# RESPONSE TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON PRIMARY INDUSTRIES AND RESOURCES RECOMMENDATIONS

The Government welcomes the House of Representatives Standing Committee on Primary Industries and Resources' report on the proposed greenhouse gas injection and storage legislation entitled *Down Under – Greenhouse Gas Storage*. The report makes a significant contribution to the development of a robust and effective regulatory framework for the injection and storage of greenhouse gases in the seabed under offshore waters.

The majority of the recommendations are supported and many of the amendments to the Bill that the Government will introduce will give effect to recommendations made by the Committee.

## RECOMMENDATION 1

*The Committee recommends the inclusion within the Bill of an objects clause, providing that the legislation:*

- *provide greenhouse gas injection and storage proponents with the certainty needed to bring forward investment; and*
- *preserve pre-existing rights of the petroleum industry as far as is practicable to minimise sovereign risk to existing titleholders' investment in Australia's offshore resources.*

**Supported**. However, the Government does not support the inclusion of a detailed objects clause because objects clauses affect the interpretation of legislation. Section 15A of the *Acts Interpretation Act 1901* provides that an interpretation of a provision of an Act that would promote the object of the Act is to be preferred to an interpretation that would not promote that object. While this rule of interpretation applies whether an object is specified in an objects clause or whether it is merely to be inferred from the provisions of the Act, setting out some objects expressly in an objects clause is likely to result in the stated objects being given priority over the unstated ones in the interpretation of the provisions of the Act. Thus, for example, the Committee's recommendation for the inclusion of objects clause which only covers two of the three high level objectives of the Bill (omitting ensuring safe and secure storage) could give this latter objective a lower priority compared with the two listed in the recommendation. Furthermore, even if that objective were included in the objects clause, such a clause could then have the effect of subordinating other important objectives, such as protection of the environment and protection of potentially commercial discoveries of petroleum. Thus, in complex legislation such as the *Offshore Petroleum Act* (OPA), which requires the balancing of multiple objectives, any objects clause would have to be comprehensive in order to ensure that the balance of the stated objects is consistent with the balance intended to be established by the substantive provisions of the Act.

In addition, there is the issue of objectives for the petroleum parts of the OPA. There is at present no objects clause for the petroleum provisions of the OPA, for the very

reason set out above. Thus, for example, objectives applying to the petroleum provisions would have to be carefully balanced with the objectives applying to the greenhouse gas(GHG) provisions, or it could impede the responsible Commonwealth Minister's ability to balance post-commencement petroleum and greenhouse gas storage proponents' activities in the public interest.

The Government therefore will propose to amend the Bill to include a high level objects clause in the Bill to address the petroleum objectives as well as the GHG objectives of the Act, along the lines:

> "provide an effective regulatory framework for petroleum exploration and recovery and the injection and storage of greenhouse gases in offshore waters."

**RECOMMENDATION 2**

*The Committee recommends that the responsible Commonwealth Minister utilise established formal consultation pathways to consult with State Governments, industry and environmental organisations, with a view to achieving national consistency in the administration of GHG storage legislation.*

**Supported**. Close liaison with State and Territory governments is already taking place through the Ministerial Council on Mineral and Petroleum Resources and the Environment Protection and Heritage Council. Broader consultation with stakeholders, including environmental organisations, will be undertaken through mechanisms such as the requirements for consultation under Site Plans.

Adopting this recommendation does not require amendment to the Bill.

**RECOMMENDATION 3**

*The Committee recommends that no acreage be automatically excluded from consideration for selection on the grounds of pre-existing petroleum activities.*

**Supported**. Automatic exclusion of acreage would not allow decisions to be made on the merits of the case in question. Existing projects, such as Sliepner and In Salah, demonstrate that greenhouse gas storage activities and petroleum operations can co-exist on the same footprint without adverse impacts, although this will depend on the geology of the area in question.

Adopting this recommendation does not require amendment to the Bill.

**RECOMMENDATION 4**

*The Committee recommends that the process for identifying and shortlisting acreage for release should be transparent and systematic, and should consider the views and submissions of all relevant stakeholders.*

**Supported**. The proposed process seeks nomination of areas to be released, consultation with stakeholders and technical assessment of potentially suitable areas.

On the basis of this process, the responsible Commonwealth Minister will decide on which areas should be released for bidding. This process will meet the criteria recommended by the Committee.

Adopting this recommendation does not require amendment to the Bill.

**RECOMMENDATION 5**

*The Committee recommends that the criteria established for assessing work bid applications facilitates the uptake of CCS activities while maintaining transparency and consistency.*

**Supported**. Criteria for assessing bids will be developed through consultation with stakeholders as part of the process of developing guidelines and regulations. Recommendation 12, which recommends that a demonstration of a readily available $CO_2$ stream should be one of the criteria that should be adopted, is also relevant. Recommendation 12 is also supported on the basis that it will facilitate the early uptake of storage opportunities.

