THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM AMENDMENT (GREENHOUSE GAS STORAGE) BILL 2008

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be moved on Behalf of the Government

(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)
AMENDMENTS TO THE OFFSHORE PETROLEUM AMENDMENT (GREENHOUSE GAS STORAGE) BILL 2008

OUTLINE

1. The amendments to the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 ('the Bill') were developed to address the recommendations contained in the report by the House of Representatives Standing Committee on Primary Industries and Resources, entitled 'Down Under, Greenhouse Gas Storage', following it's inquiry into the Bill. Matters also arose during the detailed legislative drafting process that require technical amendments to the Bill.

2. An Objects Clause has been inserted in the Bill to clarify the intent of the proposed legislation.

3. Specific regulation making powers have been included for the 'significant risk of a significant adverse impact' test. The draft amendments also specify the circumstances in which this test will be applied.

4. Recognition of designated agreements between petroleum and greenhouse gas title holders has been formalised, including where such agreements are referred to in the Bill. Powers for the responsible Commonwealth Minister to require information or documents relevant to the negotiations, including associated confidentiality clauses, have also been added.

5. The amendments also include provisions for the responsible Commonwealth Minister to establish expert advisory committees to provide advice to the responsible Commonwealth Minister on a wide range of matters as needed. The provisions also cover such matters as membership, remuneration and conflicts of interest.

6. The amendments allow for integration of certain operations across different petroleum title areas and provide for these to be approved through regulation. The intent of this amendment is to provide a mechanism for effective integration of storage operations for substances other than greenhouse gases and is not intended to be an extension of current petroleum greenhouse gas storage rights.

7. Petroleum Retention Lease holders have been given the right to apply for a greenhouse gas Holding Lease over the Retention Lease area, in a similar manner to that drafted in the Bill for petroleum Production Licence holders to apply for a greenhouse gas Injection Licence. This will allow petroleum Retention Lease holders who have discovered petroleum accumulations with significant carbon dioxide content the tenure security required to progress investment decisions. Additional amendments ensure that any greenhouse gas to be stored under such an Injection Licence must have its origin in the area of the Production Licence. Amendments have been included to tie the greenhouse gas Holding Lease (and Injection Licence) to the associated Retention Lease (and Production Licence) obtained though this process, to ensure the two titles may not be sold or transferred separately as this would be in essence a gifting of a greenhouse gas title. Should the Retention Lease be cancelled the associated greenhouse gas Holding Lease obtained though this process would also automatically be cancelled.

8. The process for awarding of Assessment Permits has also been amended to provide a wider scope of criteria used in the assessment of bids. In addition to work and
expenditure, criteria may include economic, commercial or public interest matters. This will allow the availability of a source of CO2 for storage to be considered in the bid assessment criteria.

9. The amendments include provisions to allow regulations to be made authorising petroleum title holders the right to explore for greenhouse gas storage sites under their petroleum title. This amendment will not provide any preferential rights with regard to obtaining a greenhouse gas title but is intended to allow the petroleum title holder to explore for potential storage sites within their petroleum tenure to facilitate any future petroleum resource development that may be high in carbon dioxide.

10. The amendments include regulation making powers to provide for the public release of greenhouse gas monitoring data.

11. Amendments have been developed which will allow the relinquishment of Injection Licences by an accelerated closure process where no injection of greenhouse gas has occurred. Should ownership of an Injection Licence change, amendments to the Bill ensure the new owner assumes responsibility for any remedial action required, irrespective of who caused the need for such action.

12. The amendments provide a process to ensure consultation occurs between petroleum operators and greenhouse gas operators in the event that the greenhouse gas operator needs to undertake any activities outside their title area in an area covered by petroleum title.

13. A number of technical amendments have also been drafted including the deletion of items made redundant. Other technical amendments include additional clarification to the concept of spatial extent of greenhouse gas storage formations and amendments to allow for possible future changes in datum utilised for determining the location of title areas. Amendments to allow closure of individual greenhouse gas storage formations and to allow operations which do not use all the formations in a single greenhouse gas title area have also been included. The amendments also expand the definition of a facility to include greenhouse gas facilities to ensure they fall under the National offshore Petroleum Safety Authority for occupational health and safety purposes.

