

# Chapter 3

## Provisions for regulating the market

### Process of awarding acreage

3.1 It is intended that the process for selection and awarding acreage will be based upon the model utilised for petroleum acreage in Commonwealth offshore waters. The Department of Resources, Energy and Tourism explained:

By notice published in the Gazette, applications will be invited for the grant of a work-bid or cash-bid GHG assessment permit over a block or blocks specified in the notice. The work bidding allocation process invites applicants to submit proposals for specific exploration activities and expenditure to be undertaken. Applications are assessed against publicly available criteria and areas offered to the applicant who best meets the criteria. While the extent and quality of an applicant's bid will form the basis of the selection criteria, other criteria may also be considered to reflect the public interest.<sup>1</sup>

3.2 Section 249CR allows existing petroleum producers to utilise suitable storage formations within their production licence area to store permanently CO<sub>2</sub> that has been produced as a result of petroleum production. They do not have to go through the competitive bid process to obtain the right to use the storage formation.

3.3 The committee received numerous submissions which argued that the proposed legislation gives advantage to existing petroleum title holders over prospective greenhouse gas storage (GGS) title holders. Claiming that petroleum producers who hold pre-existing site and technological knowledge have a natural advantage when it comes to acquiring acreage, a number of submitters suggested that the awarding of acreage should be subject to a more transparent, equitable and competitive process. Alternatively, it was suggested that it should be allocated according to 'public interest'.<sup>2</sup>

3.4 Dr Geoffrey Ingram, Schlumberger Carbon Services, outlined the position of new entrants to the industry:

Our position is that of a new industry, a new entrant into the carbon storage business that does not have any existing acreage over the oil and gas tenements. So, in terms of being able to build, grow and develop our

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1 Department of Resources, Energy and Tourism, answers to questions on notice 7, 29 August 2008.

2 For example, Anglo Coal submitted that the bill gives primacy to the rights of petroleum tenement holders: 'The Bill is heavily biased towards the protection of petroleum interests and, while it nominally makes CCS possible, it does not reflect a determination to make it happen.', Anglo Coal, *Submission 7*, p. 1.

business, we would need access to acreage for the large-scale storage projects. If the existing tenement holders have an option to convert, then essentially the easiest thing to do is to wait until the very last minute before you decide whether you would convert or whether you would relinquish the acreage. If it is set out as Victoria is proposing, with overlapping tenements from the start, then let the existing tenement holders in the oil and gas industry apply for it if they are serious about considering the business, rather than giving them a free kick...<sup>3</sup>

3.5 In its submission, BP Australia suggested that under the proposed legislation there are two types of project which are likely to be developed in the near term, but that the bill facilitates the latter:

...one involves CO<sub>2</sub> from an emission source such as a power station, i.e. with no link to a petroleum project, and the other is CO<sub>2</sub> from an emission source which is an integral part of an associated petroleum operation such as an LNG plant.<sup>4</sup>

3.6 Some submitters went further and argued that existing titleholders, the large oil companies, would have almost a right of veto over the use of some of the high quality potential CCS sites.<sup>5</sup>

3.7 Because of the strategic advantage held by the petroleum industry—and that the technical expertise for injection and storage rests almost entirely within the petroleum industry—new CCS projects may need to form partnerships with petroleum companies.

3.8 This may also result from the fact that GHG storage proponents, who wish to take up and assess areas where future storage activities may have the potential to affect established petroleum activities, may have additional operational considerations and constraints placed upon their activities. For in order for the relevant minister to approve an activity, the GHG title holder would need to pass a 'no significant impact test', demonstrating either:

- that their activities will have no significant adverse impact on these pre-commencement petroleum operations; or
- that an agreement has been reached between the two parties in relation to the activities.

3.9 In its submission, Monash Energy suggested that offshore gas producers may have a vested interest in discouraging CCS in their sites as it would be making coal a more viable competitor with gas:

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3 Dr Geoffrey Ingram, Schlumberger Carbon Services, *Proof Committee Hansard*, 29 August 2008, p. 41.

