

**AN AGREEMENT BETWEEN THE COMMONWEALTH AND THE STATE OF
VICTORIA**

**UNDER SECTION 45 OF THE COMMONWEALTH *ENVIRONMENT PROTECTION
AND BIODIVERSITY CONSERVATION ACT 1999***

**RELATING TO ENVIRONMENTAL IMPACT
ASSESSMENT**

Aim

- 1 The agreement aims to minimise duplication of environmental impact assessment processes, strengthen intergovernmental cooperation and promote a partnership approach to environmental protection and biodiversity conservation. In particular, this agreement provides for the accreditation of the Victorian environmental impact assessment processes (set out in Schedule 1) to ensure an integrated and coordinated approach for actions requiring approval from both the Commonwealth (under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*) and the State of Victoria. This agreement will enable the Commonwealth to rely primarily on the Victorian assessment processes set out in Schedule 1 in assessing actions under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- 2 The specific objects of this agreement are to contribute to:
 - (a) protecting the environment,
 - (b) promoting the conservation and ecologically sustainable use of natural resources,
 - (c) ensuring an efficient, timely, and effective process for environmental assessment and approval of actions, and
 - (d) minimising duplication in environmental assessment of relevant impacts within the meaning of section 82 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* through Commonwealth accreditation of Victorian processes.

Note: The provisions of this bilateral agreement are to be read in conjunction with the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

Parties to the agreement

- 3 The parties to this agreement are the Commonwealth and the State of Victoria.

Term of agreement

- 4 This agreement commences upon signature and will continue to operate until amended, suspended or terminated in accordance with this agreement or relevant legislation.

Nature of the agreement

- 5 This agreement is a bilateral agreement made under section 45 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- 6 The parties note that assessment means assessment of the relevant impacts, within the meaning of section 82 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. Notwithstanding this, the parties also note the commitments in clause 10 by the State of Victoria in relation to assessing impacts other than the relevant impacts.

- 7 The parties do not intend this agreement to create contractual or other legal obligations between the parties, or that a breach of the agreement will give rise to any cause of action, or right to take legal proceedings, other than as provided for in the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

Context

- 8 The parties recognise that Victoria has a comprehensive and integrated planning and environment assessment system underpinned by a planning framework which allows a number of actions to proceed, unless the planning scheme or a specific State law require a specific approval. The parties note the provisions of section 43A of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* that where an action has been specifically authorised before the commencement of the Act by Victoria and requires no further environmental authorisation under Victorian or another Commonwealth law the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* does not apply.

Effect of this agreement

- 9 Certain actions in a class of actions do not require assessment under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*

- 9.1 Pursuant to subsection 47(1) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, it is declared that an action does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if the action has been assessed in the manner specified in Schedule 1 to this agreement.
- 9.2 Clause 9.1 applies to actions which are taken wholly within the State of Victoria, including its coastal waters. In relation to actions taken in more than one jurisdiction (including Victoria), or which are taken in Victoria but have relevant impacts in other jurisdictions, the parties agree to consult and use their best endeavours to reach agreement with other affected jurisdictions on an appropriate assessment process, such as that set out in Schedule 1 or specified in an agreed instrument.
- 9.3 Clause 9.1 does not apply in relation to an action that was partially assessed under the EPBC Act before the commencement of this agreement and in respect of which the Commonwealth Environment Minister has given written notice to the Victorian Minister that this agreement does not apply.
- 9.4 The parties note that the provisions of this bilateral agreement do not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency. However, the parties further note that discussions will take place between the Commonwealth and the State of Victoria in relation to implementing Attachment 3 of the COAG Heads of Agreement on Commonwealth/State Roles and

Responsibilities for the Environment (“Compliance with State Environment and Planning Laws”). Following those discussions, the parties intend to amend this agreement, as necessary, so that it will apply to actions in a Commonwealth area, and actions taken by the Commonwealth or a Commonwealth agency, where it is agreed that those actions will be subject to State environment and planning laws.

10 Victoria to ensure that impacts on matters that are not of national environmental significance are assessed

10.1 This clause applies to an action that:

- (a) is a controlled action (as determined by the Commonwealth Environment Minister) taken or proposed to be taken in Victoria, and
- (b) does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if an assessment is conducted in accordance with Schedule 1 of this agreement; and
- (c) is an action:
 - (i) taken or proposed to be taken by a constitutional corporation;
 - (ii) taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between a State and Territory, or between two Territories; or
 - (iii) whose regulation is appropriate and adapted to give effect to Australia’s obligations under an agreement with one or more other countries.

