




4 July 2008

The Hon Dick Adams MP
Chair - Standing Committee on Primary Industries and Resources
PO Box 6021
House of Representatives
Parliament House
CANBERRA ACT 2600
AUSTRALIA

by email: pir.reps@aph.gov.au

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Date Received: 4-7-08
Secretary: 

Dear Mr Adams

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

The Energy Supply Association of Australia (esaa) welcomes this opportunity to comment on the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 (the Bill). The Association recognises the potential for Carbon Capture and Storage (CCS) to deliver significant economic and environmental benefits, and supports the objectives of the Bill to create an appropriate legal framework to enable offshore sequestration. However, in its current form, the Bill does not appear to provide an equitable and efficient regulatory framework, and may unnecessarily impede the development of geo-sequestration in Australia.

esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of over 40 electricity and downstream natural gas businesses. These businesses own and operate some \$120 billion in assets, employ over 49,000 people and contribute \$14.5 billion dollars directly to the nation's Gross Domestic Product. The esaa is fuel and technology neutral, and represents businesses that have investments across a wide range of fossil fuel and renewable generation technologies.

esaa recognises that the development of the technology to provide CCS is at an early stage. However, there is potential for significant economic benefits to Australia if the technology proves technically and commercially viable at large scale.

Secure, reliable and competitively priced energy is essential to the functioning of all aspects of modern economies. Preserving Australia's internationally competitive energy supply, whilst transitioning to a carbon constrained world, is a primary objective for an optimal national greenhouse mitigation strategy. In this context the

esaa has long advocated that an emissions trading scheme (ETS) should be the core policy mechanism for achieving greenhouse mitigation efficiently at least cost.

An efficient ETS will allow the market to identify and deliver abatement at least cost to the economy. However, to maximise the benefits of an ETS, it is important that the widest range of potential emission reduction options are available.

The results of the *Energy and Emissions Study – Stage 2*¹, undertaken by the esaa, indicate that CCS technology has the potential to reduce by half the expected increase in electricity generation costs required to achieve deep emission cuts. The Garnaut Review has also highlighted that successful development and commercialisation of CCS is central to the ongoing viability of Australia's coal electricity generation and export industries. The review noted that 'Australia has exceptionally good sites for carbon capture and storage, which, should the CCS technology be successful commercially (and it is strongly in Australia's interest to see this tested thoroughly on the earliest possible time frame), would support strong expansion of the Australian coal-based energy industry.'²

If the potential of CCS is achieved, it could deliver considerable economic benefits to Australia. In this context it is important that policy and legislative frameworks facilitate efficient sequestration of greenhouse gases, which if proven economically feasible is likely to lead to widespread deployment of the related CCS technology both in Australia and internationally.

esaa welcomes the Government's commitment to ensuring that an appropriate regulatory regime to facilitate carbon sequestration is established as soon as possible.

The terms of reference for the review of the provisions of the Bill by the Standing Committee on Primary Industries and Resources provide for the Committee to ascertain whether the Bill:

- a) establishes legal certainty for access and property rights for the injection and long-term storage of greenhouse gases (GHGs) in offshore Commonwealth waters;
- b) provides a regulatory regime which will enable management of GHG injection and storage activities in a manner which responds to community and industry concerns;
- c) provides a predictable and transparent system to manage the interaction between GHG injection and storage operators with pre-existing and co-existing

¹ The Energy and Emissions Study – stages 1 and 2 - are available on the esaa website http://www.esaa.com.au/papers_submissions.html

² Garnaut Climate Change Review, interim report to the Commonwealth, State and Territory Governments of Australia. February 2008.

rights, including, but not limited to, those of petroleum and fishing operators, should these come into conflict;

- d) promotes certainty for investment in injection and storage activities; and
- e) establishes a legislative framework that provides a model that could be adopted on a national basis.

