
9 Models for a national regulator

Key points

- Institutional and associated regulatory reform could address weaknesses of the current regime in relation to duplication and complexity of requirements — particularly for cross-jurisdictional projects. It could also address delays arising from the administration of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth). Regulatory duplication and inconsistencies can lead to inefficiencies. However, from the perspective of ‘competitive federalism’, there may be some benefits from intergovernmental competition in regulatory regimes.
- Desirable objectives for an improved institutional model include:
 - separating policy formulation and advice from regulatory administration when practicable
 - minimising multiple approvals or duplicate assessment requirements
 - minimising administration by multiple agencies, or ensuring clear administrative arrangements where multiple agencies are involved
 - minimising inconsistencies in legislative requirements and decision making
 - ensuring regulators have clear regulatory objectives and do not face significant conflicts of interest
 - ensuring regulators are adequately resourced with appropriately skilled people
 - consolidating specialist expertise, efficiently using scarce resources and enhancing the ability to retain specialist expertise.
- Two key issues associated with an expanded or new regulatory authority are the scope of its activities and cost recovery mechanisms to fund those activities.
- Three options for an expanded national petroleum regulator include:
 - a *national petroleum regulator* with responsibility for both onshore and offshore petroleum regulation, although implementing this option would appear to face significant challenges
 - a *national offshore petroleum regulator* with responsibility for resource management and environmental functions in all offshore areas or, alternatively, limited to Commonwealth waters
 - a *national pipeline regulator* with responsibility for approving cross-jurisdictional pipelines or coordinating such approvals.
- The current full cost recovery model (with appropriate governance) as used for the National Offshore Petroleum Safety Authority appears to be the most appropriate for any new regulatory agency.

Under the terms of reference, the Commission was asked to consider options for a national regulatory authority — such as the National Offshore Petroleum Safety Authority (NOPSA) — to manage all regulatory approvals associated with upstream petroleum activities as a means of addressing issues of regulatory duplication and inconsistencies. Issues with the current regulatory framework are discussed in section 9.1.

Two key issues associated with an expanded or new regulatory authority are the appropriate scope of its activities and funding mechanisms for these activities. Possible models for assigning regulatory functions are outlined and assessed in sections 9.2 and 9.3, respectively.

Any new or expanded authority would need to be funded by government or the upstream petroleum sector, or a combination of both. Currently, NOPSA is fully funded by industry on a cost-recovery basis. However, the Australian Petroleum Production and Exploration Association (APPEA) raised concerns about the impact of cost recovery models given the sector's significant contribution to the community through taxes and royalties. If the regulator is to be funded by the sector, it will be important that there are appropriate 'checks and balances' to ensure the regulator is operating efficiently. Processes to determine funding levels must also be transparent. Cost recovery arrangements are discussed in section 9.4.

9.1 Issues with the current framework

As detailed in previous chapters in this study, the main burdens considered to be unnecessary arising from the current regulatory regime include the following:

- A lack of clear and certain administrative timelines contained in laws or regulations (chapters 5 and 6). Where timelines do exist for regulators there is a lack of compliance or enforcement mechanisms, and in many cases poor transparency and reporting of regulators' performance against legislative timelines.
- Duplication of administrative requirements, particularly where projects are cross-jurisdictional or where there is overlap of regulatory responsibilities. For example, environmental approvals are potentially required from both the Designated Authority (DA) under the Commonwealth's *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA) and the Australian Government Environment Minister under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (chapter 6), and often under other State and Territory Acts.

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- The current approval process can be complex and generally involves multiple regulators. For example, production in Commonwealth waters will generally require separate approvals from the Joint Authority (JA), the DA and NOPSA (chapters 5 and 7).
 - Regulatory agencies may be under-resourced and have difficulty retaining necessary expertise. Multiple agencies undertaking similar functions can result in competition for scarce resources and technical expertise (chapter 6).
 - A lack of consistency in regulatory requirements and decision making over time and across jurisdictions or agencies. Onshore legislative frameworks differ and there are also inconsistencies in decision making, even where legislative requirements are the same (chapters 5, 6 and 7). Some decisions by the regulator (particularly in the case of resource management) are inherently judgemental. Examples include approval of field development plans and meeting the government's desire to maximise (within limits of what is judged commercial) overall recovery of the resource.
 - There are examples where businesses have lost significant time and resources due to changes in government policy and a lack of timely information made available on environmental and other risks (chapter 8).

While regulatory provisions are harmonised for offshore areas under the OPGGSA and (in most) State and Territory petroleum Acts and regulations, projects that are cross-jurisdictional appear to experience significant regulatory impediments. According to Nexus:

... where petroleum activities cross jurisdictions from offshore to State/Territory waters and into onshore facilities there is a significant increase in regulatory requirements and processes. (sub. 3, p. 4)

Therefore, there would appear to be scope for institutional and legislative reform to address duplication and complexity of requirements — particularly for cross-jurisdictional projects — and to address delays arising from the administration of the OPGGSA.

Constitutional issues

Much of the legislative and regulatory overlap that currently exists reflects historical factors and the development of institutional arrangements. Arguably given the preponderance of oil and gas resources found offshore in Australia, the most significant 'institutional arrangement' is the division of powers between the Australian Government and the State Governments as defined by the Australian Constitution.

Australia's federal model has a number of distinctive features. In particular, it has a relatively high degree of shared regulatory and legislative functions between governments. This has led to a diverse set of intergovernmental arrangements to handle the associated coordination challenges (PC 2006b). The Australian Government, through its external affairs and corporations powers and its ability to grant financial assistance to States and Territories on specific terms and conditions, can impose regulation in areas that might normally be expected to fall under the exclusive power of the States and Territories.

9.2 Models for assigning regulatory functions

There are a number of potential models for assigning regulatory responsibilities. These models can be used to assess whether the current overlaps and inconsistencies in regulation are justified in terms of effectiveness and efficiency.

National regulation or competitive federalism?

In the context of a federal system of government, the Subsidiarity Principle can sometimes provide guidance as to the most appropriate level of government for a particular function (box 9.1). In principle, subsidiarity would suggest that a central (or higher) level of government would perform only those essential tasks that (for reasons of scale, capacity or need for exclusive power) cannot be effectively undertaken at lower levels of administrative decision making (Head 2005).

One of the central elements of the Subsidiarity Principle is the notion of intergovernmental competition, also referred to as 'competitive federalism'. Inter-jurisdictional duplication and inconsistencies in regulation is generally viewed as an inevitable outcome of competitive federalism.

