

seem most likely that any reform proposals would involve regulating geosequestration within the framework of relevant existing legislative regimes (such as those relating to petroleum, mineral resources, environment protection, health and safety, dangerous goods, pipelines etc) rather than establishing separate geosequestration-specific legislation.

Conclusion

While it may be some time before geosequestration is accepted as a technically and commercially viable (and politically acceptable) method of curbing the release of carbon dioxide into the atmosphere, Australia's reliance on its abundant fossil fuel resources will ensure that the large-scale use of geosequestration technology in this country will continue to be seriously considered. The decision by the MCMPR to release the Draft Guiding Regulatory Framework indicates that the Federal and State and Territory Governments are keen to understand who and what might be impacted by geosequestration and then set out as clear a regime as possible to establish the responsibility and liability of a geosequestration project proponent.

Industry, community groups and other non-government organisations will need to review the Draft Guiding Regulatory Framework and carefully consider its consequences for geosequestration projects. The Federal and State and Territory Governments will need to proceed cautiously to ensure that any reform proposals are aimed not only at adequately protecting the public but also at striking an appropriate balance between encouraging investment in geosequestration technologies on the one hand while not hindering investment in other methods for reducing carbon dioxide emissions on the other.

ESTABLISHMENT OF A NATIONAL OFFSHORE PETROLEUM SAFETY AUTHORITY FOR AUSTRALIA*

The *Petroleum (Submerged Lands) Amendment Act 2003* (Cth) will establish, as from 1 January 2005, a National Offshore Petroleum Authority (NOPSA) to regulate safety on oil and gas facilities in Commonwealth waters and State and Northern Territory coastal waters, in accordance with the commitment agreed to this effect by the Commonwealth, States and the Northern Territory. As was said in the Explanatory Memorandum to the Commonwealth Act, the offshore petroleum industry is strategically important to Australia and any serious disruption to this supply through an accident would have major economic consequences.

NOPSA will operate (a) in "Commonwealth waters – ie waters of the continental shelf outside the three nautical mile territorial sea – and (b) in "designated coastal waters" of each State and the Northern Territory – ie the first three nautical miles of the territorial sea adjacent to each State and the Northern Territory – by virtue of State or Northern Territory mirror legislation.

These arrangements fit in with the 1979 Offshore Constitutional Settlement under which the States and the Northern Territory have been granted title by the Commonwealth to all waters (including seabed) landward of the three nautical mile limit, and have the same power to legislate over these coastal waters as they do over their land territory. Commonwealth title and legislation applies outside those coastal waters, under cooperative governance arrangements consisting of a "Joint Authority" (which is the Commonwealth Minister and the relevant State or the Northern Territory Minister in respect of the respective adjacent areas) for all major decisions affecting petroleum

* Patrick Brazil, Special Counsel, Phillips Fox, Canberra. An article on NOPSA is anticipated to be published in the first issue of this Journal in 2005.

exploration and development (with the Commonwealth Minister's view to prevail in the event of disagreement). Day-to-day administrative duties and regulatory functions are exercised by the "Designated Authority", who is the relevant State/NT Minister.

Under the new legislation, the existing *safety case regime* approach (operational since 1996) will be continued by NOPSA. This approach involves a sophisticated, comprehensive and integrated risk management system, based on an acceptance that the direct responsibility for the ongoing management of safety on individual facilities is with the operators and not the regulator. The key functions of NOPSA are to provide guidance as to the safety objectives to be achieved and an assessment of performance against those objectives. It will monitor the effectiveness with which the commitments in the safety case are being implemented, and the effectiveness of the safety management system and of the operators' internal audits of them. NOPSA will also critically examine the efforts made by management to actively involve the workforce in the safety case process.

STAND OFF IN THE TIMOR SEA*

The formal statement issued by the Department of Foreign Affairs and Trade at the end of the September discussions in Australia between Australia and East Timor on the Timor Sea stated that the talks were "productive" and that "the talks will resume after the (Australian Federal) election at a time and place to be confirmed". The main issues appeared to be agreement on permanent seabed boundaries, and revenue sharing from oil and gas developments in the areas in question, which for these purposes have been extended laterally by East Timor to large deposits lying outside or partially outside the Joint Petroleum Development Area (JPDA) demarcated in the Timor Sea Treaty signed by Australia and East Timor in Dili on 20 May 2002.

Time wise, reference was made on the Australian side to wanting the negotiations to be concluded by Christmas, but this would be an exceptional achievement in the light of the issues that have now been raised. Thus it appears that East Timor originally said that it could compromise on boundaries or on revenue but not on both. It was doubtful whether a deal could be achieved that would allow East Timor to ratify previously negotiated arrangements before the end of the year. Also, it now appears that East Timor may not have any mandate to discuss permanent boundaries.

In particular, it seems clear that East Timor will not be taking any steps to implement the MOU signed by Australia and East Timor on 20 May 2002 to work expeditiously and to conclude an international unitisation agreement for the Greater Sunrise Deposit, which mostly lies outside the JPDA. This clearly would impede the development of that field.

In the midst of all this, the JPDA established under the 2002 Timor Sea Treaty continues to function. A particular development that is referred to in this regard is that the Timor Sea Designated Authority of the JPDA has released a new draft Production Sharing Contract (together with a draft Petroleum Mining Code application) for comment.

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