The Government, therefore, will propose an amendment to the Bill to ensure that the criteria can include broader economic, commercial and public interest considerations as well as the work program proposed.

**RECOMMENDATION 6**

*The Committee recommends that the legislation be amended to allow for a GHG assessment permit holder to apply for a single right of renewal for a maximum three years duration.*

**Supported**. The existing term of six years non-renewable contained in the draft Bill may not provide sufficient time for assessment works in a situation where demand for equipment, such as drilling rigs, is booked for an extended period into the future.

However, to ensure that renewals are not used to 'warehouse' areas, the renewal will be subject to either proposed work programs having been fully met, but further assessment being required, or that work programs have been subject to unavoidable delays.

The Government will propose amendments to the Bill to give effect to this recommendation.

**RECOMMENDATION 7**

*The Committee recommends that the GHG injection and storage rights conferred under s.137 of the Offshore Petroleum Act 2006 be maintained where practical.*

**Supported**. This is fundamental to the protection of existing petroleum industry rights and to good oil field practice in the future. This section of the *Offshore Petroleum Act 2006* provides for petroleum production licence holders to undertake such activities in their licence area incidental to the production of petroleum from that

area subject to obtaining the normal regulatory approvals process. This extends to the right to inject by-product $CO_2$. The amended S 137 will continue these rights, including the authorisation of injection and storage operations that are incidental to recovery of petroleum in the Production Licence area. It is intended that injection and storage by production licensees will be managed by the Joint Authority via the Field Development Plan process in the regulations applying to petroleum operations.

However, as discussed under Recommendation 8 below, the Government will propose to amend the existing S 137 to allow some operations to be integrated across different title areas.

**RECOMMENDATION 8**

*The Committee recommends that the Government review the Offshore Petroleum Act and proposed amendments to provide for the development of integrated petroleum projects, including the injection and storage of GHG from multiple sources into a single storage formation.*

**Partially supported**. This recommendation is supported with the exception of allowing the storage of greenhouse gases from other title areas. The Government considers that, in such cases, storage should require a greenhouse gas title. The reasons for this are set out below.

Amendments are needed to the Bill to allow activities across different petroleum title areas to be permitted, subject to the normal approvals process, where these are consistent with good oil field practice, protection of the environment and occupational health and safety. However, the Bill in its current form does not permit the disposal of waste from outside individual petroleum title boundaries (such as the disposal of formation water from multiple title areas in a single title area). As a result there is a need to explicitly allow for integrated disposal operations. These operations will be managed by the Joint Authority via the Field Development Plan. It is not proposed, however, that the disposal of a greenhouse gas (GHG) substance across title boundaries be permitted under a petroleum title. There will be the possibility, on a case-by-case basis, under the Field Development Plan process, of injection and storage of lower concentrations of $CO_2$ being permitted as part of normal petroleum operations.

Injection of by-product GHG back within the reservoir from which it originated does not need to be controlled by the GHG requirements aimed at ensuring safe and secure storage. This arises because the reservoir has already demonstrated its ability to contain that GHG and the volume of GHG will be less than the total volume of fluids produced from the reservoir. Thus, no GHG injection licence is required and the operation can be regulated under normal petroleum provisions. This is also consistent with existing rights under a Production Licence.

However, if injection of by-product GHG from multiple sources were to be permitted under a petroleum title, then there is the possibility that the amount of GHG to be injected would exceed the quantity of fluids produced from the reservoir, with no requirement on the operator to monitor the behaviour of the stored substance or to ensure that it did not migrate outside the boundaries of the title area. There is a need,

therefore, to ensure that such injection projects are regulated under the requirements of the GHG provisions of the Act.

The main underlying issue is to give petroleum operators reasonable certainty that they will be able to obtain the GHG titles they need for an integrated operation. This can best be managed by adopting the Committee's recommendation 12 which would make the availability of a CO2 stream for imminent injection a criteria when assessing bids for the award of acreage.

The Government will propose amendments to the Bill to give partial effect to this recommendation.

**RECOMMENDATION 9**

*The Committee recommends that the Bill be amended to provide for the responsible Commonwealth Minister to direct the parties to negotiate in good faith where there are potential or actual overlapping GHG storage and petroleum titles, under both pre-commencement and post-commencement petroleum titles; and that the responsible Commonwealth Minister be empowered to direct an outcome.*

**Partially supported**. The Committee's major underlying concern relates to the potential for pre-commencement petroleum title holders to effectively block GHG activities in an area by claiming that there is a 'significant risk of a significant adverse impact 'on their petroleum operations.

The Government will propose a number of amendments to address this concern as set out below. However the Government does not support the recommendation in its present form, especially with regard to providing the Minister with the power to direct outcomes.