Nonetheless, a national or more consistent approach to regulation also offers advantages — often referred to as 'cooperative federalism'. Efficiency and effectiveness of regulation can be enhanced by assigning responsibility to the national government, where there are:

- limited differences in local conditions and risks. That is, where there are minimal or no local factors that might require a tailored approach to meet specific local circumstances or preferences
- significant inter-jurisdictional externalities or 'spillovers'. Regulation of a good or service in one jurisdiction can impose costs on other jurisdictions. Preventing these may require a cross-jurisdictional approach

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- economies of scale and scope. There may be significant efficiency gains through consolidating administrative and technical functions
 - scope for national markets. Diversity in rules or regulations is likely to lead to high transaction costs with insufficient offsetting benefits
 - compliance leakages. Mobility of capital and people across jurisdictions can undermine the regulatory effectiveness of the sub-national level of government and may undermine efforts to secure effective policy outcomes in areas of agreed national significance.

Box 9.1 The Subsidiarity Principle

Under the Subsidiarity Principle, responsibility for a particular function should, where practicable, reside with the *lowest* level of government. This rests on four main considerations:

- Sub-national governments are likely to have greater knowledge of the needs of their citizens and businesses.
- Decentralisation of responsibility and decision making makes it easier to constrain the ability of elected representatives to pursue their own agendas to the disadvantage of the citizens they represent.
- Intranational mobility of individuals and businesses exposes sub-national governments to a reasonable degree of intergovernmental competition.
- Initial emphasis on the lowest level of government encourages careful consideration or testing of the case for allocating a function to a higher or national government and thereby guards against excessive centralisation.

Source: PC (2006b).

Any move in upstream petroleum regulation towards a national regulatory framework or authority would need to carefully weigh these potential advantages against the disadvantages of diminishing competition and diversity. The current regime takes a national approach to some areas of regulation where there are less likely to be differences in local preferences and risks (for example, NOPSAs have responsibility for occupational health and safety (OHS) regulation).

Where there are multiple regulatory regimes, some project proponents might be able to avoid undertaking activities in jurisdictions with inefficient regulatory arrangements. This can provide an incentive for governments to improve their regulatory performance. However, the location of a large resource in one jurisdiction can mean that proponents may still decide to proceed with a project despite a relatively unfavourable regulatory regime. This means that the competitive

pressures in a jurisdiction to improve its performance are attenuated by the degree to which they are endowed with oil and gas resources.

Governance arrangements

Current regulatory reforms in many OECD countries emphasise the benefits from separating responsibilities for policy formulation from regulatory compliance, according to the principle of ‘single-purpose organisations’ (OECD 2002). Under this model, an independent agency is given autonomy to administer a regulatory regime within the limits of its legislative authority. This can limit opportunities for ‘bureaucratic drift’ away from the legislative mandate, improving credibility, stability and consistency in regulatory decisions.

Further, the model of regulatory governance advocated by the UK parliament (Select Committee on the Constitution 2004), for example, is founded on the following principles:

- independent regulators acting at ‘arm’s-length’ from Ministers
- independent corporate boards directing statutory regulatory agencies
- ministers accepting overall responsibility and accountability for regulatory policy and associated regulatory framework, including the setting of environmental and social standards
- a whole-of-government perspective being used to coordinate roles played by different parties of a regulatory regime.

In Australia, regulators include both dedicated regulatory agencies and departments of state — where regulation is one of many tasks performed within a single department. As is the experience internationally, the credibility and effectiveness of regulation can potentially be improved through establishing a structural separation between policy development and regulatory administration. As the Commission has previously argued in the context of price regulation:

The credibility and effectiveness of prices oversight can be enhanced if the entity that advises Government about whether regulation is needed is separate from the entity that implements the regulation. This will help avoid a conflict of interest that might exist if the regulator undertakes both functions — namely that it may tend to favour regulatory functions that expand its role. (PC 2001b, p. 107)

Where a department currently undertakes both policy and regulatory functions, the establishment of a separate regulatory agency, specifically a statutory agency, is one way of achieving greater separation between policy development — which would continue to be performed by the department and its Minister — and regulatory administration. However, the establishment of a statutory agency can also involve

transition and establishment costs, and higher ongoing operating costs (PC 2004c). The efficiency of a new statutory agency would be improved where:

- it has a broad range of regulatory responsibilities
- when established, resources are transferred from existing agencies and departments undertaking the same regulatory functions
- corporate and other support functions can be shared with other existing regulatory agencies undertaking similar functions.

Nonetheless, while the Commission supports the principle of separating policy advice and regulation, it also notes that, in some circumstances, this may not be practicable or desirable, for example in small jurisdictions. Primary Industries and Resources South Australia raised concerns with separating policy advice and regulation (see further discussion in section 10.1).

The adopted governance structure for Commonwealth statutory agencies was strongly influenced by the Uhrig Review, which took the view that effective governance arrangements should not lead to diminution of ministerial power to supervise these agencies (Uhrig 2003). Where separate regulators are established, the role of Ministers can be retained through their policy formulation role and, in some cases, through retaining specific statutory approval powers.

The governance arrangements for NOPSA (box 9.2) provide an example of a statutory agency undertaking regulatory administration and compliance that operates at arm's length from the policy makers. NOPSA has independence on operational decisions while policy makers, in the form of the Commonwealth and State and Territory Ministers, retain influence over policy through an ability to amend the relevant legislation and an ability to give the authority written advice on policy principles. In addition, there are other accountability and oversight mechanisms. These include the appointment of the Chief Executive Officer and Board members by the Commonwealth Minister (on advice of the relevant ministerial council), and State and Territory Ministers having an ability to formally request information.

As well as noting the governance arrangements for NOPSA, the Commission also notes the arrangements of other independent regulators such as the Australian Competition and Consumer Commission, the Australian Energy Regulator, the Independent Pricing and Regulatory Tribunal of New South Wales, and the Gene Technology Regulator, as well as other Commonwealth and State-based regulators. Many of these are established with a Commission or Tribunal (or other similar body) as the decision making body, with support being provided by a secretariat.

Box 9.2 Governance arrangements for the National Offshore Petroleum Safety Authority

Governance arrangements for the National Offshore Petroleum Safety Authority (NOPSA) are outlined in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth) (OPGGSA). The broad governance arrangements are as follows:

- The Commonwealth Minister with responsibility for NOPSA may give the authority written advice about policy principles. In coastal waters, this can only be done with the agreement of the responsible State and Territory Ministers. In Commonwealth waters, the Commonwealth Minister is required to consult with State and Territory Ministers.
- NOPSA must comply with directions from the Commonwealth Minister relating to the performance of NOPSA's functions or the exercise of its powers generally (but the Minister cannot direct NOPSA in relation to the operation of a particular project).
- State and Territory Governments can pass laws to empower NOPSA with regard to coastal and internal waters. In the case of internal waters, NOPSA is not obligated to exercise these powers. These powers can only be exercised if there is an agreement over fees payable.
- The responsible Commonwealth Minister appoints the NOPSA Chief Executive Officer, but only on the recommendation of the Ministerial Council on Mineral and Petroleum Resources.
- The responsible Commonwealth Minister has the power to appoint and terminate board members in accordance with the OPGGSA. Functions of the board include to give advice and make recommendations:
 - to the CEO about operational policies and strategies to be followed
 - to the Commonwealth, State and Territory Petroleum Ministers, and the Ministerial Council on Mineral and Petroleum Resources, on policy and strategic matters relating to the occupational health and safety of persons engaged in offshore petroleum activities, and NOPSA's performance of its functions.
- The responsible Commonwealth, State or Territory Ministers can request reports about NOPSA's performance, or information about the exercise of its powers.
- The responsible Commonwealth Minister can give written advice about the performance of NOPSA's operations, or about its powers, but this must not relate to regulated operations at a particular facility. Responsible State and Territory Ministers may also request the Commonwealth Minister to provide such advice to NOPSA in regard to their own coastal waters. The Commonwealth Minister must use his or her best endeavours to make a decision on such requests within 30 days after receiving them. If the Commonwealth Minister rejects a request, written reasons for the rejection must be given to the State or Territory Minister concerned.