**Financial Impact Statement**

Funding for the development and implementation of the regulatory framework has been provided and no additional funding is sought for this purpose. Fees will be charged for greenhouse gas titles to cover the costs of day-to-day administration.
NOTES ON CLAUSES

(1) Clause 2, page 1 (line 8) to page 8 (line 3)
Amendment (1) deletes the commencement provisions in subclause 2(1) of the Bill and substitutes a much simpler one. The complexity of the original commencement provisions was largely a result of the amendments being introduced prior to the commencement of the Offshore Petroleum Act 2006 and the Australian Energy Market Amendment (Gas Legislation) Act 2007. As both Acts commenced on 1 July 2008, an opportunity now exists to simplify the commencement table.

(2) Schedule 1, page 9 (after line 15), after item 2
Amendment (2) inserts a new item 2A into the Bill. Item 2A will insert an objects clause into the Offshore Petroleum Act 2006. The House of Representatives Standing Committee on Primary Industries and Resources recommended the inclusion in the Bill of an objects clause in particular terms (Recommendation 1). In complex legislation such as the Offshore Petroleum Act 2006, which requires the balancing of multiple objectives, there is a risk that an objects clause in specific terms will be inconsistent with the balance of objectives established by the substantive provisions of the Act. The proposed objects clause therefore establishes a high-level objective covering both petroleum and greenhouse gas provisions of the Act.

(14) Schedule 1, item 109, page 36 (line 27) to page 37 (line 1)
Amendment (14) amends item 109 of the Bill by deleting subsection 15B(3) and substituting new subsections (3) and (3A). Section 15B is an extended definition of the term ‘eligible greenhouse gas storage formation’. New subsections (3) and (3A) clarify the way in which the spatial extent of an eligible greenhouse gas storage formation is determined. There is no change to the intended effect of the section in this respect. Amendments (15), (16) and (17) provide for the consequential deletion of subsection 15B(5), which is now redundant.

(18) Schedule 1, item 109, page 40 (lines 17 to 23)
Amendment (18) amends item 109 by deleting section 15F, which is about the term ‘significant risk’ and substitutes new section 15F, which provides for the determination of the question arising under various sections of the Bill as to whether there is a significant risk that particular operations will have a significant adverse impact on other operations.

The House of Representatives Standing Committee on Primary Industries and Resources recommended that:

the Bill be amended to provide for the responsible Commonwealth Minister to direct the parties to negotiate in good faith where there are potential or actual overlapping GHG storage and petroleum titles, under both pre-commencement and post-commencement petroleum titles; and that the responsible Commonwealth Minister be empowered to direct an outcome. (Recommendation 9)

The underlying issue for Recommendation 9 relates to the potential for petroleum title holders to effectively block greenhouse gas activities in an area by claiming that there is a significant risk of significant adverse impact on their petroleum operations. The Committee endorsed the proposal that criteria for determining whether there is a
'significant risk of a significant adverse impact' should be in regulations. Strong definition of the criteria for the test will go some way toward addressing the veto issue.

Section 15F provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk of a significant adverse impact of one person's operations on another's. The regulation-making power is expressed in broad terms, to enable the provision of different kinds of means, or combinations of means, of arriving at an answer.

(20) **Schedule 1, page 41 (before line 28), before item 110**

Amendment (20) inserts items 109A, 109B and 109C into the Bill. These items amend the definition provisions in section 21 of the *Offshore Petroleum Act 2006* so that the datum provisions in Division 2 of Part 1.2 of the Act will apply to blocks covered by greenhouse gas titles as well as petroleum titles.

(21) **Schedule 1, page 43 (after line 23), after item 117**

Amendment (21) inserts items 117A and 117B into the Bill. Item 117A inserts new subsections (1A) and (1B) into section 78 of the *Offshore Petroleum Act 2006*, which is the section that sets out the rights conferred by a petroleum exploration permit.

