Victorian Government Submission to the House of Representatives Standing Committee on Primary Industries and Resources

Inquiry into the Draft Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008

June 2008

The Victorian context

The Victorian Government is committed to reducing greenhouse gas emissions, by 60% by 2050 compared to 2000 levels, whilst ensuring a safe, secure, reliable and affordable energy supply and enabling the value-added processing of Victoria's fossil energy reserves.

Given Victoria's dependence on fossil fuels for energy generation, carbon capture and geological storage (***CCS***) is expected to play a key role in meeting Victoria's greenhouse gas reduction targets whilst maintaining a secure energy supply. Energy generated from brown coal contributes almost all of Victoria's overall electricity needs (see **Diagram 1** opposite). However, over 60% of Victoria's greenhouse gas emissions are from the stationary energy sector due to Victoria's reliance on brown coal for electricity generation, as **Diagram 2** opposite illustrates.

Accordingly, timely access to suitable storage formations is vital to ensure the State's ongoing use of fossil fuels as a secure, reliable and affordable energy supply.

The offshore Gippsland Basin in the Bass Strait has been identified as one of the key sites for CCS in Australia. The inability of Victoria's Latrobe Valley electricity generators to access suitable sites in the Gippsland Basin for the storage of its carbon dioxide emissions will impact on electricity supplies not only in Victoria, but across the eastern seaboard through the national electricity grid.

The commercial development of CCS in a timely manner is therefore of critical importance not only to Victoria, but to the nation.

Victoria is concerned that the Commonwealth's proposed legislation, as drafted, could have the effect of delaying, if not preventing, the uptake of CCS injection and storage activities in the offshore Gippsland Basin.

If CCS is to provide an effective component of Victoria's, and also the nation's, climate change response, the industry needs to be established within the next 15-20 years. A delay of 5-10 years will effectively nullify any benefit that CCS may have for immediate climate change responses at a national level, thereby failing to deliver on the rationale behind the CCS legislation – to provide for the efficient and timely development of CCS projects on a commercial scale, as part of the Commonwealth's commitment to the reduction of atmospheric greenhouse gas emissions.

A necessary precondition for investment in CCS is the creation of clear legal rights to explore for geological storage formations, and to store carbon dioxide, as well as an efficient, transparent and credible regime for its assessment, approval and operation.

Accordingly, the Victorian Government strongly supports the development of Commonwealth legislation to enable large scale commercial CCS in offshore Commonwealth waters. This legislation is also necessary to ensure ongoing investment in major projects involving CCS, such as the Monash Energy coal to diesel project, which represents a US$5 billion investment in Victoria's Gippsland region and could supply a significant portion of Australia's future fuel needs.

In addition to the Monash project, there are additional 'clean coal' energy projects being considered for Victoria, with an estimated investment of between $10 billion and $20 billion. It is likely these projects will require CCS. If the proposed legislation is introduced in its current form, the economic value of Victoria's coal may not be realised.