10.2 The Commonwealth undertakes that the written notice referred to in clause 12.2 will indicate:

- (a) whether the Commonwealth believes that the action covered by the notice is an action to which this clause applies; and
- (b) if so, which of paragraphs (i)-(iii) in clause 10.1(c) applies to the action.

10.3 The State of Victoria undertakes to ensure that the environmental impacts that the action has, will have, or is likely to have (other than the relevant impacts) are assessed to the greatest extent practicable.

10.4 The parties agree that ‘the greatest extent practicable’ in clause 10.3 is satisfied where the assessment has been undertaken in a specified manner of assessment in Schedule 1.

Procedures to be followed

11 Victoria to use best endeavours to ensure that actions are referred

11.1 The parties will work cooperatively to ensure that proponents are aware of their obligations under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, and will use their best endeavours to encourage proponents to refer actions that are proposed to take place in the State of Victoria that may require

approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* to the Commonwealth Environment Minister.

- 11.2 The parties agree to develop administrative arrangements which will streamline the referral process for proponents. Where possible the parties will develop administrative arrangements which will allow proponents to simultaneously satisfy both the requirements of the Commonwealth and the State of Victoria. In this respect, the parties note that a State or agency of a State that is aware of a proposed action may refer the action to the Commonwealth Environment Minister, which may, in appropriate cases, provide a mechanism for streamlining the referral process.
- 11.3 Subject to sections 69, 70 and 71 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* the parties recognise that the final responsibility for referring actions which may require approval from the Commonwealth Environment Minister under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* lies with the person proposing to take the action. In making the undertakings set out in this clause, the parties do not accept any responsibility for the actions of proponents who may or may not choose to refer actions.
- 12 Commonwealth to inform Victoria of decision about whether a proposed action is a controlled action
- 12.1 This clause applies to an action or proposed action that is:
- (a) referred to the Commonwealth Environment Minister under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (b) proposed to be taken in Victoria.
- 12.2 The Commonwealth undertakes that the Commonwealth Environment Minister will give written notice of his or her decision whether the action is a controlled action to the Victorian Minister within ten business days of making the decision.
- 13 Confirmation by Victoria that an accredited process will apply
- 13.1 This clause applies where:
- (a) the State of Victoria receives a written notice from the Commonwealth Environment Minister that an action proposed to take place in Victoria is a controlled action, and
 - (b) the action will not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if assessed in the manner specified in Schedule 1 to this agreement.
- 13.2 The State of Victoria agrees that as soon as practicable after receiving the written notice referred to in clause 12.2, the Victorian Minister will indicate in a written notice given to the Commonwealth Environment Minister whether the action will be assessed in the manner specified in Schedule 1 to this agreement.

14 Assessment documentation

- 14.1 The State of Victoria undertakes that when an action is assessed in the manner specified in Schedule 1 to this agreement it will:
- (a) provide a copy of the Assessment Report to the Commonwealth Environment Minister as soon as possible; and
 - (b) provide copies of any other assessment documentation pertaining to the relevant impacts to the Commonwealth Environment Minister as soon as reasonably practicable (and in any event not more than ten business days) after the date on which the Assessment Report is provided to the Commonwealth Environment Minister.
- 14.2 The State of Victoria may, when it provides the Assessment Report, or the other assessment documentation referred to in clause 14.1, also provide additional information on social and economic matters if, in the opinion of Victoria such information will be relevant to the Commonwealth Environment Minister's decisions whether to approve the action.

15 Additional information

If, in deciding whether to approve the taking of an action assessed under this agreement, the Commonwealth Environment Minister uses any information described in paragraph 136(2)(e) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the Commonwealth Environment Minister undertakes to provide a copy of this information to the Victorian Minister. The intention of this clause is to give the State of Victoria an opportunity to comment on the accuracy of this information before the Commonwealth Environment Minister decides whether to approve the taking of the action, subject to the requirements of section 130 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* relating to the time period within which the Commonwealth Environment Minister must decide whether to approve the action.

16 Monitoring compliance with conditions

- 16.1 This clause applies where an action:
- (a) is taken in Victoria, and
 - (b) requires the approval of the Commonwealth Environment Minister under Part 9 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (c) requires approval (however described) under Victorian legislation.
- 16.2 The parties agree to cooperate in monitoring compliance with conditions attached to approvals, with the aim of reducing duplication. To this end the parties agree:
- (a) that each party will inform the other of any conditions attached to the approval(s) to take the action, and

- (b) that best endeavours will be used to put cooperative arrangements in place for monitoring compliance with conditions on any action which is approved by both parties. The aim of these arrangements is to ensure that reporting requirements for the proponent, and other monitoring efforts such as site inspections, are not duplicated.

