

BARROW ISLAND AMENDMENT BILL 2015

EXPLANATORY MEMORANDUM

Overview of the Bill

The *Barrow Island Amendment Bill 2015* amends the *Barrow Island Act 2003* (**the BI Act**) to:

- allow the State to indemnify the Gorgon Joint Venturers for a common law liability to an independent third party arising after the formal closure of the Gorgon CO₂ injection operations for loss or damage caused by the injection (geosequestration) of Gorgon CO₂ into the Dupuy Formation beneath Barrow Island where that loss or damage is attributable to an act or omission in carrying out the Gorgon CO₂ injection operations under the authority conferred by section 13 of the BI Act;

*[On this Bill coming into operation as an Act, the Agreement dated 13 February 2015 between the State and the Commonwealth will come into operation (**Intergovernmental Agreement**). Under the Intergovernmental Agreement the Commonwealth agrees to indemnify the State against 80% of the State's liability under the State's statutory indemnity on the terms of that agreement].*

- insert a provision deemed to be operative from 20 November 2003 (that date that BI Act came into operation) providing statutory protection from tortious liability for anything that a person (including the BI Act Minister) does, in good faith, in the performance of a function under the Act.

Documents associated with and relevant to the operation of the State indemnity

- (1) Intergovernmental Agreement;**
- (2) Section 13 Approval – document dated 14 September 2009 setting out conditions and restrictions of the BI Act Minister's approval to the Gorgon Joint Venturers under section 13 of the BI Act;**
- (3) Collateral Deed – the CO₂ Disposal by Injection – Collateral Deed dated 14 September 2009 required by and forming part of the Section 13 Approval;**
- (4) CO₂ Disposal Management Plan – the management plan required by and forming part of the Section 13 Approval.**

Clause 1. Short title

Provides that the short title of the Act will be the *Barrow Island Amendment Act 2015*.

Clause 2. Commencement

Provides that the Act comes into operation as follows:

- (a) sections 1 and 2 – on the day on which the Act receives the Royal Assent;
- (b) section 5 – retrospectively on 20 November 2003, immediately after the BI Act came into operation (except for section 12, which was repealed by the *Petroleum Legislation Amendment and Repeal Act 2005* before it became operative);

- (c) the rest of the Act – the day after the Act receives Royal Assent.

Clause 3. Act amended

Provides that this Act amends the BI Act.

Clause 4. Part 5A inserted

Inserts “Part 5A - Indemnification by State for long-term liability resulting from underground disposal of carbon dioxide”. Part 5A comprises sections 14A to 14F.

Section 14A. Terms used

Sets out defined terms used in Part 5A.

Section 14B. Notice that the Commonwealth representative is satisfied of certain matters.

Subsection (1)

Provides that the BI Act Minister may, 15 years after the cessation of CO₂ injection, request the Commonwealth to notify whether it is satisfied as to certain matters in relation to risk and process listed in subsection (2).

Subsection (2)

Lists matters in respect of which the Commonwealth must be satisfied, namely:

- (a) the injected Gorgon CO₂ is behaving as predicted in the modelling of the plume provided by the Joint Venturers to the BI Act Minister and there is no significant risk of leakage;
- (b) there is no significant risk that the CO₂ in the formation will have a significant adverse impact on the geotechnical integrity of the formation;

- (c) there is no significant risk that the CO₂ in the formation will have a significant adverse impact on the environment or other geological resources, including groundwater;
- (d) there is no significant risk that the CO₂ in the formation will have a significant adverse impact on human health or safety;
- (e) for at least 15 years from the " CO₂ injection cessation date" there have not been any operations to inject CO₂ into the formation;
- (f) for at least 15 years from the " CO₂ injection cessation date" there have not been any operations to inject any other substances into the formation other than for legitimate plume monitoring and management activities; and
- (g) the BI Act Minister has advised that he or she is intending to issue a " CO₂ injection site closure notice" in accordance with the Section 13 Approval.

[Matters listed in paragraphs (a) to (f) above coincide with matters that the BI Act Minister is to consider under clause 8.3 of the Collateral Deed in determining whether to issue a CO₂ injection site closure notice]

Section 14C. Declaration of liability assumption date

Subclause (1)

Provides that the BI Act Minister must declare a "liability assumption date" if the Commonwealth has given notice of its satisfaction under section 14B(1) and the BI Act Minister has issued a CO₂ injection site closure notice.

[The statutory State indemnity under section 14D and the Commonwealth's obligation under the Intergovernmental Agreement to indemnify the State against 80% of any liability of the State under the State indemnity are operative from the "liability assumption date"]

Subclause (2)

Provides that the "liability assumption date" must not be earlier than the day on which notice of declaration of such a date is published in the *Government Gazette*.

Section 14D. State to indemnify

Provides the statutory authority and obligation for the State to indemnify a Gorgon Joint Venturer for long-term common law liabilities to "independent third parties" arising after the "liability assumption date".

The State indemnity is for common law liability to "independent third parties" for loss or damage:

- caused by the injection of Gorgon CO₂ into the Dupuy formation beneath Barrow Island; and
- attributable to an act or omission in carrying out the CO₂ injection operations under the authority of the Section 13 Approval.

[Accordingly, the State indemnity does not apply to:

- *common law liability to parties that are not "independent";*
- *common law liability arising before the "liability assumption date";*

- *common law liability for loss or damage that is attributable to an act or omission that is not authorised by the Section 13 Approval*].

Section 14E. Payment under indemnity and appropriation

Provides that any payment made under the State indemnity in section 14D is to be made by the Treasurer from the Consolidated Account.

Section 14F. Disclosure of information to Commonwealth representative

Subclause (1)

Provides that the BI Act Minister may disclose to the Commonwealth information or documents:

- relating to the CO₂ injection operations;
- relating a proposal by the Joint Venturers that relates to the CO₂ injection operations;
- relevant to a matter listed in section 14B(2) (i.e. which the Commonwealth is to be satisfied of as a precondition of BI Act Minister declaring a "liability assumption date" under section 14C); or
- the existence or extent of a common law liability mentioned in section 14D (i.e. which may be covered by the State indemnity and accordingly the Commonwealth's indemnification of the State under the Intergovernmental Agreement) any matter listed in subsection 14B(2), or the existence and extent of any liability mentioned in section 14D.

Subclause (2)

Provides that subsection (1) applies to all relevant information and documents obtained by the BI Act

Minister, including whether given by the Joint Venturers or produced on behalf of the BI Act Minister.

[This section facilitates the State's provision of information to the Commonwealth in discharge of the State's information obligations under clauses 3.2 and 5.2 of the Intergovernmental Agreement]

Clause 17A. Protection from liability for wrongdoing

Subclause (1)

Provides that an action in tort may not be brought against a person for anything that the person has done in good faith in the performance of a function under the BI Act.

Subclause (2)

Provides that the protection applies even though the thing done may have been capable of being done irrespective of the BI Act.

Subclause (3)

Provides that subsection (1) does not relieve the State of any liability that the State may have for the thing done by a person having the protection of subsection (1).

Subclause (4)

Provides that in this section a reference to doing anything includes a reference to omitting to do anything.

[This section is deemed by section 2(b) of the Act to be operative on 20 November 2003, immediately after the BI Act came into operation. Retrospective effect is considered appropriate as it is usual for statutory immunity for good faith conduct by persons to be included as part of the initial regulatory function framework.]