Diagram 1: Victoria's reliance on coal for generation of its electricity needs

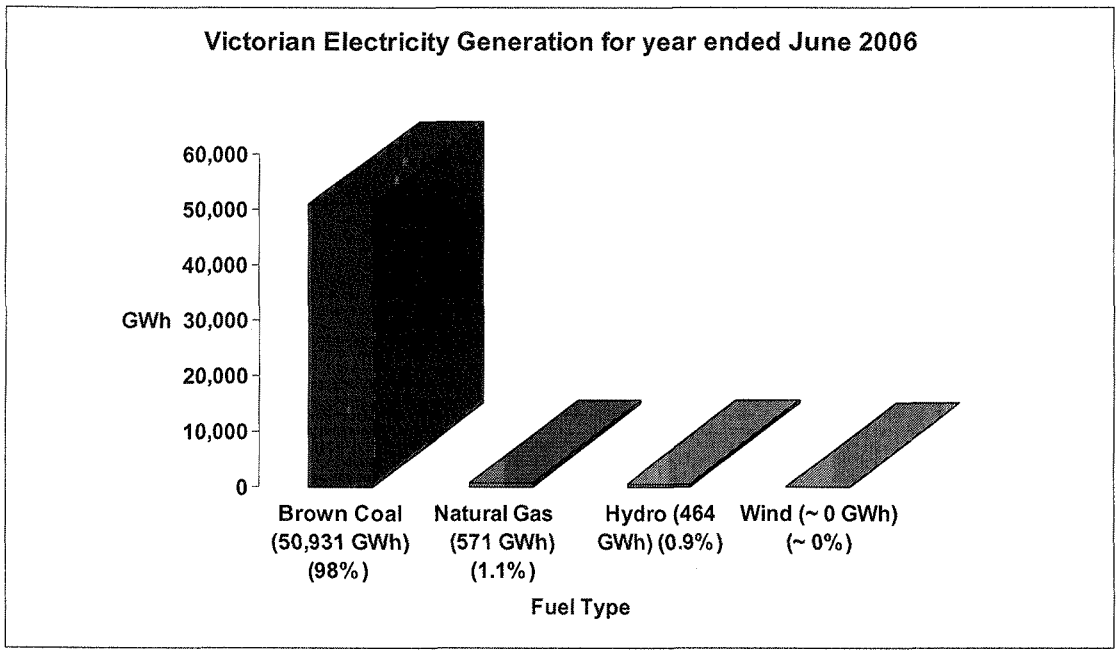
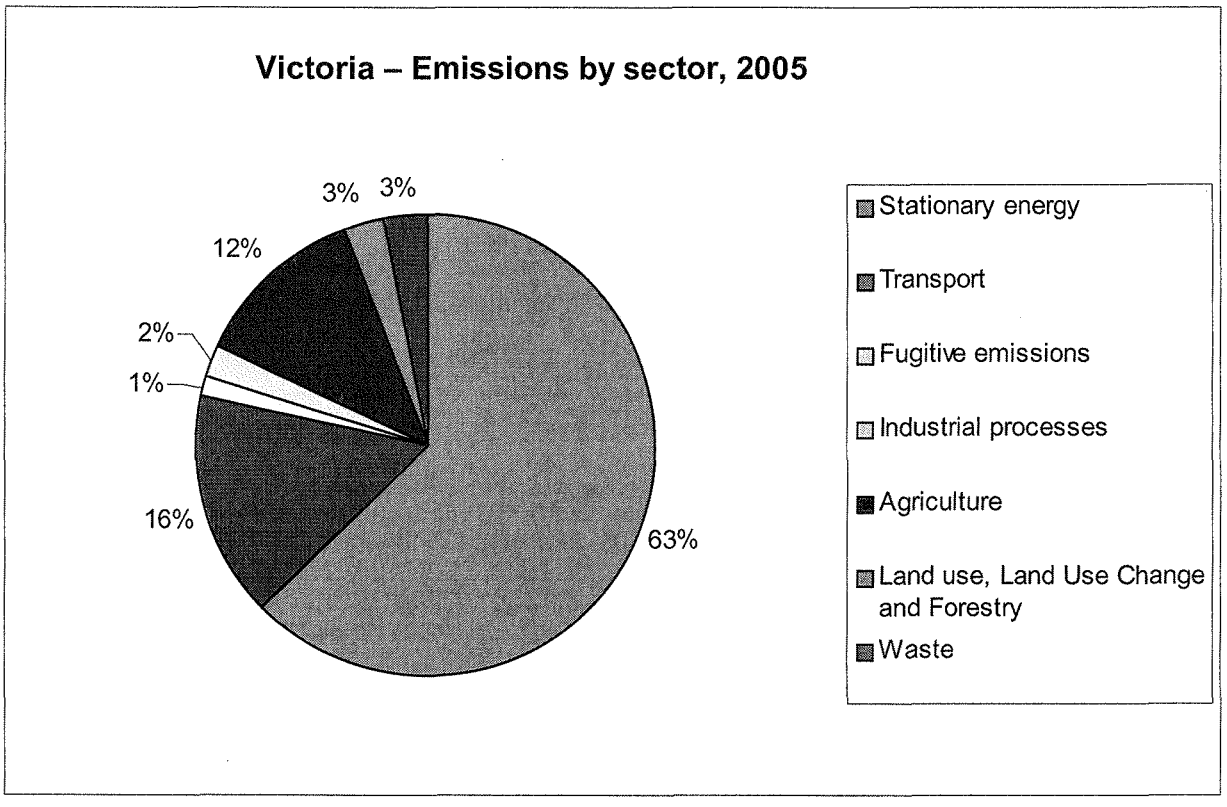