17 Enforcing conditions on approvals

The parties agree to inform one another before commencing action to prosecute a person for breaching conditions of an approval for an action which has been approved by both parties, where the conditions relate to, or affect, a matter protected by Part 3 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

18 Conditions attached to an approval

The parties recognise the need to avoid attaching inconsistent conditions to approvals and will avoid, to the extent practicable, attaching different conditions to approvals in relation to the protection of matters of national environmental significance for an action under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and Victorian legislation referred to in Schedule 1 to this agreement. To this end, the parties:

- (a) Agree where practicable to consult on the conditions to be attached to approvals granted by either party;
- (b) note the provisions of section 134 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, which include a requirement for the Commonwealth Environment Minister to consider any relevant State conditions when deciding whether to attach a condition to an approval; and
- (c) agree to inform one another before varying the conditions attached to an approval for an action which has been approved by both parties, where the condition relates to, or affects, a matter protected by Part 3 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The parties also agree to advise one another of any such variation after it has been made.

19 Administrative procedures

The parties agree to jointly develop administrative procedures to ensure that the requirements of this agreement are administered efficiently in accordance with their separate legal requirements. The administrative procedures may include guidelines on the exchange of any information about assessments, including consultation on draft assessment documentation.

Maintaining the agreement

20 Monitoring compliance with the agreement

The parties recognise that, under the Commonwealth *Auditor-General Act 1997*, the Commonwealth Auditor-General may audit the operation of the Commonwealth public sector (as defined in section 18 of that Act) in relation to this agreement.

21 Reviewing the agreement

21.1 The parties note that section 65 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* requires the Commonwealth Environment Minister to cause a review of the operation of this agreement to be carried out at least once every five years while the agreement remains in effect, and give a copy of the report of each review to the Victorian Minister.

21.2 The parties agree that each review of this agreement will:

- (a) be carried out jointly by the parties;
- (b) evaluate the operation of the agreement against the objects of the agreement; and
- (c) seek the views of key stakeholders.

22 Minor amendments to the agreement

22.1 The parties note that section 56A of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* provides that where the Commonwealth Environment Minister is satisfied that an intended draft amendment to a bilateral agreement will not have a significant effect on the operation of the bilateral agreement, the Minister may make a written determination to that effect.

22.2 Prior to making such a determination the Commonwealth Environment Minister must reach agreement with the Victorian Minister on the terms of the intended draft amendment.

23 Cancelling or suspending the agreement

23.1 The parties note that sections 57 – 64 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* provide that the Commonwealth Environment Minister may cancel or suspend all or part of this agreement (either generally or in relation to actions in specified classes) under certain circumstances.

23.2 The Commonwealth Environment Minister must cancel or suspend all or part of this agreement at the request of the Victorian Minister, but only if the request is made in accordance with this agreement.

23.3 The parties agree that a request to cancel or suspend all or part of this agreement is made in accordance with this agreement if:

- (a) the request is made on the grounds that the Victorian Minister is not satisfied that the Commonwealth has complied or will comply with the agreement; or

- (b) the request is made on the grounds that the Victorian Minister is not satisfied that the objects of the agreement are being achieved; and
- (c) before making the request, the Victorian Minister has informed the Commonwealth Environment Minister in writing of the reasons(s) for requesting the suspension or cancellation and allowed a period of at least twenty business days for the Commonwealth Environment Minister to respond.

Exchange of information

- 24 Subject to any legal constraints, each party agrees to promptly comply with any reasonable request from the other party to supply information relating to the management or administration of assessments covered by this agreement.
- 25 The parties agree that they may each use data within the control of the relevant departments of government of the other party for the purposes of meeting their respective responsibilities relating to the agreement or the assessment of environmental impacts under their respective Acts, and to make data available to the other. The parties agree that data will remain the property of the owner and its use will be subject to such licence conditions as may be agreed. The parties agree that, subject to clauses 29 and 31, data will not be used or communicated to any other person without the permission of the owner except as required by law.

