

Barrow Island Amendment Bill 2015

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Western Australia

LEGISLATIVE ASSEMBLY

Barrow Island Amendment Bill 2015

A Bill for

An Act to amend the *Barrow Island Act 2003*.

The Parliament of Western Australia enacts as follows:

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1 **1. Short title**

2 This is the *Barrow Island Amendment Act 2015*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 come into operation on the day on
6 which this Act receives the Royal Assent (*assent day*);
- 7 (b) section 5 is deemed to have come into operation on
8 20 November 2003 immediately after the *Barrow Island*
9 *Act 2003*, other than section 12, came into operation;
- 10 (c) the rest of the Act comes into operation on the day after
11 assent day.

12 **3. Act amended**

13 This Act amends the *Barrow Island Act 2003*.

14 **4. Part 5A inserted**

15 After section 13 insert:
16

17 **Part 5A — Indemnification by State for**
18 **long-term liability resulting from underground**
19 **disposal of carbon dioxide**

20 **14A. Terms used**

21 In this Part —

22 ***CO₂*** means carbon dioxide;

23 ***CO₂ disposal management plan*** has the meaning given
24 in the section 13 approval in clause 1 of the collateral
25 deed;

1 ***CO₂ injection cessation date*** has the meaning given in
2 the section 13 approval in clause 1 of the collateral
3 deed;

4 ***CO₂ injection operations*** means the disposal of CO₂
5 recovered during gas processing on Barrow Island
6 undertaken as part of the Project by —

- 7 (a) injecting that CO₂ into the formation as part of
8 a process known as geosequestration; and
9 (b) establishing and operating infrastructure and
10 facilities for that purpose and conducting
11 associated monitoring activities,

12 in accordance with the Agreement and the section 13
13 approval;

14 ***CO₂ injection site closure notice*** means a notice issued
15 no earlier than 15 years after the CO₂ injection
16 cessation date in accordance with clause 8 of the
17 collateral deed;

18 ***collateral deed*** means the CO₂ Disposal by
19 Injection — Collateral Deed dated 14 September 2009
20 executed by the then Joint Venturers (Chevron (TAPL)
21 Pty Ltd (ABN 18 081 647 047), Mobil Australia
22 Resources Company Pty Limited (ABN
23 38 000 113 217) and Shell Development (Australia)
24 Proprietary Limited (ABN 14 009 663 576)) in favour
25 of the State and given in compliance with condition 2
26 of the section 13 approval;

27 ***common law liability*** means liability for damages —

- 28 (a) in an amount claimed on the basis of a common
29 law cause of action and either —
30 (i) awarded by a court; or

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- 1 (ii) payable under a settlement, if the
2 settlement was reached with the prior
3 approval of the Commonwealth
4 representative and the BI Act Minister
5 as to the amount;
- 6 and
- 7 (b) not arising as a result of a failure by any of the
8 Joint Venturers to act in good faith or without
9 malice, fraud or recklessness;
- 10 **Commonwealth representative** means —
- 11 (a) the Minister of the Commonwealth to whom
12 the administration of the *Offshore Petroleum*
13 *and Greenhouse Gas Storage Act 2006*
14 (Commonwealth) is from time to time
15 committed; or
- 16 (b) another Minister or official of the
17 Commonwealth that is from time to time
18 notified to the BI Act Minister by the Minister
19 referred to in paragraph (a);
- 20 **formation** has the meaning given in the section 13
21 approval;
- 22 **Gorgon CO₂** means CO₂ recovered during processing
23 of gas or other petroleum from the Title Areas or, in
24 accordance with clause 18 of the Gorgon Agreement,
25 from the Greater Gorgon Area, the Barrow Island
26 Lease or other areas and includes flue gas from the
27 treatment plant constructed and operated by the Joint
28 Venturers as part of the Project;
- 29 **Greater Gorgon Area** has the meaning given in
30 clause 1 of the Agreement;
- 31 **holding company** has the meaning given in the
32 *Corporations Act 2001* (Commonwealth) section 9;

independent third party means a natural person or entity who is not —

- (a) the State or the Commonwealth; or
- (b) any of the Joint Venturers; or
- (c) a related entity of any of the Joint Venturers;

Joint Venturers has the meaning given in the Agreement and includes each of the former Joint Venturers;

leakage means the physical leakage of CO₂ from the formation into the atmosphere, biosphere or hydrosphere, other than as predicted in the section 13 approval;

liability assumption date means the day declared by the BI Act Minister as the liability assumption date by notice under section 14C(1);