Source: Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth).

Consistent with this model, the Uhrig Review stated:

Where statutory authorities undertake a narrow set of functions, delegation to an executive group, coupled with an appropriate framework of governance (not a board) will be the most practical and effective arrangement to achieve alignment between operations and the priorities of government. (Uhrig 2003, p. 8)

The Commission also notes the governance arrangements for the Civil Aviation Safety Authority (CASA), and the Australian Government's recent announcement to establish a small expert board for the Authority (Albanese 2009). As well as being a regulator, CASA also has a policy function in setting aviation safety standards and a research function. This mix of regulatory, policy and research functions is far broader than those planned for a national offshore petroleum regulator. Therefore the governance arrangements associated with independent regulators such as those noted above are of greater relevance for the establishment of a national offshore petroleum regulator.

The Commission also notes that the recent review of NOPSA's operational activities (RET 2008i) did make some observations about the role of NOPSA's Board, the clarity of its role, and its relationship with the independent regulator:

After NOPSA established itself and became operational the role of the Board became unclear to stakeholders. Some thought it was a governing board, some looked at it as an access door to Ministers, and some did not see the need for a Board.

The Board itself became more operational on a principal level engaging with stakeholders and maybe overlapped the responsibilities of the CEO of the independent NOPSA. (RET 2008i, p. 32)

Models for regulatory reform

The following models represent three distinct approaches to minimising regulatory duplication and inconsistency, each with a varying degree of shared regulatory responsibility and policy consistency:

- The *unified regulatory model* — a single agency or joint regulatory authority administering a common regulatory framework.
- *Regulatory harmonisation* — multiple regulators with harmonised legislation and regulation.
- *Cooperative regulation* — multiple regulators with clear regulatory boundaries and streamlined administrative arrangements.

A unified regulatory model — for example, a national regulator — could be established through combining inter-jurisdictional regulatory responsibilities into a single agency. This would require State and Territory regulatory powers to be

referred to the Australian Government, as has occurred, for example, in the regulation of corporations.

Regulatory harmonisation can be facilitated by a consistent set of legislative objectives, with separate regulators in each jurisdiction retaining operational control of the day-to-day administration — harmonisation can be achieved through template or model legislation (Leebron 1996). Such an approach has been applied recently in the case of the OPGGSA (and its predecessor the OPA).

Cooperative regulation is a regulatory framework in which different regulatory arrangements apply within or across jurisdictions, and unnecessary regulatory duplication and inefficiencies are mitigated by administrative and legal instruments.

These instruments vary according to whether the regulatory duplication and inconsistencies occur within or across jurisdictions:

- Intra-jurisdictional cooperation — pursued through whole-of-government processes, state agreements, memorandums of understanding (MoUs) (box 9.3), interagency committees, administrative arrangement agreements, information exchanges, and lead agencies and one-stop-shop approaches.
- Inter-jurisdictional cooperation — pursued through intergovernmental agreements, MoUs, statements of common principles, mutual recognition arrangements, and State and Territory flexibility within a national system by adopting ‘core’ and ‘model’ legislation.

Box 9.3 Memorandums of understanding

A memorandum of understanding (MoU) is a document that describes a bilateral or multilateral agreement between parties — often government departments or agencies. An MoU is not usually a legally enforceable agreement, but for it to be effective each party should have the ability under appropriate legislation to agree to the terms of the MoU. Further, an MoU should define the role of each party unambiguously.

For example, there is a MoU in place between the Environment Protection Authority and Primary Industries and Resources South Australia:

- The intent of the MoU is to ‘achieve consistent and efficient environmental regulation of upstream petroleum and mineral resources ... especially when the obligations of the parties under the Acts overlap’ (PIRSA 2003b, p. 3).
- An administrative arrangement, prepared under the auspices of the MoU, sets out procedures and responsibilities for environmental approval of petroleum activities. In particular, it outlines under what conditions proposals are referred between agencies.

Sources: PIRSA (2003a; 2003b).

Australian and international regulatory approaches

This section discusses advantages and disadvantages of current institutional approaches used in Australia and internationally, to assess whether they can provide an appropriate model for enhancing the regulation of the upstream petroleum sector. Specifically, these approaches may provide practical examples or relevant learning of how to adapt or extend current regulatory arrangements in Australia to reduce duplication and improve efficiency.

Australian upstream petroleum occupational health and safety

An example of a ‘unified regulatory model’ can be found in NOPSA — the national regulator of petroleum sector OHS in most offshore waters (chapter 7). The rationale for a single-regulator model in this situation is outlined in box 9.4.

Box 9.4 Assessing the National Offshore Petroleum Safety Authority model

There are several arguments as to why a unified regulatory model is an appropriate regulatory approach for offshore health and safety:

- In health and safety matters, there is a significant degree of consistency and commonality in the purpose and objectives of regulation both at the state and national government levels. Regulation of occupational health and safety (OHS) can be relatively easily separated from other petroleum related regulatory activities, making it easier to achieve an agreement on common objectives. There is unlikely to be significant divergence in local and national preferences towards the level of protection of health and safety and the balance between competing interests.
- Significant economies of scale can be achieved by combining the specialist human resources and technical expertise required to regulate upstream petroleum OHS. This is true for both regulators and businesses required to comply with safety regulations. Duplication and inconsistency in compliance with OHS regulation in offshore waters is now lower than under the previous multi-regulator regime.
- Administrative clarity and focus of a specialist regulator of OHS may outweigh the additional administrative efficiency in combining health and safety regulation with other petroleum-related regulations (such as environmental and resource management).
- Variation in local conditions and risk factors affecting OHS in an offshore environment are minimal and any significant differences can be managed through the dedication of specific and localised resources within the single regulator.

State Agreements in Western Australia

State Agreements as used in Western Australia are contracts between the WA Government and proponents of major resources projects, that are ratified by an Act of the WA Parliament (box 9.5). Such agreements are an example of a cooperative intra-jurisdictional regulatory model. Since 1952, State Agreements have been used by successive WA Governments for resource development such as mineral, petroleum, and related downstream processing projects, together with essential related infrastructure investments. There are currently 72 Agreement Acts in force in Western Australia (DSD 2008b).

