VICTORIAN GOVERNMENT RESPONSE TO THE PRODUCTIVITY COMMISSION

REVIEW OF REGULATORY BURDEN ON THE UPSTREAM PETROLEUM (OIL AND GAS) SECTOR ISSUES PAPER

AUGUST 2008

SUMMARY

- The Victorian Government is committed to ongoing regulatory reform to improve the efficiency and effectiveness of regulation to deliver benefits to all Victorians. Victoria's proactive approach is demonstrated through our role in the Council of Australian Government (COAG) Business Regulation and Competition Working Group, and through the *Reducing the Regulatory Burden* initiative and the work of the Victorian Competition and Efficiency Commission.

- The Victorian Government strongly supports a robust and efficient regulatory framework for the upstream petroleum sector that continues to ensure economic, environmental and social policy objectives are met.

- Regulation of the upstream petroleum sector in Victoria, including pipelines, is objective based and consistent with the offshore regulatory regime. The Victorian Government sees potential to significantly reduce the regulatory burden that currently exists under the Joint Authority/Designated Authority model.

- The Victorian Government supports in – principle the establishment of a national petroleum regulator for offshore activities. Further opportunities to improve efficiency through a nationally consistent model for regulating pipelines connecting offshore petroleum developments with onshore facilities should be explored.

INTRODUCTION

The Victorian Government welcomes the Productivity Commission's *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector.* The upstream petroleum sector is a key contributor to Victoria's economy. Victoria has two main centres of upstream petroleum activity, the Gippsland Basin which has operated for over 40 years and the more recent development of petroleum reserves in the Otway Basin, in the State's south west. Victoria also has a number of onshore upstream gas operations, and has strong potential for future Carbon Capture and Storage (CCS) locations.

Victoria strongly supports a robust and efficient regulatory framework for the upstream petroleum sector. A clear and efficient regulatory framework provides the clarity and certainty to industry necessary for the large investments required in the upstream petroleum sector.

Reducing unnecessary regulatory burden is integral to ensuring an efficient regulatory framework. The Productivity Commission's *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* provides a valuable opportunity for all stakeholders to identify areas where efficiency gains can be made in the current regulatory system and provide options for how the sector could be better regulated in the future.

The Victorian Government takes a triple bottom line approach to regulation, and encourages the Review to consider the social, environmental and economic aspects of all proposed reforms. Regulatory improvements that deliver increased efficiency without compromising social and environmental objectives are key to the development of a prosperous and sustainable upstream petroleum sector.

The Victorian Government's submission to the Productivity Commission's *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* outlines current Victorian regulatory practice within the sector, the Victorian Government's Reducing the Regulatory Burden (RRB) initiative as well as current developments in occupational health and safety (OH&S) and CCS regulation. The submission also states Victoria's in-principle support for a national offshore petroleum regulator, potentially including pipelines, and proposes the Review considers other potential regulatory models.

VICTORIA'S REDUCING THE REGULATORY BURDEN INITIATIVE

Victoria's *Reducing the Regulatory Burden* initiative affirms the Victorian Government's on-going commitment to regulatory reform and builds on our national leadership in implementing reform initiatives

The *Reducing the Regulatory Burden* initiative, announced by the Victorian Government as part of the 2006-07 State Budget, complements and strengthens Victoria's well-established best practice regulation making and review framework. The initiative commits Victoria to a specific and ambitious target for reducing the administrative burden ('red tape') imposed on businesses and not-for-profit organisation by state regulation.

Although regulation can be an important tool for achieving policy objectives and responding to community needs, the Victorian Government recognises that regulation can place a significant burden on businesses and not-for-profit organisations. Inefficient regulation can hinder economic activity and defeat the intended objective of regulation.

Victoria welcomes opportunities to contribute to all forms of regulatory cost reduction including reducing compliance burdens, and offsetting the administrative burden of new regulation with simplifications in the same or a related area. Reducing red tape is not the only focus of the Victorian Government. The *Victorian Guide to Regulation* sets out best practice principles for minimising the suite of costs to business associated with regulation.

VICTORIA'S APPROACH TO UPSTREAM PETROLEUM REGULATION

The majority of exploration and production in Victoria's Gippsland and Otway Basins occurs in Commonwealth waters, with a small amount of activity in Victorian coastal waters and some onshore gas production, storage and processing. There is also significant onshore petroleum exploration activity in Victoria.