Conflict resolution

- 26 In the event that any dispute arises under this agreement, the parties will settle it by direct negotiation using their best endeavours, acting in a spirit of cooperation. The parties agree that in the event of a dispute, discussions aimed at resolution will normally take place at officials level in the first instance. This clause does not purport to limit the rights and obligations of each party under relevant sections of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (including those sections dealing with cancelling and suspending bilateral agreements).
- 27 The parties will notify and consult each other on matters that come to their attention that may improve the operation of this agreement.

Relevant plans and agreements

- 28 The parties note that a number of agreements and plans may be relevant to assessments under this agreement. The parties undertake that, when actions are assessed under this agreement, relevant agreements and plans will be taken into account as necessary. The parties agree that where the assessment covers impacts on:
 - (a) World Heritage values of a World Heritage property, any management plan for the property is relevant;
 - (b) National Heritage values of a National Heritage place, any management plan for the place is relevant;

- (c) the ecological character of a Ramsar wetland, any management plan for the wetland is relevant;
- (d) a listed threatened species or ecological community, any recovery plan for the species or community, and any threat abatement plan for a process that threatens the species or community is relevant;
- (e) a listed migratory species, any wildlife conservation plan for the species is relevant.

Request for documents

- 29 Subject to Victorian and Commonwealth legislation, if a party receives any request, including under Freedom of Information legislation, for any documents originating from the other party or from a third party, which are not otherwise publicly available, the parties to this agreement will consult on the release of those documents.
- 30 The parties recognise the need for expeditious consultation on such requests so that statutory obligations can be met without delay.

Public access to assessment documentation

- 31 The State of Victoria agrees that the documentation relating to the assessment of each action which is assessed in the manner specified in Schedule 1 will be available to the public, except where corresponding information would not have been available to the public if the action had been assessed by the Commonwealth under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

Groups with particular communication needs

- 32 The State of Victoria will, in giving effect to the requirements in Schedule 1, make special arrangements, if appropriate, to ensure that affected groups with particular communication needs have an adequate opportunity to comment on actions assessed in the manner specified in Schedule 1. The parties note that indigenous people affected by a proposed action may have particular communication needs, and will ensure, where appropriate, that affected indigenous people have adequate opportunity to comment on actions assessed in the manner specified in Schedule 1.

Funding

- 33 The parties agree that, twelve months after the commencement of this agreement, and every twelve months thereafter until the expiry of the agreement, they will review the additional implementation costs that the State of Victoria may have incurred during the relevant twelve month period of the agreement. The Commonwealth agrees to reimburse the State of Victoria the additional implementation costs.
- 34 In clause 32, the additional implementation costs are the costs that the Commonwealth and the State of Victoria agree:

- (a) have been incurred by the State of Victoria in implementing this agreement; and
- (b) would not, in the absence of this agreement, have been incurred by Victoria in carrying out an adequate assessment of each action to which Schedule 1 applies.

Interpretation

- 35 A reference in this agreement to the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the Victorian *Environment Effects Act 1978*, the Victorian *Water Act 1989*, the Victorian *Planning and Environment Act 1987*, the Victorian *Environment Protection Act 1970*, the Victorian *Mineral Resources (Sustainable) Development Act 1990*, the Victorian *Extractive Industries Development Act 1995*, the Victorian *Petroleum Act 1998* is a reference to the relevant Acts as in force at the date of this agreement. If any of the Acts are subsequently amended in a manner that affects the operation of this agreement, the parties will seek to agree as soon as practicable on whether it is necessary to make another bilateral agreement varying or replacing this agreement.
- 36 A reference in this agreement to an Act includes a reference to any regulations and instruments under that Act.
- 37 A reference in this agreement to the impacts of an action (or the relevant impacts of an action), includes a reference to any impacts (or relevant impacts, as the case may be) of that action outside of the State of Victoria.
- 38 Unless the contrary intention appears, the terms used in this agreement have the same meaning as in the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- 39 With the exception of clause 10, **assessment** means assessment of the relevant impacts on matters of national environmental significance only.
- 40 **Assessment documentation** means any formal report, study, agreement, submission or correspondence prepared by or received as part of the formal assessment processes set out in Schedule 1. This includes draft reports or studies which would normally be publicly available under the assessment process.
- 41 **Assessment report** means the report on the relevant impacts of a controlled action prepared in accordance with Schedule 1.
- 42 **Commonwealth Environment Minister** means the Minister administering the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and includes a delegate of the Minister.
- 43 **Victorian Minister** means for the purposes of administration of this agreement, the Minister administering the Victorian *Environment Effects Act 1978*. For the purposes of actions assessed in accordance with this agreement, the Victorian Minister means, where

relevant, the Victorian Ministers administering the Victorian *Water Act 1989*, the Victorian *Planning and Environment Act 1987*, the Victorian *Environment Protection Act 1970*, the Victorian *Mineral Resources (Sustainable) Development Act 1990*, the Victorian *Extractive Industries Development Act 1995*, the Victorian *Petroleum Act 1998* and includes a delegate of the Minister.