Diagram 2: Victoria's greenhouse gas emissions



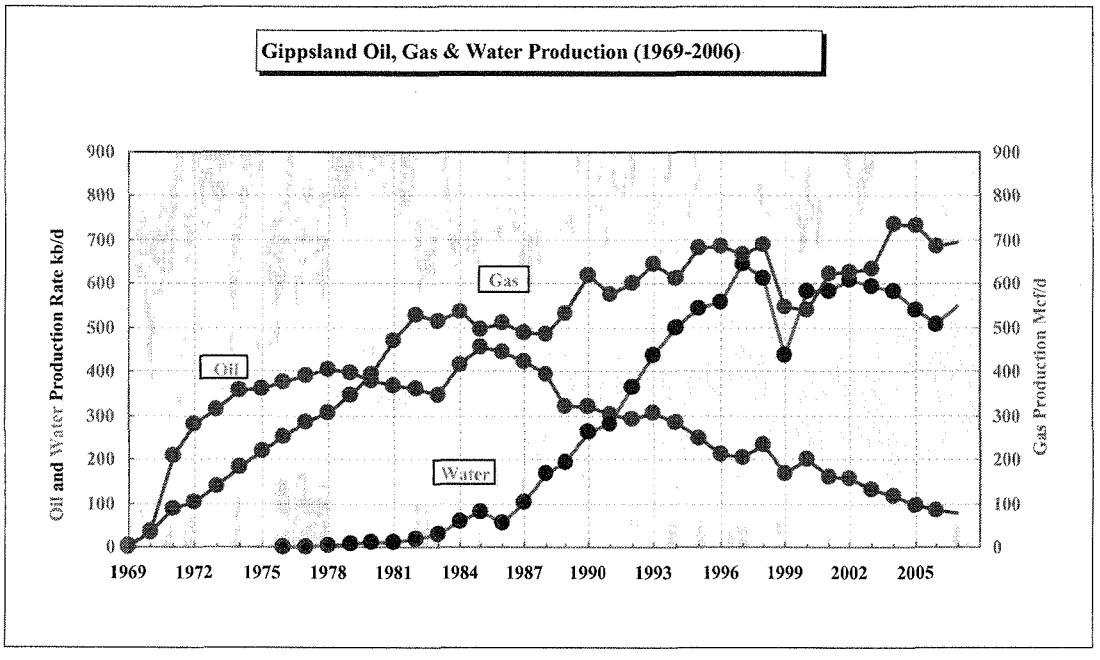
Victorian Government concerns

The Victorian Government therefore has a number of significant concerns regarding the workings of the Commonwealth's draft Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 (the Bill), and welcomes the opportunity to provide a submission to this Inquiry.

In summary, the Victorian Government's concerns are that the Bill:

- Gives existing holders of petroleum rights privileged access to the CCS resource. This is a critical issue. In particular the Bill:
  - → Affords a level of protection to pre-existing petroleum operators that may discourage investment in greenhouse gas injection and storage activities.
  - → Quarantines existing petroleum title acreage, and provides only very limited access to suitable acreage for greenhouse gas injection and storage proponents within such acreage. The effect of this is that access to suitable Gippsland Basin greenhouse gas storage sites is not subject to 'competition'.
- Establishes a type of title for CCS operators that is not secure, and is inferior to that held by petroleum operators. The Bill must provide a certain regulatory regime, as this is vital to CCS, and in turn, vital to the ongoing supply of energy to Victoria.
- Does not recognise potential for impact on on-shore resources and existing entitlements, including on-shore groundwater resources and entitlements.
- Does not recognise that there may be circumstances where it is in the national or "public interest" to allow CCS operations to be undertaken, notwithstanding the effects of such operations on the petroleum industry. This point is particularly important in the context of nearly depleted oil resources. The trend in the decline of oil resources in the Gippsland Basin is demonstrated in **Diagram 3**.

Diagram 3: Gippsland Oil, Gas & Water Production



In short, the Victorian Government considers that the Bill would not establish sufficiently secure property and access rights for the development of a CCS injection and storage industry in Commonwealth waters offshore from Victoria.

While significant, this flaw is less critical than the Bill's failure to establish a system whereby potential CCS operators can compete for prospective areas on an equal footing with existing petroleum rights holders. The CCS resource is a new resource – distinct from the petroleum resource that is commonly co-located – and should be treated as such, whereas the Bill treats CCS rights as subsidiary to those of petroleum producers.

The Bill would provide existing petroleum rights holders with unwarranted monopoly rights, effectively delaying the development of a viable commercial CCS industry for Victoria. On this basis, the Bill does not provide a legislative framework that should be adopted on a national basis.

Term of reference (a):

> ***"Whether the Bill establishes legal certainty for access and property rights for the injection and long-term storage of greenhouse gases (GHG) in offshore Commonwealth waters"***

Overview

Victoria requires a sustainable CCS industry to ensure a safe, secure, reliable and affordable energy supply, and to enable the value-added processing of Victoria's fossil energy reserves, in a carbon-constrained future.

The ability for CCS proponents to access suitable storage reservoirs in the Gippsland Basin will be essential to the development of the CCS industry, because the majority of Victoria's geo-sequestration resource is in this basin. There is also the potential for other State based emission producers to use the Gippsland Basin as a storage site.

The offshore Gippsland Basin is recognised as having the greatest potential for the storage of carbon dioxide from the Latrobe Valley coal fields.

A significant proportion of this Basin is currently subject to petroleum titles – of which approximately 80% is exploration acreage, and approximately 20% is production acreage. The extent of petroleum title tenure in the Gippsland Basin is illustrated in **Diagram 4** which shows petroleum production licences (VIC/L) and petroleum exploration permits (VIC/P) overlying reservoir depth information. The area shaded in green (depth to top of reservoir of between 800-1200 metres) is the most suitable for storage. Importantly, production licences comprise nearly 60% of the Central Basin, which represents the largest proportion of available storage, and are not subject to compulsory relinquishment provisions of exploration permits (which require the holders of exploration permits to relinquish 50% of their title area every 5 years).

It is estimated that the Gippsland Basin has a potential greenhouse gas storage capacity of 35,000MT, which represents an ability to store approximately 285 years of Victoria's emissions at the current rate of 122MT per annum.

The greatest uncertainty about a CCS proponent's ability to access suitable CCS storage formations surrounds the ability of a CCS proponent to convert to an injection licence. A CCS proponent will not invest in initial exploration and assessment activities if the uncertainty over the ability to ultimately 'operate' remains. The strong rights of petroleum title holders under the Bill – including an ability to 'veto' a CCS operation – as well as the potentially large gap in site specific knowledge between petroleum operators and CCS proponents, contribute to this uncertainty.