Victorian production accounts for the second biggest share of oil and gas production in Australia (after WA). Victoria is also currently the preferred destination for processing petroleum produced in Tasmanian offshore waters in the Otway Basin (Thylacine) and the Bass Basin (Yolla). Victoria informally undertakes regulatory activities in relation to Well Operation Management Plans (WOMPs) and some environmental assessment on behalf of Tasmania in relation to these areas.

Due to the nature of petroleum developments, approvals processes necessarily involve a number of different agencies who are responsible for planning, environment, Aboriginal cultural heritage, safety, and water.

Offshore

Offshore petroleum activities in Australia currently operate under two regulatory regimes. One for Commonwealth waters (beyond 3 nautical miles) under the *Offshore Petroleum Act 2006* (OPA) and its regulations, and the other for coastal waters (first 3 nautical miles and islands) under Victoria's *Petroleum (Submerged Lands) Act 1982* and its regulations. Petroleum approvals required for Victorian waters are identical to those required for Commonwealth waters.

Commonwealth waters are administered by the Joint Authority /Designated Authority (JA/DA) while coastal waters are administered by the State/Territory jurisdictions. The National Offshore Petroleum Safety Authority (NOPSA) administers OH&S regulation for both Commonwealth and coastal waters.

Victoria believes there is potential to significantly reduce the regulatory burden that currently exists under the JA/DA model. The cost of delays for the approval of drilling activities can be significant. According to industry figures, current standby rates for semi-submersible drilling rigs are up to $1.1 million per day[1]. Therefore improvements in the efficiency of approvals processes have the potential to deliver real benefits to the sector.

Under the current JA/DA model there is substantial duplication in the administration and assessment processes for permit/licence grants. This duplication arises from the iterative processes carried out by both the Commonwealth and DAs for the same assessments, particularly during the processing and assessment of Field Development Plans and Joint Technical Reports. For example, the Victorian regulators estimate that the approvals process to grant a production licence involves approximately 50 to 60 iterations between the DA and JA over a period of at least 12 months. The potential for delays also arises when the DA refers to the Commonwealth Department of Resources, Energy and Tourism (RET), who in turn may refer to other Commonwealth agencies. RET then refers the responses of the other agencies back to the DA.

The NOPSA/DA processes can result in additional regulatory burden in a number areas including pipeline and well operations. The DA is allowed 10 days to refer a Pipeline Management Plan to the NOPSA for safety assessment, NOPSA then has 21 days in which to make its assessment. However, statutory timeframes can be drawn out through requests for additional information, which can result in further delays. There are also other overlapping areas of responsibility such as in the assessment of the integrity of pipelines and wells.

There are also inconsistencies in decision making and approval processes across the various jurisdictions administering the OPA under the current JA/DA model. For example Victoria considers one WOMP for a number of wells associated with the same field while some other jurisdictions require a separate WOMP for each well.

[1] Reports provided to DPI by Santos, July 2008.

Onshore

Onshore upstream petroleum, and pipeline typically operate under the Petroleum and Pipeline Acts of the States or Territory. Onshore regulation for petroleum activities in Victoria operates similarly to offshore regulation. In some states petroleum legislation has been expanded to include coal bed methane (CBM), geothermal and CCS. However in Victoria CBM, geothermal and CCS are administered under different legislation.

The Acts are generally administered by the State/Territory resources department and their equivalent OH&S regulators. Onshore petroleum regulatory processes are relatively efficient as they are typically regulated by the one authority with referrals to agencies on specific issues such as OH&S and environment.

Onshore pipelines regulatory processes vary markedly from state to state and could be improved significantly by adopting similar processes.

Offshore and onshore

Approvals for projects with offshore and onshore activity tend to be bundled together as part of an objectives based management plan, eg pipeline management plan, environment plan, operation plan rather than as separate approvals.

A schematic of project approvals for a typical offshore development with an onshore pipeline and processing facility is at Appendix 1. It should be noted that in some cases, the approvals required for a Mobile Offshore Drilling Unit (MODU) (figure 1) may also be required for the development of an offshore discovery, following the grant of a production licence (figure 2).