Signed for and on behalf of the State
of Victoria by:

Signed for and on behalf of the
Commonwealth by:

The Hon Gavin Jennings MLC
Minister for Environment and
Climate Change

The Hon Peter Garrett AM MP
Minister for the Environment, Heritage
and the Arts

Date:

Date:

The Hon Justin Madden MLC
Minister for Planning

Date:

Schedule 1

Preamble

Subsection 47(1) provides that a bilateral agreement may declare that actions need not be assessed under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if the actions have been ‘*assessed in a specified manner*’.

Clause 9.1 of this bilateral agreement declares that an action does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if it is assessed in the manner specified in this Schedule.

Clause 9.2 of this bilateral agreement refers to actions that take place in more than one jurisdiction. In relation to actions taken in more than one jurisdiction (including Victoria), the parties agree to consult and use their best endeavours to reach agreement with other affected jurisdictions on an appropriate assessment process as agreed under the ANZECC Basis for National Agreement on Environmental Impact Assessment.

Interpretation

For Part B of Schedule 1, the Victorian Minister means the Minister administering the Victorian *Environment Effects Act 1978*, and includes a delegate of the Minister. EES means an Environment Effects Statement prepared under the Victorian *Environment Effects Act 1978*.

For Part C of Schedule 1, the Victorian Minister means the Minister administering the Victorian *Planning and Environment Act 1987*.

Part A – The Specified Manner of Assessment

- 1 For the purposes of clause 9.1 of this bilateral agreement, an action is assessed in the manner specified in this Schedule if:
 - (a) it has been assessed in accordance with the requirements set out in Part B, C, D, E, or F below (including if the assessment was partly carried out before this agreement commenced operation), and
 - (b) in exercising any discretion as to whether to assess the action following the processes set out in Part B, C, D, E, or F below, the relevant Victorian decision-maker has applied criteria equivalent to criteria set out in guidelines issued under section 87(6) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, to the extent that these are relevant, and
 - (c) the action has been assessed in accordance with the requirements set out in Part D, E or F only if the Commonwealth Environment Minister has:
 - (i) not requested, in any notice given under clause 12 of this agreement or otherwise, that the action not be assessed using one of the processes set out above in Part D, E, or F or

- (ii) given written concurrence to assessment using one of the processes set out above in Part D, E, or F prior to the action being assessed using one of those processes.
- 2 For the purposes of regulations made under section 50 of the *Environment Protection and Biodiversity Conservation Act 1999*, an assessment that has been carried out in the manner specified in this Schedule is:
- (a) if carried out in accordance with the requirements set out in Part B, an assessment approach which corresponds to assessment by public environment report or environmental impact statement under the *Environment Protection and Biodiversity Conservation Act 1999*;
 - (b) if carried out in accordance with the requirements set out in Part C, an assessment approach which corresponds to assessment by inquiry under the *Environment Protection and Biodiversity Conservation Act 1999*;
 - (c) if carried out in accordance with the requirements set out in Part D, E, or F below, an assessment approach which corresponds to assessment on preliminary documentation under the *Environment Protection and Biodiversity Conservation Act 1999*.

Part B – Assessment by Environment Effects Statement under the Victorian *Environment Effects Act 1978*

1 Law under which assessments are carried out

- 1.1 An Environment Effects Statement (EES) is prepared in relation to the action and is submitted to the Victorian Minister under section 4 and section 8 of the *Environment Effects Act 1978*.
- 1.2 An assessment in accordance with the requirements of Part B includes:
- (a) assessment of actions for a project where approval is required under the *Extractive Industries Development Act 1995*, where an Environment Effects Statement is required and that environment effects of the proposed actions are assessed in accordance with the requirements of Part B, and
 - (b) assessment of proposed actions for a project where approval of the actions is required under the *Mineral Resources (Sustainable) Development Act 1990*, where an Environment Effects Statement is required and the environmental effects of the proposed actions are assessed in accordance with the requirements of Part B, and
 - (c) assessment of a proposed petroleum production operation where approval is required under the *Petroleum Act 1998*, where an Environment Effects Statement is required and the environmental effects of the proposed operation are assessed in accordance with the requirements of Part B.