Box 9.5 State Agreements in Western Australia

State Agreements are Acts of Parliament that specify the rights, obligations, terms and conditions for development of projects, and establish a framework for ongoing relations and cooperation between the State and the project proponent. When entering into a State Agreement, the State's broad objectives are to:

- facilitate the efficient and effective development of the State's natural resources
- manage the development by ensuring it is consistent with State policies on issues such as land use, conservation, competition, infrastructure sharing, secondary processing development and maximising local content
- ensure that development provides economic and social benefits for the community.

State Agreement content

The contents of a State Agreement depend on what has been negotiated and agreed between the parties to it. All have similar general provisions, but, because they have been negotiated on a case-by-case basis, there are project-specific clauses that make each Agreement unique.

State Agreements have not generally been entered into for a specific term, but have been designed to operate through the life of the project. Provisions are also included to allow a developer to seek approval to modify, expand or vary its activities substantially beyond those specified in the approved proposals.

Development approvals

The Minister cannot approve proposals until all primary approvals have been finalised, such as environmental approvals, native title agreements, and heritage clearances. State Agreements usually now stipulate that environmental and native title clearances must be obtained before proposals can be approved. The development proposals, therefore, should specify all key approvals that have been obtained.

Source: DSD (2008b).

Many upstream petroleum developments require long term certainty, extensive or complex land tenure and are located in relatively remote areas. The ratification of the Agreement through legislation, and the fact that provisions can only be changed by mutual consent, potentially provides greater certainty, security of tenure and reduction of sovereign risk for such projects.

State Agreements could potentially offer significant flexibility for some projects. However, the ability of these agreements to streamline regulatory approvals would appear to depend on the timeliness of the agreement negotiation process, the specific conditions contained in the agreement, and the ability to reduce other related regulatory approvals. For instance, a State Agreement will usually only be approved by the responsible Minister once all ‘primary approvals’ have been obtained — primary approvals include environmental approvals, native title agreements, and heritage clearances.

Despite the fact that State Agreements have been used in Western Australia for many years, there still appears to be significant scope to enhance the timeliness and transparency of current development approval arrangements. Many State Agreement negotiation processes — such as that undertaken for the Gorgon project — continue to take a considerable time, do not eliminate the need to comply with a range of other complex approval processes, and do not necessarily contain consistent requirements. In addition, there has also been a lack of performance reporting and management of obligations under these agreements once they are in place (Auditor General for Western Australia 2004).

Canadian petroleum regulators

Canadian institutional arrangements are of particular relevance for Australia due to Canada’s federal system of government. One regulatory model of relevance to this study is provided by the Canadian offshore petroleum boards, which are joint federal-provincial regulatory agencies responsible for the regulation of oil and gas development in offshore areas. (A Canadian Supreme Court decision found that, as in Australia, the federal government has jurisdiction over offshore areas seaward of the low tidal point.) There are currently two offshore petroleum boards with responsibility over offshore areas — Newfoundland and Labrador, and Nova Scotia. (Details on the Canada–Nova Scotia Offshore Petroleum Board are presented in box 9.6).

The Canada–Nova Scotia Offshore Petroleum Board and the Canada–Newfoundland and Labrador Offshore Petroleum Board regulate offshore exploration and production activities under separate, but broadly similar, Accord Implementation Acts. For each province, the Accord Implementation Acts include a

federal and provincial version of the same Act. Both offshore petroleum boards have broad regulatory mandates covering OHS, resource management and the environment. The federal government continues to regulate exports of crude oil and natural gas and interprovincial and international transmission pipelines.

Where the Board makes a ‘fundamental decision’, notice of that decision is transmitted to both the federal and provincial Governments before the decision becomes final. Both Governments then consider the decision and advise the Board whether its decision may stand and be put into effect, or whether either one or both governments disagree with the decision. ‘Fundamental decisions’ are decisions that affect the pace and mode of exploration and pace of production, or decisions primarily affecting the mode of development.

Box 9.6 Canada–Nova Scotia Offshore Petroleum Board

Established in 1990 as a result of the Resources Accord, the Canada–Nova Scotia Offshore Petroleum Board (the Board) is an independent joint agency of the Governments of Canada and Nova Scotia. It is the lead regulatory agency for all petroleum activities and resources in the Nova Scotia Offshore Area. The Board, under the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act 1988* (the Act), is responsible for:

- enhancing safe working conditions for offshore operations
- promoting the protection of the environment during offshore petroleum activities
- managing and conserving offshore petroleum resources
- ensuring compliance with the provisions of the Act with respect to employment and industrial benefits
- issuing of licences for exploration and development
- resource evaluation, and data collection and management.

The Board is also required to ensure effective coordination and avoid duplication of work and activities by concluding memoranda of understanding with federal and provincial agencies that also regulate aspects of petroleum activities.

The Board consists of five members: two appointed by the federal Government, two by the provincial Government and a Chairperson. The Chairperson is appointed jointly by the two levels of government and may also act as the Chief Executive Officer. The Board has the legal powers and capacities of a corporation incorporated under the *Canada Business Corporations Act*. It may be dissolved only by the joint operation of an Act of Parliament and an Act of the Legislature of the Province.

Source: Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act 1988.

The Canadian Government also has regulatory power over interprovincial and international gas transmission pipelines. The Canadian National Energy Board

regulates these pipelines (box 9.7). The National Energy Board is responsible for approvals for the construction of proposed and existing pipelines, including in relation to environmental protection and OHS. The National Energy Board provides a working example of a national pipeline regulator within a federal system such as Australia.

Box 9.7 Regulation of pipelines in Canada

Pipelines are regulated at the federal level in Canada. Pipelines within the borders of a single province are regulated by that province's regulatory body.

In 1959, the National Energy Board was established as an independent federal agency to regulate international and interprovincial aspects of the oil, gas and electric utility industries (NEB 2008). The Board holds public hearings for pipeline projects exceeding 40 km in length (and any other pipeline proposals at the Board's discretion). It must approve the construction of all proposed and existing pipeline projects that cross provincial or international boundaries, including the environmental and safety aspects.

In order to meet its environmental protection responsibilities, the Board conducts environmental assessments before approval and carries out audits and inspections during construction, operation and abandonment. It is designated as a 'responsible authority' under the *Canadian Environmental Assessment Act 1992*.

Board staff are designated as Safety Officers for the occupational health and safety of pipeline company field staff. There is an agreement in place between the Board and Human Resources and Social Development Canada.

Other approval requirements depend on the type and ownership of the land to be disturbed by the pipeline. For example:

- timber clearing, disposal and salvage on Crown land must be approved by Natural Resources Canada
- stream, lake or river crossings must be approved by Environment Canada, the Department of Fisheries and Oceans and provincial environment departments
- archaeological and historic site crossings must be approved by Environment Canada and provincial environment departments
- plans for top soil stripping, erosion control, land reclamation, revegetation and reforestation must be approved by environmental regulators.