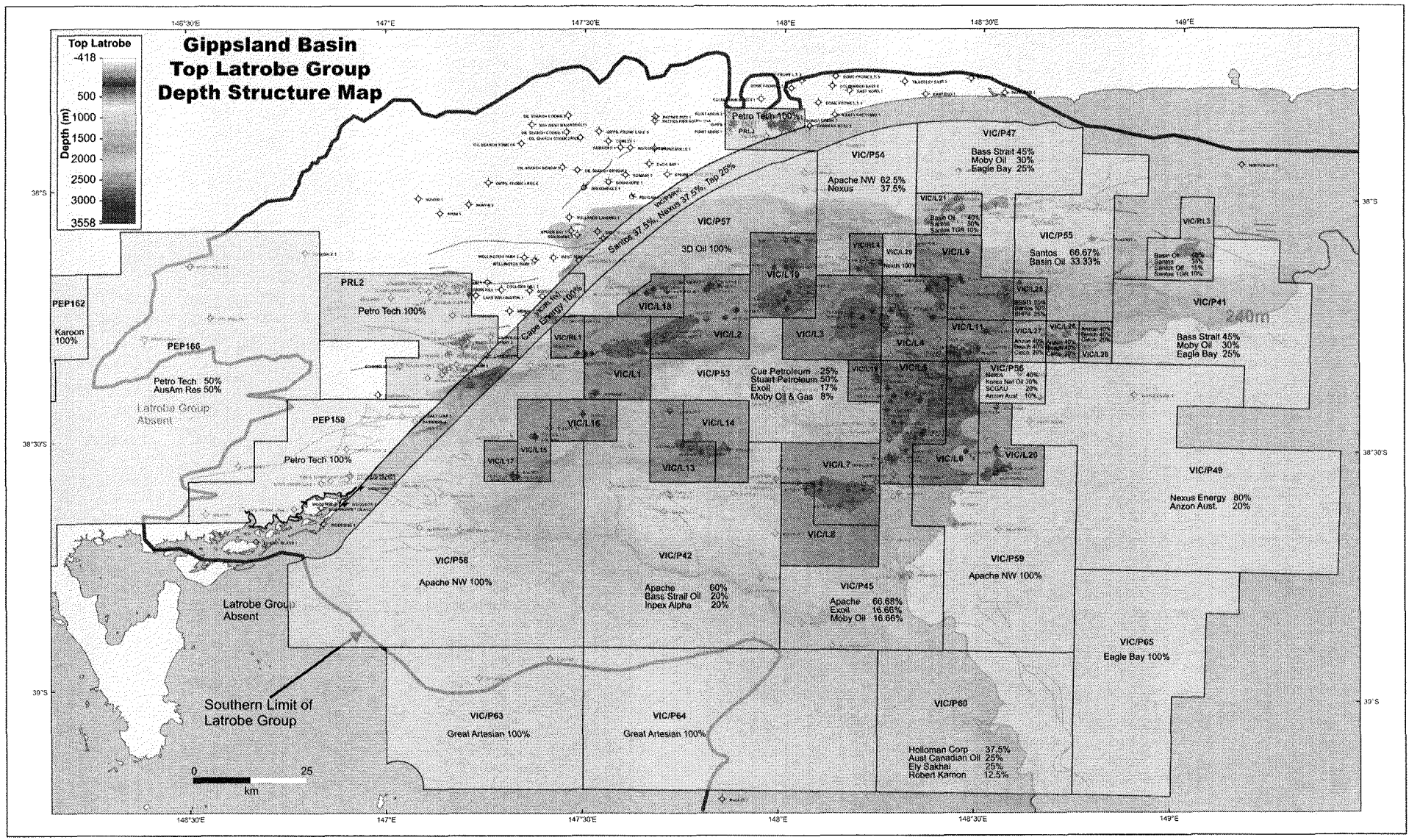
In addition, the proposed 'impact test' is broad, and contemplates the effect CCS operations may have on possible future petroleum operations. The concept of potential impacts of CCS operations on possible future petroleum operations is inherently uncertain, considering the full extent of the petroleum resource is unlikely to be known at the time the CCS proponent seeks approval to conduct the relevant CCS operation. The effect of this is that CCS titles are treated as inferior rights.

To encourage commercial investment in geological storage of carbon dioxide, the Commonwealth must provide a 'level playing field' with the petroleum industry, in particular regarding access and property rights. It must also recognise that there may be circumstances where it is in the national interest to progress a CCS operation, and to manage any resulting impact on petroleum operations.

Pre-existing petroleum operators in the Gippsland Basin may be incentivised to delay CCS activities, as this will drive the use of gas in power stations over the use of coal. Providing equal opportunities for access to CCS storage areas will deliver a fairer outcome, consistent with the intent of the proposed CCS legislation.

The Victorian Government is concerned that existing petroleum operators are afforded 'windfall benefits' under the Bill to apply for, and secure, suitable CCS tenure, as well as the ability to 'stockpile' or 'bank' suitable CCS acreage for potential future CCS investment.