2 Guidelines for Assessment

The Victorian Minister issues scoping requirements for the preparation of the EES which will ensure that the assessment:

- (a) assesses all relevant impacts of the action;
- (b) provides enough information about the action and its relevant impacts to allow the Commonwealth Environment Minister to make an informed decision whether to approve the action; and
- (c) addresses the matters (if any) prescribed under subsection 97(2)(b) and 102(2) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and Schedule 4 of the *Environment Protection and Biodiversity Conservation Regulations 2000* for assessment by environmental impact statement under that Act.

3 Public Comment on Guidelines

If appropriate the Victorian Minister will seek public comment on the guidelines before they are finalised.

4 Preparing EES

An environment effects statement is prepared by the proponent in accordance with the guidelines mentioned under clause 2.

5 Public Comment on the EES

The public is invited to comment on the environment effects statement, and at least 28 days are allowed for this public comment.

6 Final Assessment Documentation

- 6.1 If an inquiry is not held into the environmental effects of the action under section 9 of the *Environment Effects Act 1978*, the proponent prepares and submits to the Victorian Minister a supplement to the EES, taking into account the public submissions (if any) relating to the relevant impacts of the action which are received during the period referred to in clause 5.
- 6.2 If an inquiry is held into the environmental effects of the action under section 9 of the *Environment Effects Act 1978*, the Inquiry Panel considers the EES, any comments provided by the public, and information provided by the proponent which addresses, to the greatest extent practicable, the comments provided by the public.

7 Assessment Reports

The Victorian Minister prepares an assessment report which contains enough information about the relevant impacts of the action to let the Commonwealth Environment Minister

make an informed decision whether or not to approve the taking of the action under the *Environment Protection and Biodiversity Conservation Act 1999*, including:

- (a) a description of the action and the places affected by the action and any matters of national environmental significance that are affected or are likely to be affected by the action;
- (b) a summary of the relevant impacts of the action;
- (c) a description of feasible mitigation measures, changes to the action or procedures to prevent or minimise environmental impacts on relevant matters of national environmental significance proposed by the proponent or suggested in public submissions;
- (d) to the extent practicable, a description of any feasible alternatives to the action that have been identified as a result of the assessment process and their likely impact on matters of national environmental significance;
- (e) a statement of conditions for approval of the action that may be imposed to address identified impacts on matters of national environmental significance; and
- (f) a statement of State approval requirements and conditions that apply or are proposed to apply to the action when the report is prepared, including a description of the monitoring, enforcement and review procedures that apply or are proposed to apply, to the action.

8 Inviting public comment

- 8.1 When the public is invited to comment in accordance with clauses 3 and 5, the invitation is published in at least one newspaper circulating in each State and Territory with daily circulation.
- 8.2 The invitation includes a brief description of the action, the location of the action, the matters protected by a provision of Part 3 of the Act, how the relevant documents may be obtained, and the deadline for public comments.

Part C – Assessment by an Advisory Committee or a joint Advisory Committee/Panel under the *Planning and Environment Act 1987*

1 Law under which assessments are carried out

Assessments are carried out under the *Planning and Environment Act 1987*.

2 Appointing the Advisory Committee or joint Advisory Committee/Panel

- 2.1 Persons are appointed by the Victorian Minister as an advisory committee under section 151 of the *Planning and Environment Act 1987*, or as both an advisory committee under section 151 of the *Planning and Environment Act 1987* and a panel under section 153 of the *Planning and Environment Act 1987*. This is the Advisory Committee or joint Advisory Committee/Panel.

- 2.2 The people appointed to conduct the inquiry are independent and have sufficient power to investigate the action adequately.
- 2.3 The Victorian Minister specifies in writing the terms of reference for the Advisory Committee or the joint Advisory Committee/Panel, which ensure that it:
- (a) assesses all relevant impacts of the action; and
 - (b) prepares a report and/or other documentation which contains enough information about the action and its relevant impacts to allow the Commonwealth Environment Minister to make an informed decision whether or not to approve the action.
- 2.4 The Advisory Committee or the joint Advisory Committee/Panel gives public notice of its terms of reference, including by advertising in newspapers circulating generally in each State and Territory.

3 Hearings

Hearings are held in public, unless the Advisory Committee or the joint Advisory Committee/Panel direct otherwise, in the public interest, or for reasons of commercial confidentiality.