Sources: CEPA (2008); NEB (2008).

Norway

Norway provides an example of a national regulatory approach applying to upstream petroleum activities. As Norway does not have a federal system of government, a national regulatory approach is more feasible. In contrast to Canada's

offshore single joint regulatory agency arrangements, Norway's institutional framework is based on separate agencies that have differing regulatory responsibilities.

The two main regulatory agencies in Norway are:

- the Norwegian Petroleum Directorate (under the auspices and policy oversight of the Ministry of Petroleum and Energy), which is primarily responsible for resource management and licensing
- the Petroleum Safety Authority, which regulates OHS and environmental compliance.

In addition, the Petroleum Safety Authority also undertakes a coordination role in relation to the regulatory responsibilities of the Norwegian Pollution Control Authority and the Norwegian Board of Health where relevant.

The legislative and regulatory framework for upstream petroleum projects in Norway has a number of components which are established under the relevant petroleum Act and regulations. These components include exploration and production licences, approvals obtained under the Plan for Development and Operations (PDO), and a Joint Operating Agreement (JOA) (Hunter, sub. 9). For example, the two main regulatory agreements have the following functions:

- The PDO is a detailed plan required to obtain approvals for operational activities, that takes account of all aspects of a proposed project (such as production methods and environmental assessments) and is approved by the relevant Minister.
- The JOA provides the detailed rules and licence conditions for production that are consistent with the petroleum Act and regulations. The PDO forms the basis for the day-to-day operations of the licence and the allocation of earnings. The JOA is similar in nature to a joint venture agreement between private parties, except in this case, it is a contract between the Norwegian Government and the participants in a production licence.

Tina Hunter considered that the Norwegian model and the use of PDOs could provide a suitable model for streamlining Australia's regulatory arrangements:

Experience in the Norwegian system demonstrates that the regulation of all petroleum activities by a single body, the Norwegian Petroleum Directorate, provides a seamless, cohesive regulatory body for petroleum development. (sub. 9, p. 46)

... The Norwegian requirement for a PDO would be of use in the development of petroleum resources in Australia. It could streamline the regulatory system by concentrating all the regulatory requirements into a single application for production.

This single PDO would address requisite regulatory, environmental, native title, decommissioning and competition law requirements in a single plan. (sub. 9, p. 48)

The PDO and JOA approach would appear to have some positive features in the Norwegian context. However, it is unclear whether Norway's regulatory framework would be feasible, or whether it would enhance the current regulatory arrangements as they operate in Australia:

- The main weakness of the unified regulatory approach, such as the Norwegian model, is the potentially significant degree of legislative and administrative reform required when adapting this model to a federal system of government which has separate regulatory powers and institutional arrangements in each State and Territory. The applicability of a unified national regulatory approach to the Australian upstream petroleum sector is considered in the next section.
- The large degree of direct government involvement in the petroleum sector (through direct 'joint venture' agreements between the Norwegian Government and private operators) would appear to be inconsistent with the current regulatory-based approach of governments in Australia to the development of the petroleum and resources sector.
- While the Norwegian petroleum Act itself is relatively short in length, the approval arrangements under exploration and production licensing, the JOA and the PDO, do not appear to eliminate the need for multiple and complex approval requirements and conditions.

United Kingdom

The United Kingdom provides an example of a unified regulatory approach that is similar to Norway's institutional framework. There are two main regulatory agencies:

- The Department of Business Enterprise and Regulatory Reform and its Energy Development Unit are responsible for policy development and regulation of upstream petroleum activities related to resource management and licensing, pipelines and offshore environment.
- The offshore division of the Health and Safety Executive regulates OHS. The Health and Safety Executive is the general regulator of OHS across all industries in the United Kingdom.

9.3 Assessment of institutional reform options

Institutional reform has the potential to reduce unnecessary regulatory burdens when it:

- streamlines regulation by reducing the need for multiple agency approvals and removes duplication of assessment and reporting requirements
- avoids, where possible, arrangements that involve multiple agencies and, where multiple agencies have to be involved, has in place clear administrative arrangements to avoid or minimise unnecessary overlap in regulatory functions
- avoids unnecessary inconsistencies in regulatory requirements or decision making within and across jurisdictions
- provides regulators with clear regulatory objectives and minimises unnecessary conflicts of interest
- consolidates specialist expertise and promotes efficient use of resources.

However, consolidation of regulatory functions raises issues about conflicts of interest and possible diseconomies of scale. For example, should a national regulator have both approval and compliance functions? NOPSA's current role spans approving safety cases and ensuring compliance. However, a regulatory body with both an industry and development support function (through the approval process), as well as a compliance role, might create conflicts of interest.

Splitting compliance and approvals might remove this conflict and might also help to prevent regulatory creep. Separating compliance and approvals may also increase compliance activity, by effectively placing a higher priority on compliance activity. However, in practice separating compliance and approvals and at the same time providing the necessary expertise and resources is problematic. In practice, it is likely to add to regulatory burdens, not reduce them. It is more important that policy making is separated from regulation rather than separating approvals and compliance.

Commenting on issues associated with separating environmental compliance and approvals, the Victorian Government stated:

Separating environmental assessment from environmental compliance will require duplication of knowledge and understanding of the same issues. It would also result in additional briefings and clarification of environmental issues from the body responsible for environmental assessment (currently the DA) to NOPSA, where in many cases local knowledge is critical ... joint audits carried out by NOPSA and the Victorian DA indicate there is no efficiency gain achieved by combining safety and environment considerations for audit purposes ... For these reasons, keeping environmental

assessment and environmental compliance together under the one authority is important. (sub. DR26, p. 2)

Similarly, the WA Department of Mines and Petroleum submitted:

DMP strongly disagrees with the [draft] recommendation to expand NOPSA's role to include environmental compliance ... this recommendation also implies splitting the current integrated role of Designated Authority environmental officers into separate roles for approvals (Designated Authority) and compliance (NOPSA). DMP cannot identify how this proposed recommendation would achieve any reduction in regulatory burden on the petroleum industry. (sub. DR22, p. 17)

Four possible models for institutional reform of regulation of the upstream petroleum sector are examined in this section (an overview of the scope of these models is provided in figure 9.1). This discussion assumes that the necessary legislative reform would be carried out by all relevant jurisdictions to make these changes possible and that current fiscal arrangements would remain unchanged. The possible models include:

- A *national petroleum regulator* with responsibility for regulation of all upstream petroleum activities in both onshore and offshore areas. In this and all the options noted below it is recommended that a separate safety regulator (NOPSA) would also operate.
- A *national offshore upstream petroleum regulator* with responsibility for resource management, pipelines and environmental approval and compliance functions in all offshore areas.
- A *national offshore upstream petroleum regulator for Commonwealth waters*, which would take over the upstream petroleum regulatory functions for Commonwealth waters only.
- A *national pipeline authority* with responsibility for the coordination and the approval of all cross-jurisdictional upstream petroleum pipelines. This model could be pursued separately or in conjunction with the first three models.