OCCUPATIONAL HEALTH AND SAFETY

Victoria is a driving force behind ongoing COAG efforts to harmonise OH&S laws across Australia. Victoria supports a model OH&S Act that applies to *all* workplaces, and for any industry-specific OH&S issues (e.g. those associated with petroleum activities, both offshore and onshore) to be addressed (where necessary) via subordinate instruments.

Full details of Victoria's position, including arguments in favour of bringing industry legislation under one regime of OH&S law, can be found in the Victorian Government's July 2008 submission to the *National Review of Model OHS Laws*. (www.nationalohsreview.gov.au/ohs/PublicSubmissions/)

CARBON CAPTURE AND STORAGE REGULATION

Victoria's proposed legislation to regulate the onshore injection and storage of carbon dioxide is broadly consistent with the Commonwealth's draft legislation for regulating offshore injection and storage of carbon dioxide. The key point of difference is the treatment of existing petroleum titleholders compared to potential CCS proponents.

The Victorian Government's position on the offshore injection and storage of carbon dioxide is that any legislation regulating the offshore CCS should provide a level playing field for both CCS and petroleum proponents by enabling the coexistence of CCS and petroleum tenements. The Victorian Government has made a submission to the House of Representatives Standing Committee on Primary Industries and Resources Inquiry into the Draft Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill reiterating this position (www.aph.gov.au/house/committee/pir/exposuredraft/subs.htm). The Victorian Government considers that an equitable and competitive market for access to the CCS resource is absolutely essential and is working towards a nationally consistent approach to reduce regulatory burden and provide clarity to industry.

ENVIRONMENTAL PROTECTION AND HERITAGE

The Victorian Government concurs with the Productivity Commission's view that there is significant scope to improve the operational efficiency of the *Environment Protection and Biodiversity Conservation Act* (EPBC Act) and its interaction with State environment and planning approvals.

Current bilateral agreements are limited to accreditation of State and Territory environmental assessment processes, but not of decisions taken as a result of those processes.

Current accreditation arrangements allow for the preparation of a single *environmental assessment document* for the consideration of decision-makers in both the State and Commonwealth governments. While there is capacity in the EPBC Act, the Commonwealth has not so far accredited State decisions, leading to duplication in State and Commonwealth approvals.

At this stage, Victoria has not concluded an assessments bilateral agreement with the Commonwealth, but currently seeks accreditation for its assessment processes on a project-by-project basis. Victoria is keen to pursue a more comprehensive accreditation of its processes and decisions under the EPBC Act and is currently in negotiation with the Commonwealth on this issue.

A NATIONAL OFFSHORE PETROLEUM REGULATOR

In-principle the Victorian Government supports the establishment of a national petroleum regulator for offshore activities. This model would be similar to the current NOPSA model and would administer both coastal and Commonwealth waters under agreements with the States and the Northern Territory. The authority would administer all permit/licence and operational matters including safety, resources, integrity, security of supply and environment.

Although it could be argued that permit and licensing functions should be separate from operational matters, there are critical synergies within the DA regarding resource permit/licensing and operational issues. One national authority would allow significant improvements through streamlining processes and eliminating duplication. This would result in reduction of the regulatory burden placed on the upstream petroleum sector by reducing delays and uncertainty, while keeping a strong and functional regulatory system in place.

Under a national authority, offices could be located in the key offshore petroleum jurisdictions. This would give the authority ability to better balance work loads and develop a deeper inventory of skill sets across Australia. Improved economies of scale could be achieved through a national regulator. This would particularly benefit jurisdictions with small offshore petroleum industries who have limited capacity to attract and retain appropriately skilled regulators.

A national regulator could improve Australia as an investment destination by simplifying the approvals processes for exploration and petroleum production activities. Improving the efficiency of regulatory approvals could go some way towards mitigating the high cost of conducting exploration and development activities in Australia (particularly rig and seismic vessel costs) due to Australia's geographic distance from key global petroleum producers.

In summary, establishing a national offshore regulator could deliver a number of potential benefits including:

- Reduction in current cross jurisdictional inconsistencies in administering the *Offshore Petroleum Act 2006,* and provide greater clarity and consistency for operators, many of who operate across a number of jurisdictions.

- Streamlining of current approval and regulatory processes by having all approvals sent to one agency, ameliorating delays associated with approvals and decisions being passed between the State and Commonwealth members of the Joint Authority. This could potentially reduce the time taken to obtain an approval to around six to 12 months, or by approximately 50 percent.