Diagram 4: Gippsland Basin – Tenement Holdings



Analysis of the Bill

The Victorian Government has identified circumstances in which the Bill fails to deliver certainty of access and property rights to CCS proponents:

No underlying power to advance certain CCS operations in the 'public interest'

Where a CCS assessment permit and a pre-commencement petroleum title, or post-commencement production licence coexist, and if the responsible Minister determines that there is a 'significant risk' that the 'key' activities of a CCS proponent may have a 'significant adverse impact' on current or future petroleum operations in that area, in the absence of any agreement by the petroleum title holder to the conduct of those CCS activities, then the Minister must not approve the conduct of those CCS activities.

Similar considerations apply to a CCS proponent wishing to convert its CCS assessment permit to a CCS injection licence, where the CCS assessment permit and a pre-commencement petroleum title or a production licence coexist.

In these circumstances:

- An incumbent petroleum operator is under no obligation to negotiate with, and can refuse to negotiate with, a CCS proponent, regarding the proposed CCS activity. Accordingly, access to suitable storage reservoirs in the Gippsland Basin is effectively subject to a 'veto' by incumbent petroleum operators.
- The responsible Minister has no underlying power to determine that the CCS activity is, in fact, in the 'public interest', and should be allowed to be carried out on that basis.

The effect of this regime is to limit a CCS proponent's ability to obtain access to, and property rights in, key CCS storage areas.

The 'public interest' test is unclear

The Bill seeks to introduce a number of 'public interest' tests.

There are currently relatively few circumstances in the *Offshore Petroleum Act 2006* which require 'public interest' or 'national interest' considerations to be taken into account. The Bill will significantly increase the number of circumstances in which consideration of the 'public interest' must be made by the responsible Minister.

As a threshold issue, the Bill does not seek to provide guidance on what constitutes 'the public', or indeed, what should be taken into account when considering what may be, and what may not be, in the 'public interest'.

The circumstances in which the 'public interest' must be taken into account by the responsible Minister include:

- When a petroleum operator is seeking approval to conduct key petroleum operations within coexisting CCS tenure.
- When a CCS operator is seeking approval to conduct key CCS operations within coexisting petroleum tenure.
- When a CCS assessment holder seeks the grant of a CCS injection licence.

In the first scenario, the 'public interest' may seemingly dictate that the conduct of the relevant petroleum operation should proceed, except where the coexisting CCS tenure is a CCS injection licence.

However, in the second scenario, and as noted above, the power for the responsible Minister to sanction the conduct of a CCS operation on 'public interest' grounds is not expressly available where the coexisting petroleum tenure is any pre-existing petroleum title, or a production licence.

Accordingly, the responsible Minister's ability to advance petroleum operations in the 'public interest' is broader than for CCS operations.

Equally, in the third scenario above, the responsible Minister only has power to grant the CCS injection licence to the CCS proponent on 'public interest' grounds if the co-existing petroleum tenure is a 'post-commencement' form of tenure, and never in relation to a coexisting production licence.

Accordingly, the Bill gives the responsible Minister wider powers to advance petroleum operations in the 'public interest' than it does to advance CCS operations.

In addition, the Bill does not appear to give any consideration to the protection of non-petroleum resources and entitlements, such as groundwater, in assessing whether proposed CCS operations or petroleum operations are in the 'public interest'. Given that these resources are often State-administered, the lack of referral mechanisms to the States may have significant consequences for these resources, and for State economies.

Inadequate allocation criteria

The Bill seeks to create competition for the acquisition of property rights in possible CCS storage resources through the use of 'work-bid' acreage releases.

The 'work-bid' process allocates CCS tenure to the applicant 'most deserving' of the grant, in the opinion of the responsible Minister.

Although employed in the *Offshore Petroleum Act 2006*, such criterion is highly subjective, and its application regarding the grant of CCS rights will necessarily involve different considerations to those taken into account when assessing the grant of petroleum rights.

The Victorian Government is concerned that the accumulated wealth of knowledge, and longstanding presence, of petroleum operators in the Gippsland Basin, may translate into such operators being considered as 'most deserving' of the grant. The grant assessment criteria ignores the fact that a CCS proponent, new to the area, will not have recourse to basic information and regional studies necessary to make a 'competitive' acreage bid, being the same information which will enable an existing petroleum operator to submit a 'superior' bid.

By-passing competition for the allocation of prime storage resources

As noted above, access to CCS resources under the Bill will generally be determined through 'work-bid' acreage releases.

However where potential storage formations are located within existing production licence areas, access to those formations will not be subject to competitive bidding. This is because the relevant production licence holder can apply for the grant of a CCS licence in respect to those formations 'as of right'. Accordingly, these storage locations are effectively quarantined from access by 'non-petroleum' CCS proponents.

These provisions do not provide all potential CCS proponents with a workable legal regime within which to acquire property rights in key storage areas. The proposed regime would, instead, shut out almost all potential CCS operators who do not already possess petroleum access rights.

Undermining competition for suitable CCS acreage

The Bill enables the holder of a production licence to progress the existence of suitable CCS injection and storage formations situated within the production licence area, through to the grant of a CCS injection licence.