In addition to these broad institutional reform options, chapter 7 also considers options for an expanded NOPSA (also outlined in figure 9.1) that can be pursued separately or in conjunction with these other institutional reforms. Potential options considered for an expanded NOPSA include safety and integrity of offshore pipelines, subsea equipment and wells, and OHS for onshore sections of integrated facilities, although the latter was, on balance, not recommended.

The following discussion assumes that the Joint Development Petroleum Authority for East Timor will continue to be separately regulated for the time being, although this may be considered later in relation to memorandums of understanding or

delegation. As the terms of reference for this study exclude coal seam methane projects, the Commission has not considered the effect of these on the workability of these models. Although coal seam methane projects could be considered a mining activity it would, in principle, seem quite possible that such projects could potentially be regulated under these models.

Figure 9.1 Potential upstream petroleum regulator models

	Onshore	Coastal waters	Commonwealth waters	Onshore	Coastal waters	Commonwealth waters	Onshore	Coastal waters	Commonwealth waters	Onshore	Coastal waters	Commonwealth waters
Pipeline regulation ^a	National Pipeline Authority ^b			National Pipeline Authority ^b			National Pipeline Authority ^b			National Pipeline Authority		
Resource management	National Petroleum Regulator ^{b,c}			National Offshore Petroleum Regulator (NOPR) ^{b,d,e}			National Offshore Petroleum Regulator – Commonwealth waters (NOPR-CW) ^{b,d,f}					
Environment	National Petroleum Regulator ^{b,c}			National Offshore Petroleum Regulator (NOPR) ^{b,d,e}			National Offshore Petroleum Regulator – Commonwealth waters (NOPR-CW) ^{b,d,f}					
Occupational health and safety	NOPSA ^c			NOPSA			NOPSA			Expanded NOPSA ^c (Onshore sections of integrated facilities)		
	Current JA–DA arrangements removed			Current JA–DA arrangements removed			Current JA–DA arrangements removed			Current JA–DA arrangements retained		

^a Includes all aspects of pipeline regulation (including environmental and occupational health and safety aspects) in offshore areas, as well as onshore pipelines that cross two or more jurisdictions. ^b The National Pipeline Authority could be incorporated into the National Petroleum Regulator, NOPR or NOPR-CW. ^c In this model, the National Offshore Petroleum Safety Authority's (NOPSA's) responsibilities could be extended onshore to make it the national upstream OHS regulator. ^d In this model, the States and Territories retain responsibility for onshore petroleum regulation (excluding pipelines). ^e Ministerial reporting based on NOPSA model. ^f In this model, the States and Territories retain responsibility for regulation in coastal waters.

A national petroleum regulator

A national petroleum regulator with responsibility for both onshore and offshore upstream regulation would have the theoretical advantage of providing greater consistency in decision making and regulatory enforcement across all jurisdictions. This should minimise duplication in requirements for proponents. This approach has the potential to consolidate existing petroleum expertise and should gain from significant economies of scale in administrative and support functions. However, this model would appear to have a number of significant weaknesses.

Primary Industries and Resources South Australia highlighted the benefits of retaining local State and Territory responsibility for onshore petroleum regulation and the practical difficulty of integrating the responsibilities of a national regulator with onshore regulatory frameworks:

Each State has aligned its approach to onshore petroleum regulation to reflect its particular spectrum of petroleum resource prospectivity and stakeholders' concerns. Each State also has its own framework of legislation and interrelationship of petroleum legislation with other legislation. Therefore, it would be difficult to come up with a single national regulatory framework for onshore operations that would satisfy each State/Territory Government. (sub. 20, p. 8)

The Victorian Government acknowledged that a national regulator for both onshore and offshore would have substantial benefits, but it also expressed similar concerns regarding the difficulty of integrating offshore and onshore arrangements:

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, [coal seam methane], geothermal and [carbon, capture and storage]). (sub. 7, pp. 8–9)

On balance, the Commission considers the option of a national petroleum regulator for both offshore and onshore areas is not practical at this stage for a number of reasons.

Onshore petroleum projects located wholly within one jurisdiction are unlikely to justify a national approach to regulation. Given the magnitude of the changes required there are not likely to be sufficient spillovers or commonality of local factors across all jurisdictions — especially in relation to local environmental and planning issues — to warrant a national approach. Clearly companies operating nationally would prefer a national regime but this looks difficult to justify.

Current petroleum regulators in each jurisdiction may be better placed to regulate onshore projects. Onshore regulatory regimes for petroleum projects will inevitably involve a range of local legislation and regulation that reflects State and Territory

community preferences and legislative powers in areas other than petroleum regulation. Local agencies, which are more familiar with the regimes in each jurisdiction, may be more efficient and effective in negotiating through the complexity of these processes.

Although this model would achieve improved consistency in regulation across jurisdictions, improved consistency could also be pursued through legislative harmonisation of onshore petroleum legislation across jurisdictions, without the need for a single regulator.

FINDING 9.1

A national petroleum regulator for both onshore and offshore areas would, in theory, provide greater cross-jurisdictional consistency, reduce duplication of regulatory requirements and benefit from economies of scale. However, such an agency would also appear to have significant weaknesses. Specifically, for activities located wholly onshore and within one jurisdiction, local agencies would appear to be better placed to undertake regulation due to their knowledge of local factors and community concerns. On balance, and also given the cost and difficulty of implementing a national petroleum regulator for onshore and offshore areas, the Commission considers this model not to be a practical option.

A national offshore petroleum regulator

A national offshore petroleum regulator (NOPR) would undertake upstream, petroleum resource management, pipeline and environmental regulation in Commonwealth and State and Territory waters seaward of the low tide mark, including islands within those waters, and would administer both the OPGGSA and its ‘mirror’ State and Territory Acts. Ideally, NOPR would perform the following functions:

- *Administration* of exploration permits, production and pipeline licensing. NOPR would prepare advice and make recommendations to the Commonwealth Minister. This is consistent with international practice, where ministerial power is retained for approvals relating to property rights such as exploration permits, production licences and retention leases.
- *Administration and approval* of production, well construction and drilling, and pipeline consents — NOPR would have the authority to approve consents for these activities in consultation with NOPSA for safety and integrity issues and, when relevant, with other responsible Australian Government and State and Territory agencies.

Implicit in the above is that NOPR would also have the functions of environmental approvals and compliance.

The NOPR model would effectively be an application of the ‘NOPSA model’ to other areas of offshore petroleum regulation. The responsibility for OHS regulation in offshore areas could be retained by NOPSA. As discussed earlier, the Canadian offshore petroleum boards provide an example of a single offshore regulator model — these boards undertake all regulatory functions, including OHS, resource management, and environmental approvals in offshore areas of their respective provinces. However, as noted in chapter 7, the Commission is now of the view it would be better to retain NOPSA as a separate institution, unlike in Canada.

