CarbonNet Project
Managing long-term liability for geologic storage of CO₂
Joint IEA-GCCSI Workshop

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The CarbonNet Project

- **Project perspective** on regulatory process
- Not representing Victorian or Commonwealth Governments
- Not representing Victorian or Commonwealth regulators
The CarbonNet Project

- Established in 2009 to investigate the potential for a commercial-scale, multi-user CCS network in Gippsland, Victoria, Australia
- Capturing CO₂ emissions from industrial sources and injecting it for storage in rock formations deep below the sea bed
- Funded by the Australian & Victorian Governments
- Working collaboratively with industry
Legislative context

- Three GHG Acts – offshore legislation very complex

Victorian State Land
Victorian State Waters
Commonwealth Waters


Legislative context

Onshore Victorian land

**Greenhouse Gas Geological Sequestration Act 2008 (Vic)**
- Pipelines Act 2005 (Vic)
- Environment Effects Act 1978 (Vic)
- Environment Protection Act 1970 (Vic)
- Environment Protection and Biodiversity Conservation Act 1999 (Cth)
- Aboriginal Heritage Act 2006 (Vic)
- Traditional Owner Settlement Act 2010 (Vic)
- National Parks Act 1975 (Vic)
- Native Title Act 1993 (Cth)
- Land Act 1958 (Vic)
- Crown Lands (Reserves) Act 1978 (Vic)
- Transfer of Land Act 1958 (Vic)
- Coastal Management Act 1995 (Vic)
- Flora and Fauna Guarantee Act 1988 (Vic)
- Forests Act 1995 (Vic)
- Heritage Act 1995 (Vic)
- Planning and Environment Act 1987 (Vic)
- Wildlife Act 1975 (Vic)

Offshore in Victorian waters

**Offshore Petroleum and Greenhouse Gas Storage Act 2010 (Vic)**
- National Parks Act 1975 (Vic)
- Fisheries Act 1995 (Vic)
- Wildlife Act 1975 (Vic)
- Aboriginal Heritage Act 2006 (Vic)
- Environment Effects Act 1978 (Vic)
- Coastal Management Act 1995 (Vic)
- Flora and Fauna Guarantee Act 1988 (Vic)
- Environment Protection Act 1970 (Vic)
- Heritage Act 1995 (Vic)
- Native Title Act 1993 (Cth)
- Planning and Environment Act 1987 (Vic)
- Traditional Owner Settlement Act 2010 (Vic)
- Environment Protection & Biodiversity Conservation Act 1999 (Cth)

Offshore in Commonwealth waters

- Environment Protection and Biodiversity Conservation Act 1999 (Cth)
- Historic Shipwrecks Act 1976 (Cth)
- Sea Installations Act 1987 (Cth)
- Environment Protection (Sea Dumping) Act 1981
- Native Title Act 1993 (Cth)
Long-term liability

• Different long-term liability regimes in Victorian & Commonwealth jurisdictions for stored CO\textsubscript{2}

• Regulatory Test Toolkit recommendation 10 –
  ➢ “Consider the need to align approach to long term storage liability across jurisdictions taking into account international developments”

• Regulatory Test Toolkit recommendation 8 –
  ➢ “Identify options for enabling cross-jurisdictional storage of CO\textsubscript{2}”
Long-term liability - Victoria

- **In Victorian onshore & offshore GHG legislation** –
  - where injection licence is cancelled or surrendered, the Crown becomes the owner of any injected GHG substance
  - legislation is silent on what liabilities are transferred to the State (presumably common law remains indefinitely)

- **Rationale for this approach** -
  - consistent with approach taken for other earth resources & waste disposal industries – “the liability should lie where it falls”
  - provides community assurance
  - acts as disincentive to poor operational performance
Long-term liability - Commonwealth

• In Commonwealth offshore GHG legislation –
  – No legislative provision which transfers ownership of any injected GHG substance to Cth
  – Legislation provides that Cth must indemnify a former GHG licence holder where -
    ➢ There is a liability for damages;
    ➢ The liability arose out of an act/omission done in the carrying out of operations authorised under the licence;
    ➢ The liability is incurred or accrues after the end of the closure assurance period (ie 15 years after site closing certificate issued).
  – Commonwealth assumes liability if closure assurance period declared and licence holder ceases to exist
Long-term liability challenges in Victoria

• How different are the Victorian & Commonwealth approaches in practical terms? (…. “act/omission done in the carrying out of operations authorised under the licence”)

• How big a disincentive are different liability regimes to attracting private investment in fledgling CCS industry in Victoria?

• Will the commercial sector accept an open-ended liability?

• How will the lack of alignment in LTL regimes effect the implementation of a solution which enables cross jurisdictional storage?
The CarbonNet Project

For further information, including regular project updates, please visit:

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