Although all greenhouse gas substances stored in such formations must initially be the by-product of petroleum extracted from within the production licence area, it is seemingly inevitable (from an economic and practical perspective) that, after such petroleum production ceases, storage of 'outside' sourced greenhouse gases will proceed (noting the Bill is silent on this issue).

This regime clearly reduces the ability for a 'greenfield' CCS proponent to compete for access to 'key' CCS storage sites.

The ability for a production licence holder to apply for such CCS injection licences will apply to storage formations which are 'inadvertently' identified by the petroleum proponent whilst exploring for petroleum, or identified prior to the commencement of the Bill.

Accordingly, the rights of a production licence holder to change its business from petroleum production, to CCS injection and storage, is enhanced, as it is appears unlikely that, given the prevailing attitude towards protecting the 'rights' of pre-existing petroleum title holders, such reservoirs will be included in a 'work-bid' acreage release.

In addition, given that petroleum fields cross a number of production licence boundaries, the Bill appears to authorise production licence holder to re-inject waste CO2 arising from petroleum production in one field, into another field. This effectively creates a CCS monopoly by petroleum producers in the Gippsland Basin.

Whereas a petroleum reservoir may have depleted, and been available for competitive bidding for CCS, the production licensee may, with minor CO2 injection, tie this reservoir up for a significant period.

Victorian Government proposal

The Victorian Government considers that an equitable and competitive market for access to the CCS resource is absolutely essential. The rights of CCS proponents should not be treated as subordinate to those of pre-existing petroleum title holders, or the petroleum industry generally.

Unless there an equitable regime is put in place, the development of the CCS industry will be severely handicapped.

Consequently, the Victorian Government proposes that:

- The Minister should be given power to determine whether a CCS activity is in the 'public interest', and that a CCS proponent should be entitled to exploit CCS storage locations on that basis.

  This power should apply to all CCS activities, and should be able to be applied irrespective of when the overlapping petroleum title was granted.

  The exercise of this power should also require consideration of the impacts on other interests and resources, such as groundwater aquifers that may be linked geologically to potential underground greenhouse gas storages.

- In addition, the Minister should have power to direct CCS and petroleum proponents to the negotiating table regarding access to possible CCS storage formations which are co-located within petroleum tenure.

  This power could be based on the cooperative provisions, and powers of direction, embodied in similar legislative regimes.

- Where petroleum operations have reached a certain point (such as declining petroleum recovery to the stage that exploitation has become uneconomical, and prior to decommissioning), access to those petroleum reservoirs for CCS storage should be opened up for competitive bidding.

  This could be achieved by empowering the responsible Minister to invite competitive bidding for access to such CCS storage formations. In this way, the benefits of a 'work-bid' regime could apply to prime storage locations within the Gippsland Basin. This regime would be consistent with the fact the CCS industry is distinct from the petroleum industry.

  In short, once a storage formation has been exploited for petroleum purposes, that storage formation would be accessible by all for the exploitation as a CCS resource.

- Appropriate consideration should be given to a CCS proponent's technical ability and work program when considering the grant of CCS assessment permit tenure.

Term of reference (b):

"Whether the Bill provides a regulatory regime which will enable management of GHG injection and storage activities in a manner which responds to community and industry concerns"

As with any 'new' industry, the governing legislation must be inherently flexible so as to respond to, and accommodate, changes in industry practice, current entitlements, existing referral mechanisms and community attitudes.

The Victorian Government's main concern regarding the ability of the Bill to respond to matters concerning the CCS industry is that the proposed regime simply does not provide for consultation around key decision making, and does not provide for consultation with other jurisdictions and agencies responsible for the administration of non-petroleum resources such as groundwater.

The concept of consultation in the decision making process is discussed in more detail under 'term of reference' (c) below.

In more general terms, a regime that encourages the timely and efficient development of commercial scale CCS projects will be essential if Australia is to significantly reduce its greenhouse gas emissions. The proposed Bill would curtail the Commonwealth's ability to deliver on its emission reduction commitment, in the short and medium terms.

The importance of a viable CCS industry was confirmed by the Garnaut Climate Change Review Centre in its Interim Report (February 2008). The Report finds that:

> *"It would be consistent with Australian policy traditions, and with sound principle, to make substantial commitments to support private research, development and commercialisation activities related to carbon capture and storage by established electricity producers."*

The Report also highlights that:

- Australia has exceptionally goods sites for CCS, and it is strongly in Australia's interest to have CCS technology be commercially successful in the earliest possible timeframe.
- In the absence of commercially successful CCS, there is no question that coal based mining and power generation firms in Australia would be negatively affected by the introduction of an 'emissions trading scheme', and may struggle to operate profitably in a carbon-constrained economy, and that reduced operations would have implications for the welfare of communities.
- Commercially successful CCS could turn coal based electricity generating areas – meaning the Latrobe Valley – into regions of strong expansion and prosperity.
- Pioneering private investment in provision of geo-sequestration infrastructure is a key component in the ideal domestic climate change mitigation strategy.