New subsection 78(1B) is concerned with exploration by a petroleum exploration permittee for a site for injection and storage of by-product substances recovered along with the petroleum under an eventual production licence. The subsection is necessary because the Bill inserts new section 249AC which will prohibit exploration for a potential greenhouse gas storage formation or potential greenhouse gas injection site unless the exploration is authorised by, *inter alia*, 'this Act'. It is unlikely that most exploration permittees would be at risk of infringing this prohibition, as it applies only to exploration for the purpose of eventual injection and storage of a greenhouse gas substance. There will, however, be high-CO₂ fields where the exploration permittee may in fact be going to inject a greenhouse gas substance once petroleum recovery operations commence under the future production licence. In addition, it is desirable that exploration permittees intending eventually to inject and store for purposes incidental to petroleum recovery be given certainty that their exploration activities for that purpose will not be caught by the prohibition in new section 249AC.

(22) **Schedule 1, page 49 (after line 15), after item 120**

Amendment (22) inserts items 120A and 120B into the Bill. Item 120A inserts new subsections (1A) and (1B) into section 113 of the *Offshore Petroleum Act 2006*, which is the section that sets out the rights conferred by a petroleum retention lease.

New subsection 113(1B) is concerned with exploration by a petroleum retention lessee for a site for injection and storage of by-product substances recovered along with the petroleum under an eventual production licence. The subsection is necessary because the Bill inserts new section 249AC which will prohibit exploration for a potential greenhouse gas storage formation or potential greenhouse gas injection site unless the exploration is authorised by, *inter alia*, 'this Act'. It is unlikely that most retention lessees would be at risk of infringing this prohibition, as it applies only to exploration for the purpose of eventual injection and storage of a greenhouse gas substance. There will, however, be high-CO₂ fields where the retention lessee
may in fact be going to inject a greenhouse gas substance once petroleum recovery operations commence under the future production licence. In addition, it is desirable that retention lessees intending eventually to inject and store for purposes incidental to petroleum recovery be given certainty that their exploration activities for that purpose will not be caught by the prohibition in new section 249AC.

Amendment 23  Schedule 1, item 125, page 54 (line 30) to page 55 (line 2)

Amendment (23) deletes item 125 of the Bill and inserts a replacement item 125 that will insert new subsections (1A), (1B), (1C) and (1D) into section 137 of the Offshore Petroleum Act 2006. Section 137 of the Act sets out the rights conferred by a petroleum production licence. These amendments are intended to achieve two policy objectives.

Firstly, the House of Representatives Standing Committee on Primary Industries and Resources recommended that:

‘the GHG injection and storage rights conferred under s. 137 of the Offshore Petroleum Act 2006 be maintained where practical.’ (Recommendation 7)

New subsections (1A) and (1B) are intended to preserve, as far as is practicable, the existing rights of petroleum production licensees with respect to the injection and storage of substances in the production licence area as an incidental aspect of operations for the recovery of petroleum. At present, a production licensee is able, subject to obtaining regulatory approvals, to inject substances from any source for the purpose of enhanced hydrocarbon recovery, gas recycling or other similar process or for the temporary or permanent disposal of by-products (such as formation water, methane or carbon dioxide) recovered along with the petroleum in the licence area.

New section 249CC will prohibit the injection and storage of a substance in the seabed and subsoil unless the injection and storage is authorised by, inter alia, 'this Act'. The function of new subsection 137(1A) is to make clear that the new provisions inserted by the Bill for licensing injection and storage of a greenhouse gas substance do not, by implication, remove the previously-existing ability that production licensees had under the Act to inject and store substances for purposes incidental to petroleum recovery.

Injection and storage by production licensees for the above petroleum-related purposes is going to be authorised and regulated by the Joint Authority as part of the field development plan (FDP) process under the proposed Offshore Petroleum (Resource Management) Regulations. The FDP provisions of those Regulations will be 'objective-based' and will be similar to the safety case provisions in the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996.