This recommendation is based on existing Queensland legislation which sets out a process and timelines for parties to consult with one another with the objective of reaching a commercial arrangement. If no agreement is reached, then the Minister can direct an outcome. The Government understands that the Queensland Minister has never had to exercise this power and that the cases where the process has been triggered have been resolved through commercial agreements. However, it is not clear that the subjects of these processes have been as intractable as clashes between GHG and petroleum rights have the potential to be.

Specific concerns are:

- Giving the Minister power to direct the parties to negotiate in good faith would be unlikely to assist the parties to reach a negotiated settlement. This is because each party will, albeit in good faith, inevitably continue to act in pursuance of their own commercial interests.

- Giving the Minister power to direct an outcome needs to be given separate consideration in relation to pre-commencement and post-commencement petroleum titles.

- In pre-commencement petroleum titles, a power for the Minister to direct an outcome would be a substantial encroachment on pre-existing petroleum rights. It would represent a major shift in the policy balance of the Bill.
- A similar situation applies in the case of post-commencement Production or Injection Licences, which are also protected through the 'significant risk of a significant adverse impact' test. This is included in the framework because of the need to protect the investments that will have been made once projects reach this stage.
- In post-commencement petroleum exploration and retention titles, there is already a 'circuit-breaker' mechanism in place where parties fail to agree. In the absence of agreement between the parties, and even if there is an agreement, but the Minister is not satisfied with the terms of the agreement, the Minister has power to decide the outcome in the public interest. The Minister's ability to decide the outcome in terms of granting or not granting a title or an approval in the public interest will provide a strong incentive for the parties to negotiate a commercial settlement for themselves.

The following measures have been identified that will to go some way towards addressing the Committee's concerns:

- One issue relates to the 'significant risk of a significant adverse impact test' itself. The Committee's endorsement of the proposal that the definition of the 'significant risk of a significant adverse impact' be a matter for regulation rather than legislation and the content of submissions and evidence on this matter give confidence that this matter can be handled in regulations with well-defined criteria. Strong definition of the criteria for the test will go some way to alleviating this concern. This will require amendment to the Bill to confer specific power to make relevant regulations.

- Treatment of the 'significant risk of a significant adverse impact test' can be further strengthened by providing the Minister with the power to establish expert advisory committees to provide advice. Committees would be established on a 'needs' basis.

- Amending the Bill to give the responsible Commonwealth Minister the power to be able to request parties to provide information and documents on any negotiations that have taken place and the outcome of these negotiations will also contribute. While the existing framework of the legislation has been prepared with the intention of providing incentives for commercial negotiations, explicit provisions such as these will provide further encouragement.

- Another area where regulations can contribute to addressing the underlying issue relates to data. The Government proposes to amend the Bill to enable the responsible Commonwealth Minister to require production of any relevant information as an aid in decision making. The proposed amendment will also include provisions to protect confidential information.

The Government will propose amendments to the Bill, as outlined above, to address the underlying issues identified by the Committee.

**RECOMMENDATION 10**

*The Committee recommends that the regulations and guidelines attendant upon the legislation are released for stakeholder and public comment as a matter of urgency.*

**Supported**. The Government plans to move ahead rapidly with consultations with stakeholders on the proposed regulations and guidelines. It is planned that these consultations will be based on discussion papers, which could be released in early October. It is unlikely, however, that the regulations could be in a form ready for tabling before final passage of the Bill.

Adopting this recommendation does not require amendment to the Bill.

**RECOMMENDATION 11**

*The Committee recommends that incumbent petroleum operators be offered a one-off opportunity to incorporate a GHG assessment permit over their exploration or production licence, with the condition that they must demonstrate utilisation of this permit within five years, or surrender it.*

**Not supported**. While adoption of this recommendation would, as the Committee suggests, likely lead to increased exploration activity and knowledge of Australia's storage resource, it could delay implementation of some projects by 'locking out' early movers which do not have existing petroleum titles, such as may emerge in the Gippsland Basin, for up to 5 years.

Another major drawback is that storage sites are very unlikely to match petroleum title boundaries. The underlying geology will be a crucial factor when selecting acreage for release for a GHG Assessment Permit because of the need to take migration paths into account, which is not a factor in determining petroleum title areas. As a result, areas that would be selected to give the best utilisation of potential storage sites would almost certainly be very different from the areas covered by existing petroleum titles.

It is also noted that this recommendation is at least partly inconsistent with the intent of recommendations 9 and 12, in so far as it relates to giving increased opportunities to petroleum title holders, while recommendation 9 is aimed at limiting existing petroleum title holders' ability to unfairly block GHG activities. Recommendation 12 places a priority on having a source of CO2 ready for injection, which is not entirely consistent with any system of 'pre-allocation'.