Term of reference (c):

> ***"Whether the Bill provides a predictable and transparent system to manage the interaction between GHG injection and storage operators with pre-existing and co-existing rights, including, but not limited to those of petroleum and fishing operators, should these come into conflict"***

Overview

A transparent and predictable system of managing the rights of CCS proponents and petroleum operators is crucial to the CCS industry.

This system is of particular importance when it comes to assessing the 'impact' that CCS activities may have on petroleum operations, and vice versa.

Given their importance under the Bill, 'impact tests' should be transparent, deliberative, and should involve access to all relevant information, including State considerations.

A favourable 'impact assessment' will, in a number of circumstances, determine whether a CCS proponent is entitled to conduct initial exploration and assessment work leading to an eventual injection and storage operation.

Analysis of the Bill

The Victorian Government has identified circumstances in which the Bill lacks predictability and transparency in managing interaction between GHG injection and storage operators with pre-existing and coexisting rights:

Responsibility for impact assessments reside solely in the Minister

In recent years there has been a progressive shift in administrative authority under the *Offshore Petroleum Act 2006* to the State, and to industry, while retaining some clearly defined Commonwealth involvement in technical or policy issues which have national implications.

The Bill does not seek to replicate this blend of State and Commonwealth decision making authority. As a result, there is an inherent lack of 'balance' in the CCS decision making process, when viewed against the petroleum equivalent Joint Authority/Designated Authority regime.

Power in respect to CCS decision making resides solely in the Commonwealth, with no State delegation or representation. As there is no requirement for the Commonwealth to seek State input in the decision making process, no mechanism will exist for the State's interests to be heard, and accordingly, the Bill fails to offer protection to Victoria's petroleum and non-petroleum entitlements and resources.

Application of 'impact testing' should be fairly and evenly applied

The outcome of the Bill 'impact assessment' process will generally determine whether a CCS proponent is entitled to carry out its proposed operations.

This assessment is also required when a CCS proponent applies to convert its CCS assessment permit to a CCS injection and storage licence.

However the Bill does not apply the 'impact test' consistently to petroleum operators.

For instance, the Joint Authority is under no obligation to apply an 'impact test' when granting a production licence to a pre-commencement petroleum title holder, as the Bill does not effect any change to the production licence grant regime under the *Offshore Petroleum Act 2006* as it applies to the holders of pre-commencement petroleum titles.

Accordingly, no consideration of the 'future' CCS industry is required to be made in the process.

As noted above, 80% of the Gippsland Basin is subject to pre-existing exploration titles, which may be converted to production licences in due course.

In addition, the impact of operations proposed to be carried out under a post-commencement exploration permit are only required to be considered against CCS 'injection and storage operations', and not CCS operations preliminary to that point, such as exploration and appraisal.

In contrast, a CCS proponent wishing to carry out equivalent CCS assessment operations will be impact tested against the full range of actual and potential petroleum exploration and recovery operations.

This provides favourable rights to existing petroleum title holders.

Finally, as the Bill does not give any detail on the scope of the proposed 'impact testing' regime, and what it may take into account, CCS proponents are not afforded requisite predictability in how such test will be applied.

Application of 'impact testing' should be broadened

The conduct of offshore petroleum operations in the Gippsland Basin may have adverse effects on other resources and entitlements, such as aquifers and on-shore ground water licences.

Accordingly, in approving the conduct of petroleum operations in offshore Victoria, the impact of such operations on the enjoyment of the rights held by other stakeholders must be considered, and protected.

Victorian Government proposal

In order to provide a consistent, predictable and transparent system to manage interaction between GHG injection and storage operators with pre-existing and co-existing rights, the Victorian Government proposes that:

- An expert 'panel' would be formed, with State and Territory representation, to advise the Minister, including in relation to the application of the 'impact test'.

  In other words, the responsible Minister should be obliged to take appropriate advice in the process of making key CCS decisions.

  This expert panel would have a formal process of taking submissions from government, industry and community groups.

  This will regime will assist in achieving transparency in the decision making process (in particular if the panel's advice is made public), and in achieving a level of predictability in the decisions themselves.

- As the concept of a 'pre-existing' petroleum title will naturally fall away over time (with the exploitation and depletion of hydrocarbon reserves), the Bill should establish a 'level playing field' for CCS proponents and petroleum operators.

  This includes putting in place a regime which makes every conversion of petroleum tenure (including the conversion of a pre-commencement petroleum title to a production licence) subject to 'impact testing' in relation to how operations under that tenure may impact on current and future CCS activities.

- Reinjection activities by petroleum operators, in connection with their petroleum operations, should be critically evaluated, so that appropriate CCS injection obligations apply equally to the petroleum operator who is, in effect, conducting the same operation, but without a CCS injection licence.

- The 'impact' test in relation to the conduct of petroleum operations should be broadened to take account impacts of other resources and entitlements, such as aquifers and on-shore ground water licences, in addition to the consideration of impacts on the CCS industry.

Term of reference (d):

"Whether the Bill promotes certainty for investment in injection and storage activities"

Overview

Certainty in the ability to conduct ongoing and uninterrupted injection and storage operations is vital to promote CCS investment.