4 Advisory Committee or Joint Advisory Committee/Panel Report

The Advisory Committee or the joint Advisory Committee/Panel produces a report which includes:

- (a) a description of the action and the places affected by the action and any matters of national environmental significance that are affected or are likely to be affected by the action;
- (b) a summary of the relevant impacts of the action;
- (c) a description of feasible mitigation measures, changes to the action or procedures to prevent or minimise environmental impacts on relevant matters of national environmental significance proposed by the proponent or suggested in public submissions;
- (d) to the extent practicable, a description of any feasible alternatives to the action that have been identified as a result of the assessment process and their likely impact on matters of national environmental significance;
- (e) a statement of conditions for approval of the action that may be imposed to address identified impacts on matters of national environmental significance; and
- (f) a statement of State approval requirements and conditions that apply or are proposed to apply to the action when the report is prepared, including a description of the monitoring, enforcement and review procedures that apply or are proposed to apply, to the action.

Part D – Assessment by permit application under the *Planning and Environment Act 1987*

1 Law under which assessments are carried out

- 1.1 Assessments are carried out under the *Planning and Environment Act 1987*.
- 1.2 An assessment in accordance with the requirements of Part D includes:
 - (a) assessment of actions to be taken in accordance with a draft work plan lodged under section 17 of the *Extractive Industries Development Act 1995* where a Planning Permit is required and the information submitted with the application is a sufficient basis for assessing the relevant impacts of the proposed action in accordance with the requirements of Part D, and
 - (b) assessment of proposed actions taken in accordance with a draft work plan lodged under section 40 of the *Mineral Resources (Sustainable) Development Act 1990* where a Planning Permit is required and the information submitted with the application is a sufficient basis for assessing the relevant impacts of the proposed action in accordance with the requirements of Part D, and
 - (c) assessment of proposed actions taken in accordance with the *Petroleum Act 1998* where a planning permit is required, and the information submitted with the application is a sufficient basis for assessing the relevant impacts of the proposed action in accordance with the requirements of Part D.

2 Planning Permit Application

A planning permit application is submitted in accordance with section 47 of the *Planning and Environment Act 1987* and the information that must be submitted with the application is a sufficient basis for assessing the relevant impacts of the proposed action. In particular, the application addresses all relevant impacts of the action.

3 Setting the public comment period

The public is invited to comment on the permit application, and at least fourteen days are allowed for comment.

4 Responding to public comment

A supplementary document to the permit application is prepared by the proponent. The supplementary document either summarises or responds to public comments on the relevant impacts of the action (including possible mitigation measures and alternative ways of taking the action to reduce relevant impacts).

5 Report on Planning Permit Application

The responsible authority prepares a report on the planning permit application which contains enough information about the relevant impacts of the action to let the Commonwealth Environment Minister make an informed decision whether or not to

approve the taking of the action under the *Environment Protection and Biodiversity Conservation Act 1999*, including:

- (a) a description of the action and the places affected by the action and any matters of national environmental significance that are affected or are likely to be affected by the action;
- (b) a summary of the relevant impacts of the action;
- (c) a description of feasible mitigation measures, changes to the action or procedures to prevent or minimise environmental impacts on relevant matters of national environmental significance proposed by the proponent or suggested in public submissions;
- (d) to the extent practicable, a description of any feasible alternatives to the action that have been identified as a result of the assessment process and their likely impact on matters of national environmental significance;
- (e) a statement of conditions for approval of the action that may be imposed to address identified impacts on matters of national environmental significance; and
- (f) a statement of State approval requirements and conditions that apply or are proposed to apply to the action when the report is prepared, including a description of the monitoring, enforcement and review procedures that apply or are proposed to apply, to the action.

6 Inviting public comment

- 6.1 When the public is invited to comment in accordance with clause 3, the invitation is published on a website approved by the Victorian Department of Planning and Community Development and linked to the Commonwealth Department of the Environment and Heritage website.
- 6.2 The invitation includes a brief description of the action, the location of the action, the matters protected by a provision of Part 3 of the Act, how the relevant documents may be obtained, and the deadline for public comments.

7 Assessments managed by local government

When the report referred to in clause 5 is prepared by a council, the assessment is to be undertaken in accordance with Victorian Department of Planning and Community Development guidelines.

Part E – Assessment under the *Environment Protection Act 1970*

1 Law under which assessments are carried out

Assessments are carried out under the *Environment Protection Act 1970*.

2 Works approval application

A works approval application is submitted in accordance with section 19B of the *Environment Protection Act 1970* and the information that must be submitted with the application is a sufficient basis for assessing the relevant impacts of the proposed action. In particular, the application addresses all relevant impacts of the action.