Under these regulations, proposals by a production licensee for injection and storage under the authority of the production licence will be assessed and approved case-by-case by the Joint Authority. This will enable the Joint Authority to decide whether the nature and scale of any proposal for permanent storage of CO₂ are appropriate to the nature and scale of petroleum recovery operations that are to be carried on in the licence area. The Joint Authority will also consider technical advice about the suitability of the storage formation in the production licence area.
New subsection 137(1B) is concerned with exploration by a petroleum production licensee for a site for injection and storage of by-product substances recovered along with the petroleum. The subsection is necessary because the Bill inserts new section 249AC which will prohibit exploration for a potential greenhouse gas storage formation or potential greenhouse gas injection site unless the exploration is authorised by, inter alia, 'this Act'. It is unlikely that most production licensees would be at risk of infringing this prohibition, as it applies only to exploration for the purpose of eventual injection and storage of a greenhouse gas substance. There will, however, be high-CO$_2$ fields where the production licensee may in fact be going to inject a greenhouse gas substance. In addition, it is desirable that production licensees intending to inject and store for purposes incidental to petroleum recovery be given certainty that their exploration activities for the purposes of eventual injection of substances will not be caught by the prohibition in new section 249AC.

Secondly, the House of Representatives Standing Committee on Primary Industries and Resources recommended that:

the Government review the Offshore Petroleum Act and proposed amendments to provide for the development of integrated petroleum projects, including the injection and storage of GHG from multiple sources into a single storage formation.

(Recommendation 8)

New subsection (1C) will provide for the making of regulations that authorise and regulate 'centralised' injection and storage of by-product substances. The regulations may provide that, if petroleum is recovered in a production licence area ('the first licence area') and the petroleum is recovered or processed by means of a facility located in another licence area ('the second licence area'), by-product substances from the first licence area may be injected and stored in the second licence area.

The regulations will provide for this 'centralised' injection and storage to be authorised and regulated by the Joint Authority under the FDP. Permanent storage of carbon dioxide will not be permitted under these provisions. Producers of petroleum from high-CO$_2$ fields will therefore need a GHG title to dispose of CO$_2$ outside the licence area. There may be a need, however, to make provision for lower concentrations of CO$_2$ to be disposed of centrally, as there may be some CO$_2$ in an ordinary petroleum stream. If necessary, this will be dealt with under the regulations, either as part of the FDP process or by way of a free-standing regulation that prescribes limits.

(24) Schedule 1, page 87 (before line 8), before item 165A

Amendment (24) is a further response to Recommendation 9 of the House of Representatives Standing Committee on Primary Industries and Resources. New section 226A applies in circumstances where the existence or non-existence of a 'designated agreement' between an applicant for an approval, or an applicant for a title, and another person is relevant to the making by the Minister of the decision whether to grant the approval or title.

The section enables the responsible Commonwealth Minister to require the applicant to provide a written report about negotiations, or attempts at negotiations, relating to the entering into of the agreement and the content of any agreement. While the requirement is directed only at the applicant, the report will in fact provide the
Minister with information as to the willingness of both parties to enter into a commercially negotiated agreement concerning the proposals of the applicant. If the other party wished to provide its own report on negotiations to the Minister, the Minister would consider that information as well.

(27) Schedule 1, item 169, page 102 (after line 9)

(28) Schedule 1, item 169, page 102 (line 20) to page 103 (line 11)

Amendments (27) and (28) amend item 169 of the Bill to modify the provisions in section 249AL relating to the criteria according to which the responsible Commonwealth Minister ranks applicants for a greenhouse gas assessment permit under subsection 249AL(3). These changes implement Recommendations 5 and 12 of the House of Representatives Standing Committee on Primary Industries and Resources, which were as follows.

The Committee recommends that the criteria established for assessing work bid applications facilitate the uptake of CCS activities while maintaining transparency and consistency. (Recommendation 5)

The Committee recommends that those proponents who can demonstrate a readily available CO₂ stream for imminent injection receive preferential consideration when assessing bids for GHG acreage allocation. (Recommendation 12)

It is implicit in the present provisions of the Bill that the criteria made public under subsection 249AL(3) will be essentially work-bid criteria, as is the case with applications for petroleum exploration permits. Amendments (27) and (28) amend section 249AL to provide for a broader range of criteria, including economic, commercial and public interest matters. This will enable the criteria to include matters such as the achievement of synergies with the development of offshore petroleum resources or with onshore industry projects such as power plants.