The Bill gives the responsible Minister broad, 'post-grant', powers to acquire the rights of a CCS licence holder.

This ability to effectively 'unwind' a CCS licence after its grant, based on circumstances not known at the time the grant was made, would make investment in 'known petroleum regions' such as the Gippsland Basin, inherently risky and uncertain. Further, it is difficult to envisage a situation where such a wide discretionary power would be needed by the Minister.

The Victorian Government notes that such powers also effect the 'predictability' of how the coexistence of petroleum and CCS operators will be managed, and are equally applicable to the Committee's consideration of 'term of reference' (c), as discussed above.

Analysis of the Bill

The Victorian Government has identified circumstances in which the Bill does not promote certainty for investment in injection and storage activities:

CCS licences subject to suspension and cancellation in respect to 'new' petroleum discoveries

Where a CCS injection licence and a pre-commencement petroleum title coexist, and if the responsible Minister determines that the CCS licence holder's activities may have a 'significant adverse impact' on the ability of a petroleum operator to recover petroleum from that area – including in relation to petroleum that was discovered subsequent to the grant of the CCS injection licence – in the absence of agreement by the petroleum title holder to the conduct of the CCS activities, then the Minister may effect the indefinite suspension or cancellation of a CCS proponent's licence.

This provision demonstrates that the rights of a CCS licence holder are not fully protected against the rights of pre-commencement petroleum title holders. Thus, the CCS licence holder is treated as having an inferior form of right to that of pre-existing petroleum title holders.

Instead, the rights given to a CCS licence holder must be capable of certain, ongoing and uninterrupted enjoyment.

Under the proposed Bill, these rights are largely contingent on there being no further discoveries of petroleum in the relevant region.

The ability for the Minister to 'unwind' the rights of a CCS licence holder, based on circumstances not known at the time of grant, seems to undermine the broad 'impact assessment' process leading to the initial CCS licence grant.

The mere threat of an ability by the responsible Minister to exercise a 'cancellation' power will be of concern to CCS proponents (and their project financiers) considering committing significant capital investment in CCS projects. This may in turn lead to CCS proponents delaying investment until such time as the prospect of 'new' petroleum discoveries in the relevant region is acceptably low.

The Minister may also direct CCS licensees to eliminate or mitigate any risk that their operations may compromise petroleum recovery – including with respect to areas outside of the CCS licence area – including by prohibiting the conduct of operations authorised by the licence.

These directions have an unlimited scope, and a CCS proponent will bear the resulting financial burden of compliance. The Bill has not sought to include equivalent provisions for the elimination or mitigation of risks to CCS proponents where petroleum operations are concerned.

As a result, the Bill seeks to establish an uncertain regime for investment in CCS injection and storage activities.

CCS proponent access to petroleum infrastructure

The Bill is silent on the ability for a CCS proponent to gain access to petroleum infrastructure, in the context of CCS operations.

Significant infrastructure already exists in the Gippsland Basin which may be potentially suitable for CCS injection and storage operations.

The absence of a regime which facilitates access to such existing petroleum infrastructure and services presents CCS proponents with a significant financial barrier to entering the CCS market.

It is envisaged that, in a number of circumstances, enabling a CCS proponent to access such infrastructure and services will be in the 'public interest', particularly from the perspective of avoiding unnecessary expenditure incurred on reinstalling suitable infrastructure that has been decommissioned pursuant to the 'petroleum provisions' of the *Offshore Petroleum Act 2006*.

Victorian Government proposal

To provide certainty for investment in injection and storage activities, the Victorian Government proposes that:

- The broad powers of the Minister to suspend or cancel a CCS licence following grant be removed, or at the least restricted to the impact on petroleum resources known at the time the CCS licence was granted (subject, naturally, to true 'emergency' considerations).

  The CCS injection licence grant process already requires an extensive consideration of the impact a CCS operation may have on any 'future petroleum recovery operations' from the relevant area.
- Access to existing petroleum infrastructure is facilitated in a way that is economical for both CCS and petroleum operators. This concept has particular application to infrastructure which would otherwise be decommissioned at the conclusion of petroleum operations, and which is suitable for use in CCS operations.

  Appropriate compensation would be payable by a CCS proponent to a petroleum producer who acquires property under this regime.
- The Minister be given certain powers to direct the transfer of rights in petroleum infrastructure from the petroleum operator to the CCS proponent.

Term of reference (e):

"Whether the Bill establishes a legislative framework that provides a model that could be adopted on a national basis."

The Victorian Government considers that the Bill does not provide a framework which could be adopted on a national basis, as:

- The considerations for managing such things as the co-existence of CCS and petroleum activities are practically different in an onshore and offshore context.
- The Bill would provide existing petroleum rights holders with unwarranted monopoly rights, effectively delaying the development of a viable commercial CCS industry for Victoria.
- The proposed 'impact test' does not operate in a manner which promotes investment in CCS. Put differently, a CCS proponent is always to be measured against a petroleum operator, in determining whether a CCS activity can be approved, and how such test is to be applied is not clear.