing uncertainty about the validity of the project's approval some 14 years after approvals were granted by the NSW government and the Commonwealth made a 'not a controlled action' decision. Since 2012, Santos has already invested more than A\$1.5 billion on getting the Narrabri Gas Project and HGP approved and developed, but still has no certainty regarding the pipeline's approvals status.

Industry needs a regulatory regime that provides greater certainty on the rules required to obtain approvals, and must be able to rely on approvals given, or at the very least, have any perceived issues ventilated within acceptable and certain timeframes post approval. Santos supports any reform which will bring clarity and greater investment confidence to the approvals regime.

### **The Bill**

Specifically, Santos considers that the changes proposed by the Bill would help support investment certainty for a project proponent once a referral decision has been made, with the knowledge that after 36 months, an application for reconsideration can only be made by the Minister (or equivalent) from the relevant Australian State or Territory.

Santos supports reforms that encourage a level of vetting, such that reconsideration requests made after 36 months are made only in appropriate circumstances and where there is sufficient merit. It is expected to follow that reconsideration requests made at this point would be appropriately targeted, proportionate to the nature, scale, risk and location of the activities, and would take into account that prior approval has been given.

Consistent with these principles, Santos suggests legislative amendments to also prescribe a timeframe within which a reconsideration decision is required to be made. This would further assist in limiting uncertainty created by lengthy reconsideration periods. It is acknowledged that there are already some limits on Ministerial decisions being revoked via the reconsideration pathway, under section 78(3) of the Act. Namely, the Minister must not revoke a decision once approval under the Act has been provided or the action is 'taken'. Clarification by way of legislative definition of the term 'taken' would further assist to clarify when a 'not a controlled action' decision such as the HGP referral decision is excluded from revocation

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<sup>3</sup> [Project Decision - EPBC Act Public Portal \(awe.gov.au\)](https://www.awe.gov.au/project-decision).



under sub-section 78(3). The commencement of works pursuant to an approval granted under the Act should constitute the taking of the action.

Challenges in the form of reconsideration requests will continue to cause delays and uncertainties for proponents, investors and the community if deficiencies in the Act are not addressed.

Santos supports the Bill.

Yours sincerely

Alice Trethewey  
**Head of Government Affairs**