(29) Schedule 1, item 169, page 111 (after line 16)

The House of Representatives Standing Committee on Primary Industries and Resources recommended that:

The Committee recommends that the legislation be amended to allow for a GHG assessment permit holder to apply for a single right of renewal for a maximum three years duration. (Recommendation 6)

Amendment (29) inserts a new Division 3A into Part 2A.1 that implements this Recommendation. The renewal is to be granted by the responsible Commonwealth Minister in the circumstances set out in new section 249ASB. These are as follows.

- If the applicant has complied with the conditions of the present permit and the legislation and has notified the responsible Commonwealth Minister of the discovery of at least one eligible greenhouse gas storage formation under section 249NA, the responsible Commonwealth Minister must grant the renewal.

- If the applicant has not complied with the conditions or the legislation, but any non-compliance with a work program condition was attributable to unavoidable delays caused by the unavailability of services or equipment, and there are sufficient grounds to warrant granting the permit, the responsible Commonwealth Minister may grant the renewal.
If the applicant has complied with the conditions and the legislation, but there has been no notice given under section 249NA, and there are sufficient grounds to warrant granting the permit, the responsible Commonwealth Minister may grant the renewal.

**(44) Schedule 1, item 169, page 142 (after line 10)**

Amendment (44) inserts new sections 249BSG to 249BSJ that provide for the holder of a petroleum retention lease to apply for a greenhouse gas holding lease. This corresponds to the right of a petroleum production licensee to apply for a greenhouse gas injection licence under section 249CQ. In either case, the petroleum title-holder does not have to compete for the acreage, provided no other person holds a greenhouse gas title over any of the relevant blocks.

**(53) Schedule 1, item 169, page 149 (after line 32)**

Amendment (53) inserts new section 249BZC, which applies where the holder of a petroleum retention lease has obtained a greenhouse gas holding lease on a non-competitive basis. (See amendment (44)). New section 11A provides that the greenhouse gas holding lease and any subsequent greenhouse gas title in the series is 'tied' to the petroleum retention lease and any subsequent petroleum title in the series. (See amendment (12)).

New section 249BZC provides that, where a greenhouse gas holding lease is tied to a petroleum retention lease and the retention lease is cancelled, surrendered or wholly revoked, the responsible Commonwealth Minister must cancel the greenhouse gas holding lease.

**(54) Schedule 1, item 169, page 154 (after line 28)**

Amendment (54) applies where a greenhouse gas injection licence has been obtained on a non-competitive basis, either because the injection licence was granted to a petroleum production licensee under section 249CR or because the production licence is a successor title to a retention lease the holder of which obtained a greenhouse gas holding lease under new sections 249BSG to 249BSJ, with the result that the production licence and the injection licence are 'tied'.

Amendment (54) inserts new subsections 249CE(7A) and (7B), which provide that, in each of the above cases, the origin or origins of the greenhouse gas injected and stored under the injection licence must be in the production licence area. Because this is a continuing requirement, it is not possible for the injection licensee to obtain a variation of the injection licence that would permit injection of greenhouse gas from an external source.

**(55) Schedule 1, item 169, page 159 (after line 33)**

Amendment (55) inserts new subsection 249CH(6A) which ensures that the holder of a greenhouse gas holding lease that was granted on a non-competitive basis under new sections 249BSG to 249BSJ can only obtain an injection licence that is tied to a production licence held by the same title-holder. This ensures that the source(s) of greenhouse gas injected under the injection licence must be in the tied production licence area.
Amendments (56) to (61) and (79) to (80) provide for consultation with a petroleum title-holder if the responsible Commonwealth Minister gives a direction to a greenhouse gas title-holder to do something outside the greenhouse gas title area at a location that is within the title area of the petroleum title-holder. At present, the Bill provides only for consultation with other greenhouse gas title-holders in whose title area the directed activity is to take place.

(63) Schedule 1, item 169, page 201 (after line 4)

Amendment (63) inserts new provisions into section 249CZE that provide that, where a greenhouse gas injection licence is tied to a petroleum retention lease or production licence and the retention lease or production licence ceases to be in force for any reason, the injection licensee must make an application for a site closing certificate. New subsection 249CZE(15) makes it an offence not to comply with the requirement and new subsection 249CZE(16) makes the offence one of strict liability. The penalty for non-compliance is 100 penalty units.