- Be better positioned to attract and retain a highly skilled workforce in current labour market conditions, especially if working under a full cost recovery directive. A national regulatory body would have more flexible remuneration options, which could better compete with industry for specialised skills. A national regulator would also provide greater efficiency in its resource allocation, having greater flexibility to adapt to movements in industry activity across Australia.

The success of NOPSA suggests further national regulation of the offshore petroleum sector may lead to gains in reducing regulatory burden for the sector. The experiences of NOPSA and areas identified for improvement in the review of NOPSA should be taken into account in the development of any national model.

However, alongside its consideration of options for a national regulatory authority, the Victorian government sees benefits in the Productivity Commission considering options to improve and streamline the current regulatory arrangements to provide a better basis for assessing an optimal regulatory model.

The Victorian Government urges the Commonwealth to finalise its consolidation of offshore petroleum regulations. This process has been delayed by amendments to the OPA to allow for CCS. Consolidation of these regulations offers substantial potential for streamlining and simplifying approval processes.

PIPELINE REGULATION

In addition to the advantages of a national petroleum regulator for offshore activities noted above, opportunities exist to improve efficiency through extending the model above to provide a nationally consistent model for regulating pipelines connecting offshore petroleum developments with onshore facilities.

Victoria recently reviewed and reformed its onshore pipelines regulation resulting in reduced red tape, improved safety and performance-based regulation. The *Pipelines Act 2005* and *Regulations 2007* have been modernised to reflect current community expectations in relation to transparent public processes, safety and environment protection.

The *Pipelines Act 2005* provides for: one integrated licence authorising the construction and operation of a pipeline; clear timelines for key decision making processes; mandated early and ongoing consultation with all affected parties; negotiation between proponents and landowners over land access and compensation; safety and environmental protection; and third party access to unused pipeline capacity and/or use of a pipeline easement for other infrastructure.

The national offshore petroleum model described above could be expanded to include onshore pipelines that are currently administered by the States and Northern Territory under their respective pipeline acts.

Many petroleum projects involve pipelines running from offshore to onshore crossing a number of jurisdictions. In the case of the Woodside Otway project pipeline four jurisdictions (Commonwealth waters administered by both Victoria and Tasmania, Victorian state waters and Victorian onshore) were triggered. The time taken to grant a pipeline licence is currently between three to nine months and involves approximately 20 to 30 iterations between the DA and JA. Approvals for suspension and extension of pipelines can involve an additional three to six months, or 12-20 iterations. As noted above for petroleum production licence approvals, there is potential to reduce approvals times by approximately half.

Although onshore pipeline regulatory processes and legislation generally vary markedly from state to state, in Victoria's case the *Pipelines Act 2005* is modern, objective based and in alignment with the principles of the offshore pipeline legislation. This allows offshore to onshore pipeline operations to be approved under the one operations plan, which meets the objectives of both onshore and offshore legislation. Victoria would support the national regulation of pipelines based on the principles of the current offshore pipeline legislation. To introduce this model, the various jurisdictions would need to adopt similar pipeline legislation. It is also considered that it would be a relatively straightforward process to implement.

NATIONAL PETROLEUM AND PIPELINE AUTHORITY MODEL

The Productivity Commission should consider the relative advantages and disadvantages associated with establishing a single national authority to regulate all offshore and onshore petroleum and pipeline activity.

This model has the greatest potential to reduce regulatory burden but would also be the most difficult to implement because of the degree of legislative reform required.

Legislative reform would be particularly complex as various jurisdictions have included a range of activities in their onshore petroleum legislation (for example, CBM, geothermal and CCS).