NOPR would take on the regulatory functions from the Department of Resources, Energy and Tourism (RET) and Geoscience Australia and the DA’s current delegated role in the approval of exploration permits, production licences and environmental approvals in Commonwealth waters. NOPR would be the one-stop-shop for regulation in Commonwealth waters rather than the DA and JA. The new agency would also be responsible for resource management and environmental regulation in State and Territory waters seaward of the low tide mark, including islands within those waters, and so would also take on the role currently performed by State and Territory agencies for these areas, but not for onshore areas.

A key finding of the Independent Review Team that established the NOPSA model was the need to reduce the confusing and overlapping legislation that applied to offshore facilities (DISR 2001). The Ministerial Council for Mineral and Petroleum Resources, in recommending the formation of NOPSA, were mindful of the need for effective and efficient coordination between the safety authority and other regulatory agencies. The OPGGSA requires NOPSA to cooperate with:

- other Commonwealth agencies having offshore petroleum operation functions
- State or Northern Territory agencies having functions relating to offshore petroleum operations
- the DAs of the States and the Northern Territory.

As with NOPSA, there would be significant benefits from NOPR establishing offices in each major petroleum producing State and Territory to retain local knowledge, and liaise with relevant State and Territory agencies with responsibility for other relevant regulatory functions for offshore activities — such as fisheries, shipping, conservation and environment. NOPR would also need to have clear administrative agreements and good communication with NOPSA.

In addition to other State and Territory agencies responsible for offshore regulation, the onshore–offshore interface would also need to be managed to ensure projects that move from offshore to onshore would have streamlined and coordinated regulatory requirements. The management of this interface would also depend on the arrangements eventually agreed for pipeline approvals. For example, a major pipeline in offshore waters and extending onshore may also require an environmental impact assessment under a State and Territory environmental protection Act — in addition to petroleum-specific environmental approvals under the OPGGSA and the mirror Acts, and on some occasions under the EPBC Act.

However, it may be possible to also include provisions within the State and Territory petroleum Acts to undertake environmental assessments under a common set of principles to minimise duplication of requirements and referrals to other State and Territory agencies. This sort of bilateral arrangement is in place for environmental assessments under the EPBC Act between the Commonwealth and the States and Territories.

If NOPR were to undertake pipeline approvals, rather than a separate pipeline regulator (see discussion on a national pipeline authority later in this section), it could also potentially have responsibility for the regulation of pipelines that extend onshore. This would reduce the overlap and duplication associated with the regulation of cross-jurisdictional pipelines.

An alternative model for a national regulator

In response to the Commission’s draft report and recommendation on the establishment of a new national offshore petroleum regulator, APPEA put forward an alternative model for consideration:

The industry would also expect that governments may also consider establishing a joint national statutory authority, whereby State Ministerial responsibilities were not divested to the Commonwealth Minister. Under this model, a single joint Statutory Authority would administer mirror legislation for the Commonwealth Minister in Commonwealth waters, and for the State Minister in State waters and for onshore pipelines. (sub. DR29, p. 16)

While such a model would produce some of the benefits associated with NOPR, the gains could be limited. First, the gains from removing the iterative JA–DA arrangements would likely be reduced under the APPEA suggestion. The NOPR model removes existing JA–DA arrangements and provides for seamless regulatory arrangements across Commonwealth and State and Territory waters seaward of the low tide mark, including islands within those waters. However, a joint national statutory authority regulating for both Commonwealth and State and Territory

Ministers would duplicate regulatory responsibilities in offshore areas and create the potential for inconsistent decision making and unnecessary delays.

Second, by maintaining regulatory roles for the Commonwealth and States and Territories in offshore areas, the suggestion has the potential to reduce efficiency gains and reduce the potential for streamlining of regulatory arrangements and resources required by governments. As with NOPSA today, the Commission's proposal for NOPR would allow State and Territory Ministers to provide policy input (through the Commonwealth Minister who would have to provide reasons if this were not passed onto NOPR). However, neither the Commonwealth or State and Territory Ministers can give NOPSA (or in this proposal, NOPR) instructions relating to a specific facility. The risk of having NOPR effectively report to both Commonwealth and individual State and Territory Ministers is that it might result in a more complicated environment than even the current JA–DA arrangements.

Relationship with NOPSA

In some other countries, such as the United Kingdom, the resource management and environmental regulation functions are performed by a different agency to the one undertaking OHS regulation.

The main advantage of retaining NOPSA as a separate entity is to maintain its exclusive focus on OHS regulation, therefore, avoiding potential or perceived conflicts in regulatory objectives or priorities — a single authority might create a potential conflict between its OHS objectives and its resource development role (that arises with exploration permit, production licence and other approvals). With NOPR and NOPSA as separate entities, NOPR could perform the role of the one-stop-shop for offshore proponents, and would refer OHS and safety integrity related approvals to NOPSA.

While NOPR could be established as a separate authority, there are also some potential advantages to combining it with NOPSA. Administrative efficiencies and improved communication could be achieved through having a single offshore petroleum regulator, through consolidating corporate support and other 'back-of-office' functions. Potential conflicts in regulatory objectives could be avoided, or at least minimised, through structural separation of the functions within the one agency. Further, strong review and oversight provisions may also identify potential regulatory conflicts or tensions before they become significant and affect performance, and allow these to be appropriately managed.

On balance, it is considered that the benefits of maintaining NOPSA as a separate entity outweigh the administrative efficiencies that would arise by combining NOPSA and NOPR.

Benefits of a national offshore petroleum regulator

Establishing NOPR would have a number of advantages. Specifically, it has the potential to:

- reduce inconsistencies and duplication in the administration of resource management and environmental regulation between Commonwealth and coastal and adjacent internal waters — reinforcing the intention of harmonised legislative arrangements under the OPGGSA and State and Territory petroleum (submerged lands) Acts
- remove the duplicative role of Australian Government and State and Territory agencies — under the current JA–DA arrangements — in Commonwealth waters
- improve governance arrangements by separating the regulatory role from the current policy role of the JA and DA agencies
- consolidate resources, and help to attract specialist expertise and staff.

The Victorian Government expressed support for a NOPR-like model to replace the DA’s function:

... the Victorian Government supports in-principle the establishment of a national petroleum regulator for offshore activities. (sub. 7, p. 2)

It stated also that establishing a national regulator would reduce unnecessary regulatory burdens on proponents:

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. (sub. 7, p. 6)

APPEA argued a single joint authority that is accountable to the respective Ministers (consistent with current JA arrangements) would appear to be a way of enhancing the operation of harmonised arrangements under the OPGGSA. Specifically, APPEA considered that the harmonised arrangements under the OPGGSA:

... could be further improved through the establishment of a single joint regulatory authority, administering a nationally consistent regulatory framework, yet answerable to each respective Minister across each of the jurisdictions. (sub. 16, p. 50)

In support of a national petroleum regulator, Nexus argued that one of the main advantages is the potential to achieve greater consistency in the administration of current legislative arrangements and improve efficiency of administration:

The centralised NOPSA model for a national upstream petroleum regulator has great potential to increase the consistent application of legislation and regulations. It will need to be adequately resourced with experienced, professional staff that are equipped with appropriate policy guidelines. This should assist in a consistent interpretation of the regulations.