There is, however, one area where the rights of petroleum title holders to apply for GHG titles could be extended. Currently the Bill provides for the holder of a Production Licence to apply for a GHG Injection Licence. In the Browse Basin, a number of large petroleum fields with high CO2 content are being considered for development. These titles are currently held under Retention Leases. Additional certainty could be provided to the holders of these titles by allowing Retention Lease

holders to apply for GHG Holding Leases in the same manner as Production Licensees can apply for Injection Licences.

The Government will propose amendments to the Bill in respect of petroleum Retention Leases.

**RECOMMENDATION 12**

*The Committee recommends that those proponents who can demonstrate a readily available CO2 stream for imminent injection receive preferential consideration when assessing bids for GHG acreage allocation.*

**Supported.** This would be included in the criteria for assessing bids for acreage. Its implementation will also go a long way towards addressing the issues raised in Recommendation 8. As mentioned under Recommendation 5 this will require some amendments to the Bill to allow criteria to include broader economic, commercial and public interest considerations as well as the size of the work program proposed.

Adopting this recommendation does not require amendment to the Bill, beyond those referred to under recommendation 5.

**RECOMMENDATION 13**

*The Committee recommends that the Government consider further financial incentives for the earliest movers in this new industry, and that these incentives be made public at the earliest opportunity.*

This is not a matter for this Bill as the Bill only deals with enabling legislation rather than with incentives. Nevertheless, it is an important policy issue which the Government will be considering separately.

**RECOMMENDATION 14**

*The Committee recommends that a process for the formal transfer of long term liability from a GHG operator to the Government be established within the proposed legislation, such transfer to be conditional upon strict adherence to prescribed site closure criteria.*

**Not supported.** The benefits of any take-over of long-term liability by the Commonwealth have not been established. The Committee's reasons for making this recommendation are unclear.

The practical effect of the current legislative framework is that after statutory obligations cease when a closure certificate is issued, common law will apply. The existing Bill sets out requirements that have to be met before a closing certificate can be issued. In particular, it requires the responsible Commonwealth Minister to be satisfied that the injected substance is behaving as predicted and that it does not pose significant risks to the conservation of natural resources, the environment, human health and safety or other matters that the Minister may consider relevant. Another

condition of the closing certificate is that a security has been lodged to fund long-term monitoring.

Under these provisions a GHG operator would likely only be liable if damage arose and there was fault or a failing of some kind such as negligence on the part of the operator. However paragraph 4.41 of the report states that "the Committee has reservations about indemnifying the CCS proponents from common law liability". Paragraph 4.44 also contain the words "... the transfer of long term liability from the GHG operator to the government ... [would not] prevent parties pursuing damages on the grounds of deliberate misconduct or negligence by the operator".

As a result, it appears to be the Committee's intent that if any provision for the transfer of long term liability were included in the Bill, then it would also need exclusions for the type of issues referred to in paragraph 4.44. Thus, the overall effect would be similar to the existing approach of staying silent on long term liability in the Bill, thereby leaving the matter to common law. In addition, any such provision would have the potential to lead to significant confusion should any cases arise in the future.

Another possible impact of taking over all liability as recommended by the Committee could be to lengthen the closure period and increase the complexity of the closure process because such a transfer of liability would likely lead to the Minister requiring a higher degree of certainty concerning long term liability issues.

**RECOMMENDATION 15**

*The Committee recommends that general criteria for achieving a site closing certificate be established and published as part of the implementation of the legislation.*

**Supported**. It is proposed that these would form an integral part of the site plan regulations. While the objectives of the site closing process are set out in the Bill, in terms of the matters of which the Minister must be satisfied before granting a site closing certificate, specific criteria will be highly site specific and regulations will have to be expressed in objectives-based terms.

Adopting this recommendation does not require amendment to the Bill.

**RECOMMENDATION 16**

*The Committee recommends that non-fixed closure timeframes as currently prescribed within the proposed legislation be used in preference to alternative models such as fixed term closure periods.*

**Supported**. This is effectively an endorsement of the existing framework of the Bill.

**RECOMMENDATION 17**

*The Committee recommends that community and stakeholder engagement strategies be considered as part of any GHG storage activity.*

**Supported**. This is a matter of operation procedures and is consistent with the way in which the Bill would be implemented.

Adopting this recommendation does not require amendment to the Bill.

**RECOMMENDATION 18**

*The Committee recommends consideration be given to making monitoring data associated with GHG storage project publicly available.*

**Supported**. The Government will propose an amendment to the Bill to provide for making monitoring data publicly available to be the subject of regulations.

**RECOMMENDATION 19**

*The Committee recommends the use of consultative pathways to provide feedback on the wider community's concerns to the responsible Commonwealth Minister.*

**Supported**. This is a matter of operation procedures and is consistent with the way in which the Bill would be implemented.

Adopting this recommendation does not require amendment to the Bill.