Appendix 1

Figure 1

Approvals required for Mobile Offshore Drilling Unit

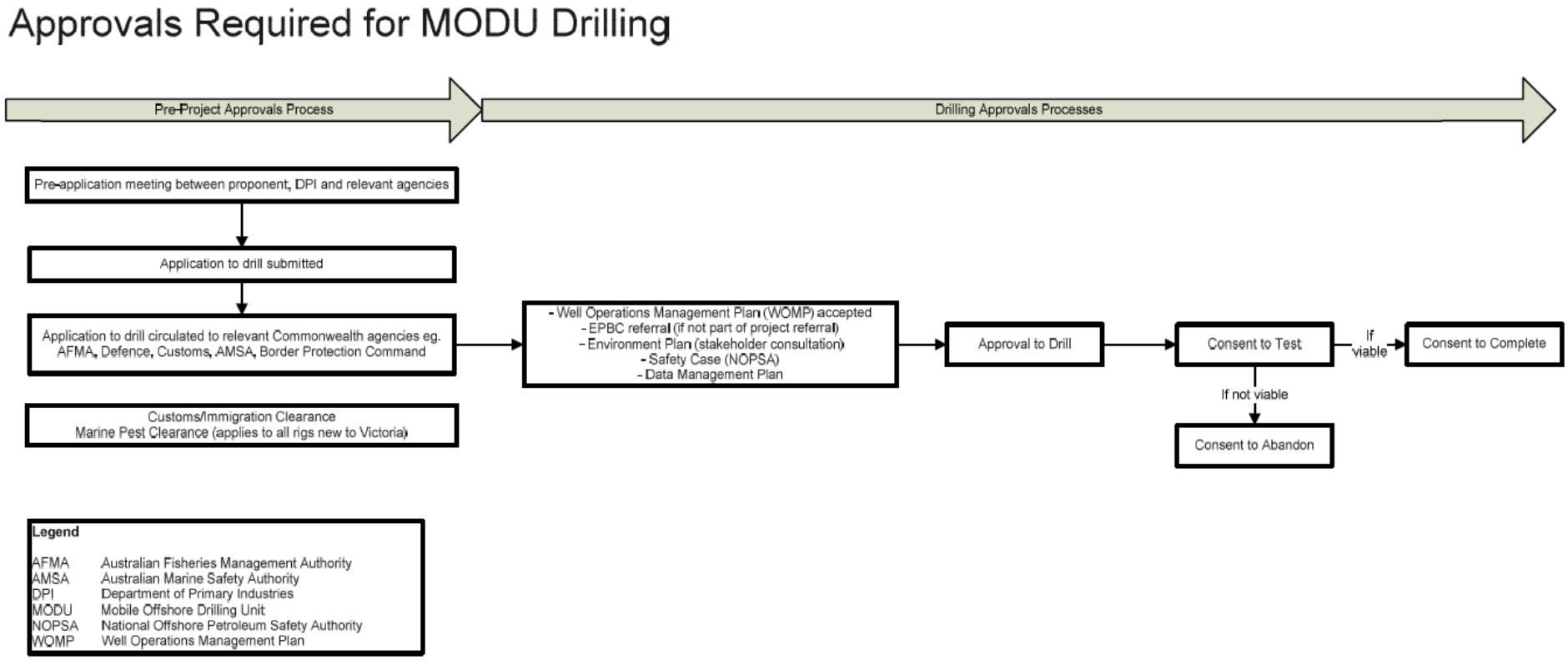

Figure 2

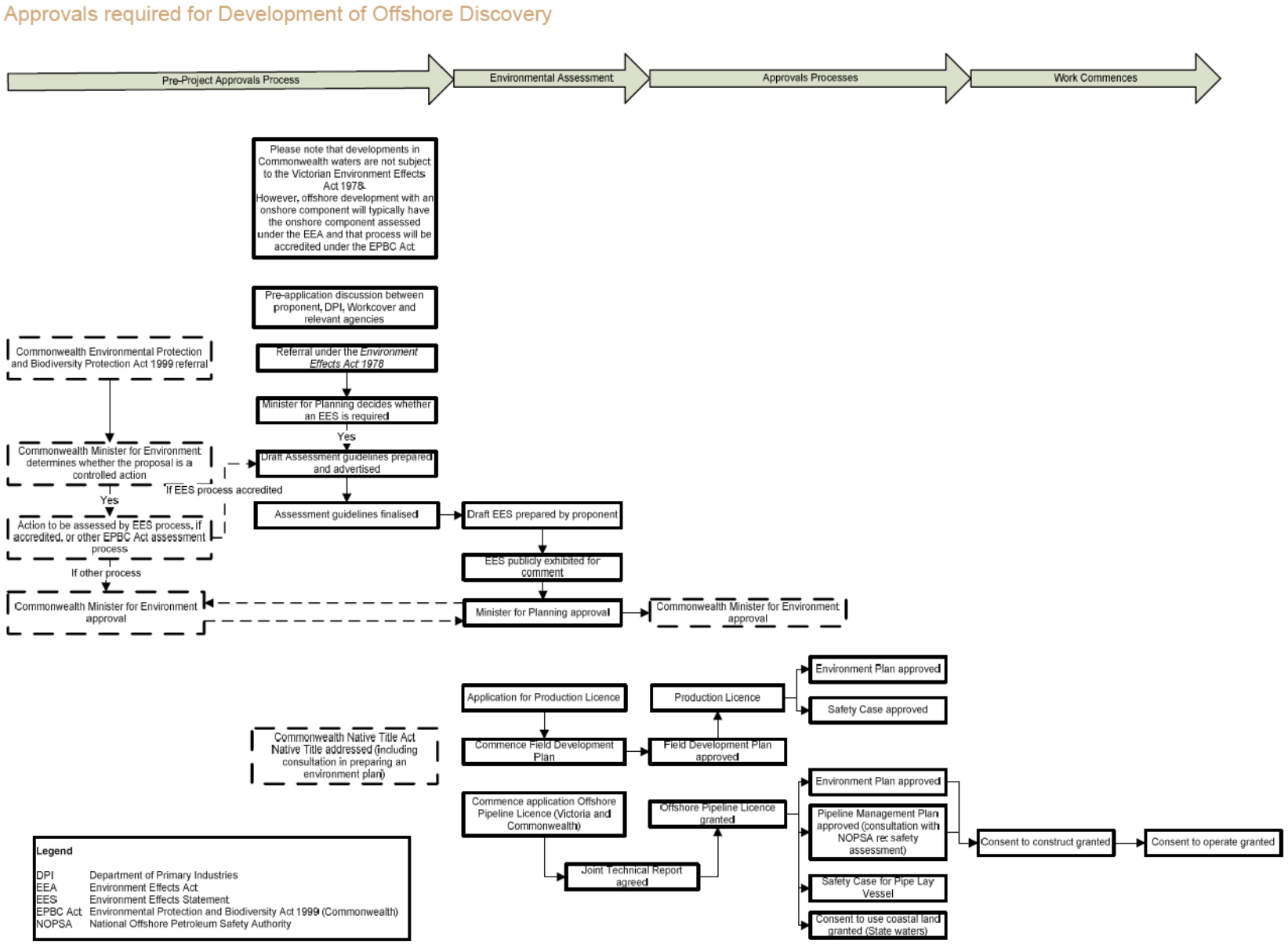
Approvals required for Development of Offshore Discovery
Pre-Project Approvals Process
Environmental Assessment
Approvals Processes
Work Commences
Please note that developments in Commonwealth waters are not subject to the Victorian Environment Effects Act 1978.
However, offshore development with an onshore component will typically have the onshore component assessed under the EEA and that process will be accredited under the EPBC Act
Pre-application discussion between proponent, DPI, Workcover and relevant agencies
Commonwealth Environmental Protection and Biodiversity Protection Act 1999 referral
Referral under the Environment Effects Act 1978
Minister for Planning decides whether an EES is required
Yes
Commonwealth Minister for Environment determines whether the proposal is a controlled action
Draft Assessment guidelines prepared and advertised
If EES process accredited
Yes
Assessment guidelines finalised
Draft EES prepared by proponent
Action to be assessed by EES process, if accredited, or other EPBC Act assessment process
EES publicly exhibited for comment
If other process
Commonwealth Minister for Environment approval
Minister for Planning approval
Commonwealth Minister for Environment approval
Environment Plan approved
Application for Production Licence
Production Licence
Safety Case approved
Commonwealth Native Title Act
Native Title addressed (including consultation in preparing an environment plan)
Commence Field Development Plan
Field Development Plan approved
Environment Plan approved
Commence application Offshore Pipeline Licence (Victoria and Commonwealth)
Offshore Pipeline Licence granted
Pipeline Management Plan approved (consultation with NOPSA re: safety assessment)
Consent to construct granted
Consent to operate granted
Joint Technical Report agreed
Safety Case for Pipe Lay Vessel
Consent to use coastal land granted (State waters)
Legend
DPI Department of Primary Industries
EEA Environment Effects Act
EES Environment Effects Statement
EPBC Act Environmental Protection and Biodiversity Act 1999 (Commonwealth)
NOPSA National Offshore Petroleum Safety Authority

Figure 3

Approvals required for a standard onshore pipeline and processing plant