4 BP Australia, *Submission 6*, p. 6.

5 World Wildlife Fund, *Submission 4*, p. 12, citing the CO2CRC.

The rather hopeful expectations on the part of Government officials which accompanied release of the Bill seem to reflect a view that given an emissions trading scheme (ETS) and a CO<sub>2</sub> price, CO<sub>2</sub> storage could be an attractive business for a petroleum tenement holder. Please keep in mind that the dominant product from such tenements is in fact natural gas, which is held by few parties and competes with coal to provide energy to Australian consumers. As their economic interests are against facilitating CCS for third parties this may push out the timing for introduction of CCS past 2030 (if at all). Blithe expectations for the formation of 'commercial agreements' between incumbents and GHG injection applicants gloss over the reality that the commercial interests of the incumbent will go way beyond 'non-interference' with petroleum extraction.<sup>6</sup>

3.10 By contrast, the committee also received representations seeking to protect further the rights of current petroleum licence holders. In its submission, Woodside Energy suggested that 'enforcing a bid process onto projects of this type creates a new and unnecessary risk to cost and schedule not faced by our international competitors'.<sup>7</sup>

3.11 Such a view was supported by ExxonMobil who suggested 'issuing overlapping access leases or licenses should be carefully considered as simultaneous CCS operations and oil and gas production can create potentially significant safety and operational risk'.<sup>8</sup>

3.12 Upon commencement of the legislation all future titles grants for petroleum and GHG activities will be given an equal level of protection, where there is the potential for adverse impacts. If the two activities cannot occur at the same time the relevant Minister may make a decision based upon public interest as to whether the petroleum or GHG activity should proceed.

3.13 Woodside also suggest that integrated petroleum developments 'be able to sequester greenhouse gases arising from that development without being required to bid for the right to undertake that activity'.<sup>9</sup> This seems to be a logical step for offshore petroleum operations, and it seems unlikely that any decision would jeopardise this form of integrated operation. However, it may be useful for this to be clarified.

3.14 Schlumberger raised concerns about the regulatory framework for managing the interaction between GHG injection and storage operators and those with pre-existing or co-existing rights, particularly as this related to an 'information asymmetry':

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6 Monash Energy, *Submission 3*, p. 2.

7 Woodside Energy, *Submission 9*, p. 2; Mr Niegel Grazia, Woodside Energy, *Proof Committee Hansard*, 29 August 2008, p. 3.

8 ExxonMobil, *Submission 1*, p. 12.

9 Mr Niegel Grazia, Woodside Energy, *Proof Committee Hansard*, 29 August 2008, p. 2.

...the information asymmetry that currently exists between existing oil and gas producers and any new storage project proponent makes it difficult to envisage how a storage project could get up without extremely deep pockets and a huge appetite for risk. The Bill recognizes that existing property rights must be protected and that any overlapping projects must have a commercial agreement between the respective promoters. If the onus is on the storage proponent to show no adverse impact on existing oil and gas operations then they must have access to data held by the oil and gas operator to prove this. The Government should be able to set and enforce a strict timeline on when an agreement must be reached by two parties otherwise it will apply the 'public interest' clause. We envisage most of the potential conflicts to come from overlapping storage and hydrocarbon operations as opposed to storage and fishing operators. One suggestion might be for all exploration and production data to be placed on open file within 1 or 2 years of acquisition.<sup>10</sup>

3.15 Acknowledging that the legislation offers no incentive for petroleum title holders to make their data available, the Cooperative Research Centre for Greenhouse Gas Technologies commented, 'access to data could represent a significant hurdle to the development of offshore storage'.<sup>11</sup>

### **Proposed administrative model—ministerial discretion**

3.16 Many submitters to the inquiry considered that the proposed legislation allows excessive ministerial discretion.

3.17 Under the proposed legislative model, the Australian government and ultimately the relevant minister will be responsible for administering the regulation of GHG transport injection and storage in Commonwealth offshore waters. The proposed legislation confers upon the minister a number of discretionary decision-making powers in an effort to balance competing activities and associated needs.