The application for a site closing certificate and the reports and other documents that accompany it will be the responsible Commonwealth Minister’s major source of information about the cessation of injection operations and about the remedial and precautionary work program that needs to be carried out by the licensee in the site-closing (decommissioning) period. The work carried out in this period will be for the medium and long term protection of resources, the environment and other interests. At this stage of the project, the injection licensee stands to gain no further commercial benefit from carrying out the site-closing work program. Strict liability is therefore considered necessary in order to ensure the integrity of the regulatory regime.

In relation to the proposed penalty of 100 penalty units, the very high level of expenditure that is routinely incurred in offshore resources activities makes the normal upper limit of 60 penalty units for strict liability offences inadequate to operate as a meaningful deterrent. The proposed 100 penalty units is seen as necessary for that purpose.

(62) Schedule 1, item 169, page 199 (after line 27)

(64) Schedule 1, item 169, page 201 (lines 27 to 30)

(65) Schedule 1, item 169, page 205 (after line 23)
Amendments (62) and (64) to (66) amend various provisions to take account of the possibility that there may have been no operations to inject a greenhouse gas substance into a particular storage formation and that certain site closing requirements therefore need not apply.

Amendment (74) is a further response to Recommendation 9 of the House of Representatives Standing Committee on Primary Industries and Resources. New section 249JHA applies in circumstances where the existence or non-existence of a 'designated agreement' between an applicant for an approval, or an applicant for a title, and another person is relevant to the making by the Minister of the decision whether to grant the approval or title.

The section enables the responsible Commonwealth Minister to require the applicant to provide a written report about negotiations, or attempts at negotiations, relating to the entering into of the agreement and the content of any agreement. While the requirement is directed only at the applicant, the report will in fact provide the Minister with information as to the willingness of both parties to enter into a commercially negotiated agreement concerning the proposals of the applicant. If the other party wished to provide its own report on negotiations to the Minister, the Minister would consider that information as well.

Amendment (76) inserts new section 249NL which provides for the making of regulations providing for certain information held by the Commonwealth to be made publicly available. The information to which this section applies is data and reports etc of the monitoring of the behaviour of a greenhouse gas substance stored in a part of a geological formation.

This amendment implements Recommendation 18 of the House of Representatives Standing Committee on Primary Industries and Resources.

Amendment (77) amends item 191 of the Bill by inserting new subsections (2A) and (2B) into section 298-261. That section provides for approval of transfers of greenhouse gas titles by the responsible Commonwealth Minister. The new subsections provide that a greenhouse gas holding lease or a greenhouse gas injection licence that is tied to a petroleum retention lease or production licence cannot be transferred separately from the petroleum title to which it is tied. This prevents tied titles from being in different ownership.

Amendment (81) inserts new item 253A which substitutes a new definition of 'facility' into section 353 of the Offshore Petroleum Act 2006. The definition of 'facility' is the core definition that gives jurisdiction to the National Offshore Petroleum Safety Authority. The new definition is needed because the definition of 'facility' in relation to State or Northern Territory designated coastal waters depends on the relevant occupational health and safety provisions in the State or Northern Territory Petroleum (Submerged Lands) Act being such that they 'substantially correspond' to

(66) Schedule 1, item 169, page 205 (line 28)

(74) Schedule 1, item 169, page 229 (after line 13)

(76) Schedule 1, item 169, page 257 (after line 18)

(77) Schedule 1, item 191, page 267 (after line 25)

(81) Schedule 1, page 335 (after line 4)
the equivalent provisions in the *Offshore Petroleum Act 2006*. Once the greenhouse
gas amendments made by the Bill take effect, Schedule 3 to the *Offshore Petroleum
Act 2006* will no longer 'substantially correspond' to the State or Northern Territory
OHS Schedules. This is because the State and Northern Territory OHS Schedules
are not expected, at least initially, to extend to greenhouse gas facilities.

It is therefore necessary for the definition of 'facility' in section 353 to provide
separately for State or Northern Territory OHS provisions to 'substantially
correspond' in relation to petroleum facilities and in relation to greenhouse gas
facilities.