Project has the meaning given in clause 1 of the Agreement;

related entity means —

- (a) a holding company; or
- (b) a subsidiary; or
- (c) a subsidiary of a holding company; or
- (d) an Associated Entity (as defined in clause 1 of the Agreement);

section 13 approval means the document dated 14 September 2009 setting out the conditions and restrictions of the BI Act Minister's approval granted to the then Joint Venturers (Chevron (TAPL) Pty Ltd (ABN 18 081 647 047), Mobil Australia Resources Company Pty Limited (ABN 38 000 113 217) and Shell Development (Australia) Proprietary Limited (ABN 14 009 663 576)) under section 13 to inject CO₂ into the formation as varied, added to or substituted for in accordance with condition 19 of that document and,

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1 for the avoidance of doubt, includes the collateral deed
2 and the CO₂ disposal management plan;

3 *subsidiary* has the meaning given in the *Corporations*
4 *Act 2001* (Commonwealth) section 9;

5 *Title Areas* has the meaning given in clause 1 of the
6 Agreement.

7 **14B. Notice that Commonwealth representative is**
8 **satisfied of certain matters**

9 (1) The BI Act Minister may, after the expiration of the
10 15 year period beginning on the CO₂ injection
11 cessation date, request the Commonwealth
12 representative to give the BI Act Minister notice that
13 the Commonwealth representative is satisfied in
14 respect of the matters listed in subsection (2).

15 (2) The matters in respect of which the Commonwealth
16 representative must be satisfied are as follows —

17 (a) the Gorgon CO₂ injected into the formation is
18 behaving as predicted in the modelling of the
19 plume provided by the Joint Venturers to the BI
20 Act Minister either —

21 (i) as part of the application under
22 section 13 that resulted in the grant of
23 the section 13 approval; or

24 (ii) in subsequent refinements of that
25 modelling accepted by the BI Act
26 Minister in accordance with the
27 section 13 approval,

28 and there is no significant risk of leakage;

29 (b) there is no significant risk that the CO₂ in the
30 formation will have a significant adverse
31 impact on the geotechnical integrity of the
32 whole or a part of a geological formation or a
33 geological structure;

- 1 (c) there is no significant risk that the CO₂ in the
2 formation will have a significant adverse
3 impact on the environment, or other geological
4 resources, including groundwater;
- 5 (d) there is no significant risk that the CO₂ in the
6 formation will have a significant adverse
7 impact on human health or safety;
- 8 (e) for at least 15 years since the CO₂ injection
9 cessation date there have not been any
10 operations to inject CO₂ into the formation;
- 11 (f) for at least 15 years since the CO₂ injection
12 cessation date there have not been any
13 operations to inject any other substances into
14 the formation other than where that was
15 necessary for legitimate and appropriate plume
16 monitoring and management activities;
- 17 (g) the BI Act Minister has advised that he or she
18 has issued or is intending to issue a CO₂
19 injection site closure notice in accordance with
20 the section 13 approval.

21 **14C. Declaration of liability assumption date**

- 22 (1) The BI Act Minister must, by notice published in the
23 *Gazette*, declare a particular day as the liability
24 assumption date if —
 - 25 (a) the Commonwealth representative has given the
26 notice requested under section 14B(1); and
 - 27 (b) the BI Act Minister has issued a CO₂ injection
28 site closure notice.
- 29 (2) The liability assumption date must not be earlier than
30 the day on which the notice under subsection (1) is
31 published.

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14D. State to indemnify

The State will indemnify the Joint Venturers for their common law liability to independent third parties arising after the liability assumption date for loss or damage caused by the injection of Gorgon CO₂ in the formation where that loss or damage is attributable to an act done, or omitted to be done, in the carrying out of CO₂ injection operations under the authority of the section 13 approval.

14E. Payment under indemnity and appropriation

The payment of any money under the indemnity in section 14D is to be made by the Treasurer and charged to the Consolidated Account, which this section appropriates to the necessary extent.

14F. Disclosure of information to Commonwealth representative

- (1) The BI Act Minister may, at any time, disclose to the Commonwealth representative information or any document that —
 - (a) relates to CO₂ injection operations or to a proposal by the Joint Venturers that relates to CO₂ injection operations; or
 - (b) is relevant to —
 - (i) a matter listed in section 14B(2); or
 - (ii) the existence (or otherwise) or extent of liability mentioned in section 14D.
- (2) Subsection (1) applies to information or documents whether given to the BI Act Minister by the Joint Venturers, produced by or on behalf of the BI Act Minister or otherwise obtained by the BI Act Minister.

After section 16 insert:

(4) In this section a reference to the doing of anything includes a reference to the omission to do anything.