3 Setting the public comment period

The public is invited to comment on the works approval application, and at least twenty one days are allowed for comment.

4 Responding to public comment

A supplementary document to the works approval application is prepared. The supplementary document either summarises or responds to public comments on the relevant impacts of the action (including possible mitigation measures and alternative ways of taking the action to reduce relevant impacts).

5 Report on Works Approval Application

The Environment Protection Authority prepares a report on the works approval application which contains enough information about the relevant impacts of the action to let the Commonwealth Environment Minister make an informed decision whether or not to approve the taking of the action under the *Environment Protection and Biodiversity Conservation Act 1999*, including:

- (a) a description of the action and the places affected by the action and any matters of national environmental significance that are affected or are likely to be affected by the action;
- (b) a summary of the relevant impacts of the action;
- (c) a description of feasible mitigation measures, changes to the action or procedures to prevent or minimise environmental impacts on relevant matters of national environmental significance proposed by the proponent or suggested in public submissions;
- (d) to the extent practicable, a description of any feasible alternatives to the action that have been identified as a result of the assessment process and their likely impact on matters of national environmental significance;
- (e) a statement of conditions for approval of the action that may be imposed to address identified impacts on matters of national environmental significance; and
- (f) a statement of State approval requirements and conditions that apply or are proposed to apply to the action when the report is prepared, including a description of the monitoring, enforcement and review procedures that apply or are proposed to apply, to the action.

6 Inviting public comment

- 6.1 When the public is invited to comment in accordance with clause 3, the invitation is published on a website approved by the Victorian Department of Sustainability and Environment and linked to the Commonwealth Department of the Environment and Heritage website.
- 6.2 The invitation includes a brief description of the action, the location of the action, the matters protected by a provision of Part 3 of the Act, how the relevant documents may be obtained, and the deadline for public comments.

Part F – Assessment by a Panel under the *Water Act 1989*

1 Law under which assessments are carried out

Assessments are carried out under the *Water Act 1989*.

2 Application for a bulk water entitlement or amendment or licence to take and use water

An application is submitted either under subsection 36(1) or section 44 of the *Water Act 1989* for a bulk entitlement or amendment of a bulk entitlement or under section 51 of the *Water Act 1989* for a licence to take and use water (“the relevant application”). The Minister uses his or her powers under that Act to ensure that the relevant application contains information equivalent to the information that would be required under relevant provisions of Schedule 3 of the *Environment Protection and Biodiversity Conservation Regulations 2000*.

3 Setting the public comment period

Public comments on the relevant application are invited in accordance with either section 39 or section 50 of the *Water Act 1989*, and at least 14 days are allowed for comment.

4 Responding to public comment

A supplementary document to the relevant application is prepared by the proponent. The supplementary document either summarises or responds to public comments on the relevant impacts of the action (including possible mitigation measures and alternative ways of taking the action to reduce relevant impacts).

5 Panel Report

A Panel appointed under section 39 or section 50 of the *Water Act 1989* prepares a report on the application which contains enough information about the relevant impacts of the action to let the Commonwealth Environment Minister make an informed decision whether or not to approve the taking of the action under the *Environment Protection and Biodiversity Conservation Act 1999*, including:

- (a) a description of the action and the places affected by the action and any matters of national environmental significance that are affected or are likely to be affected by the action;
- (b) a summary of the relevant impacts of the action;
- (c) a description of feasible mitigation measures, changes to the action or procedures to prevent or minimise environmental impacts on relevant matters of national environmental significance proposed by the proponent or suggested in public submissions;
- (d) to the extent practicable, a description of any feasible alternatives to the action that have been identified as a result of the assessment process and their likely impact on matters of national environmental significance;
- (e) a statement of conditions for approval of the action that may be imposed to address identified impacts on matters of national environmental significance; and
- (f) a statement of State approval requirements and conditions that apply or are proposed to apply to the action when the report is prepared, including a description of the monitoring, enforcement and review procedures that apply or are proposed to apply, to the action.

6 Inviting public comment

- 6.1 When the public is invited to comment in accordance with clause 3, a copy of the notice is published on a website approved by the Victorian Department of Sustainability and Environment and linked to the Commonwealth Department of the Environment, Water, Heritage and the Arts website.
- 6.2 The invitation includes a brief description of the action, the location of the action, the matters protected by a provision of Part 3 of the Act, how the relevant documents may be obtained, and the deadline for public comments.