**(86) Schedule 1, page 351 (after line 20)**

Amendment (86) inserts new item 274B into the Bill. This insets new Part 6.1A which
provides for the establishment of expert advisory committees. This provision for
expert advisory committees is a further response to Recommendation 9 of the House
of Representatives Standing Committee on Primary Industries and Resources and is
intended to provide transparency in the making of decisions that affect the balance of
rights between greenhouse gas and petroleum interests. It will also assist the
Minister to make decisions requiring a high level of technical expertise.

Subsection 435A(1) provides that the responsible Commonwealth Minister may, by
writing, establish expert advisory committees. Subsection 435A(2) provides that an
instrument made under subsection (1) is not a legislative instrument. The provision
in subsection (2) is merely declaratory of the law, and is included to assist the reader,
and does to amount to exemptions from the *Legislative Instruments Act 2003*.

The matters that the responsible Commonwealth Minister may refer to an expert
advisory committee are:

- questions of the kinds described in paragraphs 435B(2)(a) to (d), ie
  questions as to whether there is a significant risk that operations under a title
  will have a significant adverse impact on operations under another title;

- the matters listed in paragraphs 435B(2)(e) to (f); and

- matters specified in regulations made under paragraph 435B(2)(g).

Subsection 435D(1) provides that the responsible Commonwealth Minister may give
an expert advisory committee written directions about the way in which the
committee is to carry out its functions. Subsection (2) provides that a direction under
subsection (1) is not a legislative instrument. The provision in subsection (2) is
merely declaratory of the law, and is included to assist the reader, and does to
amount to exemptions from the *Legislative Instruments Act 2003*.

Because people suitable for appointment to an expert advisory committee, that is,
people with the necessary technical expertise, are likely to have close links with the
petroleum and greenhouse gas storage industries, it is necessary to include stringent
provisions for the protection of information provided by applicants and other affected
parties to the responsible Commonwealth Minister and made available to the
committee for the purposes of a particular matter. Subsection 435L(1) makes it an
offence for a present or past member of a committee who has obtained information
by reason of being a member to disclose that information where the disclosure could
reasonably be expected to prejudice substantially the commercial interests of another
person. There are exceptions in subsection (2) relating to performance of duties as a committee member and disclosure pursuant to a requirement under Commonwealth law or a prescribed State or Territory law. Subsections (3) and (4) make equivalent provision in relation to use of information.

(87) Schedule 1, page 351 (before line 21)

Amendment (87) inserts new item 274C into the Bill. This item inserts a new Part 6.1B which provides for the gathering and handling of information relevant to the making of designated agreements. This amendment is a further response to Recommendation 9 of the House of Representatives Standing Committee on Primary Industries and Resources.

New section 435N applies to applications that are made to the responsible Commonwealth Minister where the existence or non-existence of an agreement, or the terms of an agreement, between the applicant and another person is relevant to the making of the decision by the Minister on the application. Subsection 435N(2) provides that where the Minister believes on reasonable grounds that a person has information or a document that is relevant to the decision, the Minister may require the person to give the information or produce the document or a copy of the document.

New section 435V provides for the protection of information given to the Minister pursuant to a requirement under section 435N. The person who gives the information or a document has the right to claim that the information is commercial-in-confidence and, if that claim is made, the information or document is given a level of protection appropriate to commercial-in-confidence information. Section 435W provides, on the other hand, that if no such claim is made by the person providing the information, the Minister may disclose the information to another person for the purposes of the consideration by the other person of whether to enter into an agreement or of the terms of an agreement.

(88) Schedule 3, page 389 (line 26)

(89) Schedule 3, items 14A to 14D, page 389 (line 27) to page 390 (line 15)

(90) Schedule 4, page 400 (lines 3 and 4)

(91) Schedule 4, item 1A, page 400 (lines 5 to 22)

(92) Schedule 4, page 400 (line 23)

(93) Schedule 4, items 2 to 4, page 400 (line 24) to page 401 (line 9)

These amendments have become redundant following the repeal of Gas Pipelines Access Act 1998.