The Bill, in its current form, does not appear to comprehensively meet these objectives. Rather, it establishes a highly discretionary regime that would be incapable of realising the full potential economic benefits that CCS could deliver for Australia.

The Bill would create a legislative regime to make greenhouse gas sequestration legal, in certain circumstances, and to ensure the protection of public safety and the environment. However, in seeking to ensure that there is no risk that sequestration activities could impact on potential hydrocarbon discovery and production, there is a substantial risk that the Bill could impede the development of a greenhouse gas sequestration industry by not equitably balancing the relative economic benefits to Australia of CCS-related greenhouse gas abatement and efficient proving and monetising of petroleum deposits.

Under the Bill, these critical questions of balance would be at the discretion of the relevant Minister without reference to an independent regulator or advisory panel. In addition, the Ministers discretion is limited in certain circumstances to only considering the interests of petroleum activities (as detailed below).

The Bill seems to provide existing petroleum lease holders with a right of veto over CCS development proposals. The Minister would be prohibited from granting approval for greenhouse sequestration operations if there is a significant risk that those operations would have a significant impact on petroleum activities that are or could be carried out (section 249AF (11)). It further provides in section 15F that 'a risk is taken to be significant, even if the probability is low'. This seems to be a low threshold, particularly as risk assessment is normally a function of the relative size of the impact and the probability of occurrence.³ However, even once the threshold of 'significant risk' is established, there is no requirement for the holder of a petroleum right to enter commercial negotiations in good faith, or any independent body to assess claims of loss.

A greenhouse sequestration project that has successfully navigated the approval process to secure an injection licence is then subject to the further risk of Ministerial discretion giving priority to petroleum resource extraction. Under section 249CX the rights and obligations of a greenhouse gas injection licence holder can be altered by the Minister for the purpose of eliminating, mitigating or managing the risk that operations carried out under the licence could have a significant adverse impact on a geological formation or part of a geological formation that contains, or is likely to

³ See Australian Standard 4360 Risk Management

contain, a petroleum pool, or otherwise compromise the exploitation of any petroleum that occurs as a natural resource. This discretion does not appear to be reciprocal to protect greenhouse gas storage formations or, more importantly, to be constrained by an independent economic test of the net benefits for the community.

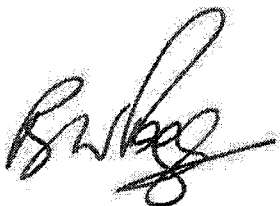
Throughout the process from acreage release to injection licensing, there appear to be multiple steps where opaque tests, other commercial companies and/or Ministerial discretion can delay or stop a potential sequestration project relatively arbitrarily. In addition, the interests of a proponent for a greenhouse gas sequestration project, and the public, appear to be second to the interests of existing, and potentially future, petroleum rights holders.

The terms of reference for this Review are punctuated with words such as certainty, predictable and transparent. However, these objectives are inconsistent with a Bill that, in its current form, creates a discretionary regime with a bias toward petroleum activities.

The Bill demonstrates that a regulatory regime can be developed to provide for the safe and legal sequestration of greenhouse gases. However, in its current form, the Bill does not equitably and transparently balance the potentially competing commercial interests of hydrocarbon extraction and greenhouse sequestration. The absence of a reasonable negotiation framework, combined with potential veto rights, unnecessarily increases the likelihood of commercial disputes impeding the development of sequestration resources. The substantial availability of Ministerial discretion reduces transparency and increases incentives for inefficient sectoral lobbying to influence outcomes, in place of a well-defined regulatory framework based on independent economic and environmental criteria, and the relatively improved investment confidence and certainty that the latter would provide.

To ensure transparency and to appropriately balance competing commercial interests, the Bill should establish an independent regulatory framework to encourage negotiation, protect the legitimate rights of existing and future petroleum and sequestration rights holders, and make decisions in the public interest against clearly defined economic criteria.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brad Page', with a stylized flourish at the end.

Brad Page
Chief Executive Officer