3.18 The discretionary ministerial powers contained within the legislation deal with specific situations such as public interest assessments, the analysis of significant impacts or to give directions in a 'serious situation', and as such are very narrow in their application. Given the objective-based nature of the legislation and recognising the lack of decision-making precedents, the ability to make decisions on a case by case basis for these specific issues was considered to offer the most efficient option.

3.19 The committee notes that a number of submitters call for more explicit definition of terms to which the minister is to have regard in exercising discretion, these included: 'public interest', 'significant impact criteria', 'significant risk', and 'no

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10 Schlumberger Carbon Services, *Submission 5*, p. 4.

11 Cooperative Research Centre for Greenhouse Gas Technologies, *Submission 15*, p. 4.

significant adverse impact'.<sup>12</sup> These terms may need to be further defined in order to provide clear guidance.

3.20 Some submitters questioned whether the discretionary powers held by the minister will provide sufficient regulatory protection, while others suggested an alternative administrative model, such as a committee or advisory panel.

### **Designated authority—committee or panel of experts**

3.21 In Chapter 2 it was suggested that a panel of experts could be established to make recommendations to the minister on a variety of matters relevant to administration and regulation of the legislation. Members of such a committee might include representatives from Geoscience Australia, accredited scientific experts, representatives from the states and territories, technological and policy experts and members of the community.

3.22 A committee, or panel of experts, might have designated authority and could be involved in a range of activities including:

- assessing any environmental impact statements prior to approving any CCS operation;
- site selection;
- providing advice on monitoring and regulation of licence holders;
- resolving disputes between petroleum licence holders and GHG proponents; and
- approving site closure certificates.

3.23 The Victorian suggested the following model:

...the responsible Commonwealth minister should be assisted by an expert panel, including representatives from the states and territories. The expert panel should be able to advise the minister and make recommendations. The expert panel should be able to hold hearings to take formal submissions from government, industry and community groups. The recommendations of the expert panel should be made publicly available. An assessment of competing resource impacts should be required for any resource operations proposed under the legislation. This assessment process should include considerations of impacts, both positive and negative, on other resources and entitlements including, in the Victorian context, onshore groundwater resources.<sup>13</sup>

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12 For example, ExxonMobil, *Submission 1*, p. 3; Monash Energy, *Submission 3*, pp. 3–5.

13 Victorian government, *Proof Committee Hansard*, 29 August 2008, p. 21.

3.24 Some form of expert panel was also supported by the World Wildlife Fund and the Australian Network of Environmental Defenders' Offices.<sup>14</sup>

3.25 Depending on the preferred degree and nature of transparency and accountability, there are a number of ways such a panel could be structured:

- Giving advice in private to a minister, which could be accepted or rejected at the minister's discretion;
- Giving advice publicly to a minister, which may involve some political cost if rejected; or even
- Delegating to the panel the power to make decisions, with the minister needing parliamentary approval to override the panel's decision.

### **Lease timeframes**

3.26 The duration of the GHG permit and licences will be significant to the success of the CCS industry. They must be sufficiently long to facilitate GHG operations, but not be so long as to delay the development of a new industry.

3.27 In the proposed legislation, the duration of a GHG assessment permit is 6 years. It cannot be renewed. A holding lease lasts for 5 years and can be renewed once. A GHG injection licence has no fixed term but is subject to certain conditions. For example, if no injection has occurred during the first 5 years of issue the licence can be revoked.

3.28 In its submission, BP Australia argued that an injection license has a 5 year duration but there may be very valid technical reasons why a legitimate proponent cannot commence injection activity within 5 years, particularly if they are planning to inject into a hydrocarbon reservoir which must be depleted first.<sup>15</sup>

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14 See, for example, World Wildlife Fund, *Proof Committee Hansard*, 29 August 2008, p. 15; Victorian government, *Proof Committee Hansard*, 29 August 2008, p. 21; Australian Network of Environmental Defenders' Offices, *Proof Committee Hansard*, 29 August 2008, p. 44; Australian Network of Environmental Defenders' Offices, *Submission 2*, p. 3.

15 BP Australia, *Submission 6*, p. 6.