



Western Australia

Barrow Island Amendment Act 2015

As at 08 May 2015

No. 13 of 2015

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Barrow Island Amendment Act 2015

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Barrow Island Amendment Act 2015

No. 13 of 2015

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

[Assented to 8 May 2015]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Barrow Island Amendment Act 2015*.

2. Commencement

This Act comes into operation as follows —

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

3. Act amended

This Act amends the *Barrow Island Act 2003*.

4. Part 5A inserted

After section 13 insert:

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

14A. Terms used

In this Part —

CO₂ means carbon dioxide;

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

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

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

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

in accordance with the Agreement and the section 13 approval;

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

collateral deed means the CO₂ Disposal by Injection — Collateral Deed dated 14 September 2009 executed by 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)) in favour of the State and given in compliance with condition 2 of the section 13 approval;

common law liability means liability for damages —

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

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- (ii) payable under a settlement, if the settlement was reached with the prior approval of the Commonwealth representative and the BI Act Minister as to the amount;

and

- (b) not arising as a result of a failure by any of the Joint Venturers to act in good faith or without malice, fraud or recklessness;

Commonwealth representative means —

- (a) the Minister of the Commonwealth to whom the administration of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Commonwealth) is from time to time committed; or
- (b) another Minister or official of the Commonwealth that is from time to time notified to the BI Act Minister by the Minister referred to in paragraph (a);

formation has the meaning given in the section 13 approval;

Gorgon CO₂ means CO₂ recovered during processing of gas or other petroleum from the Title Areas or, in accordance with clause 18 of the Gorgon Agreement, from the Greater Gorgon Area, the Barrow Island Lease or other areas and includes flue gas from the treatment plant constructed and operated by the Joint Venturers as part of the Project;

Greater Gorgon Area has the meaning given in clause 1 of the Agreement;

holding company has the meaning given in the *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,

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

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

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

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

- (1) The BI Act Minister may, after the expiration of the 15 year period beginning on the CO₂ injection cessation date, request the Commonwealth representative to give the BI Act Minister notice that the Commonwealth representative is satisfied in respect of the matters listed in subsection (2).
- (2) The matters in respect of which the Commonwealth representative must be satisfied are as follows —
 - (a) the Gorgon CO₂ injected into the formation is behaving as predicted in the modelling of the plume provided by the Joint Venturers to the BI Act Minister either —
 - (i) as part of the application under section 13 that resulted in the grant of the section 13 approval; or
 - (ii) in subsequent refinements of that modelling accepted by the BI Act Minister in accordance with the section 13 approval,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 whole or a part of a geological formation or a geological structure;

- (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 since the CO₂ injection cessation date there have not been any operations to inject CO₂ into the formation;
- (f) for at least 15 years since the CO₂ injection cessation date there have not been any operations to inject any other substances into the formation other than where that was necessary for legitimate and appropriate plume monitoring and management activities;
- (g) the BI Act Minister has advised that he or she has issued or is intending to issue a CO₂ injection site closure notice in accordance with the section 13 approval.

14C. Declaration of liability assumption date

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

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.

5. Section 17A inserted

After section 16 insert:

17A. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.