A staff reporting structure that encourages nationwide consistency should be more achievable in a central agency model than the current system where inconsistent application of regulations between DAs is attempted to be resolved at twice yearly committee meetings ... Gains in efficiency with a centralised national upstream petroleum regulator will be achieved primarily if actions/decisions are made by the one authority rather than duplicating the current DA/JA process. (sub. 3, pp. 6–7)

Like Nexus, the Victorian Government also regard the NOPSA model as a useful example of the benefits and costs associated with establishing a national regulator:

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. (sub. 7, p. 7)

Additional discussion and submissions following the Commission’s draft report on a new national offshore petroleum regulator are presented in section 10.2.

The potential for improved economies of scale could particularly benefit jurisdictions with a small offshore petroleum sector with ‘limited capacity to attract and retain appropriately skilled regulators’ (Victorian Government, sub. 7, p. 7). Overall, the Victorian Government (sub. 7) identified three main benefits:

- A reduction in administration inconsistencies in administering the OPGGSA, providing greater clarity and certainty for proponents who operate across a number of jurisdictions.
- Streamlining of current approval and regulatory processes by having all approvals sent to one agency rather than between the Commonwealth and State and Territory members of the JA — resulting in a potential reduction in the time taken to obtain approvals to around six to 12 months (or around 50 per cent).
- Improving the position of government to attract a highly skilled workforce, especially if working under full cost recovery arrangements.

This model would also improve governance arrangements by establishing a structural separation between the current policy and regulatory functions of Australian Government and State and Territory petroleum agencies. Combining

policy and regulatory functions can potentially result in regulatory ‘creep’ — a gradual expansion of regulatory responsibilities. It would also provide a one-stop-shop for the vast majority of petroleum activities that are undertaken in offshore areas — including streamlining the regulation of petroleum activities that are undertaken in Commonwealth waters, which currently involves the State and Territory petroleum agencies in each jurisdiction.

Other advantages include:

- increased scope for mobilising more resources when major projects occur — these inevitably happen in a ‘lumpy’ manner and a larger national regulator is likely have more flexibility to cope with upswings in demand
- a well resourced regulator would also be in a better position to avoid the potential for resources being diverted from compliance activities to meet upswings in approval activities.

Weaknesses of a national offshore petroleum regulator

A NOPR would not eliminate the potential duplication and inconsistency in regulation between offshore and onshore areas. However, this would be difficult to eliminate under any regulatory framework, other than the fully national model. In addition, there may be some merit in such a separation.

Effectively integrating NOPR into the broader regulatory framework for State and Territory waters seaward of the low tide mark, including islands within those waters, in each jurisdiction is likely to require a significant reform effort. Weaknesses of the NOPR model include:

- It would remove the one-stop-shop that, in theory, exists with the DA for projects that extend from offshore to onshore. Although currently, even if the same DA staff are involved in the same project, once they move to the onshore environment they are operating under different legislation. For example, currently proponents undertaking a pipeline project are required to apply for offshore approvals via the DA under the OPGGSA, and onshore under relevant State and Territory petroleum regulations.
- A new authority would be required to replicate current, in some cases effective, administrative relationships that have been established between the DAs and other State and Territory regulatory agencies. For example, currently DAs are responsible for the environmental approvals under the OPGGSA in Commonwealth waters and administering environmental approvals in coastal waters and in some cases onshore environmental approvals — as a result there

are some established administrative arrangements between DAs and relevant State and Territory environmental agencies.

- NOPR would be competing for scarce technical expertise related to petroleum approvals and locally experienced upstream petroleum regulators with the States and Territories, who would also require some of these staff for onshore regulation.
- Potential efficiency gains from a national regulator may be reduced if a large unwieldy ‘bureaucracy’ were created, which might add to the regulatory burden. Or, alternatively, some smaller jurisdictions might feel a loss of local expertise if NOPR did not have local staff in their jurisdiction.

Some States and Territories might argue for retaining the current arrangements to ensure they continue to be formally involved in approving offshore activities that they believe have implications for State interests. In addition, APPEA have argued that continued Commonwealth and State and Territory involvement remains important to provide a point of appeal or moderation when proponents wish to refer decisions taken by one regulator. For example, APPEA argued:

On balance, the industry supports the presence of state representatives on the JA as it establishes checks and balances in State/Federal system helping to moderate the potential for any extreme positions. (sub. 16, p. 17)

Inevitably, in all but the full national model, there will be an interface between regulators, whether it is the shoreline or the three nautical miles, that will require a clear division of regulatory responsibilities. However, the NOPR model would be most effective and efficient if all regulatory powers in relation to petroleum activities in State and Territory waters seaward of the low tide mark, including islands within those waters, were conferred on NOPR. This would include conferring final powers (but not influence) on the Commonwealth Minister responsible for making decisions regarding property rights in all offshore waters (including State and Territory waters seaward of the low tide mark, including islands within those waters). The arrangements used for NOPSA would appear to offer the appropriate model — under the NOPSA model, States and Territory Ministers and the relevant Ministerial council have a range of advice, consultation and information request powers (box 9.2).

While a case could be made by the States and Territories for retaining some approval powers, the efficiency gains of the NOPR model are largely dependent on the extent to which States and Territories are willing to confer final administrative and decision-making responsibilities in State and Territory waters seaward of the low tide mark, including islands within those waters, on NOPR and the responsible Commonwealth Minister. Otherwise NOPR might end up involved in many of the iterations that currently delay approvals under the JA–DA arrangement.

Some have argued that many of the gains possible under a NOPR might be achieved though improved agency resourcing and coordination.

For example, Apache were of the view:

... more important than the organisational structure are (i) genuine local knowledge (ii) adequate staffing levels and competent personnel (iii) clear, distinct (i.e. not overlapping) responsibilities between departments and authorities and (iv) the ability to make approvals at an appropriate level and with transparency and accountability. (sub. 14, p. 6)

While many of these initiatives would improve regulatory arrangements, and are discussed further in chapter 10, experience with the current system suggests that without changing institutions and regulations these initiatives will not promote best regulatory practice. Feedback from industry and government participants at roundtables and meetings since the draft report suggests that the target of achieving a 50 per cent reduction in overall approval timelines is feasible, but is conditional on fundamentally reshaping the current JA–DA arrangements.

A single regulator for Commonwealth waters

It would be a significant challenge to gain the simultaneous agreement of all States and Territories for NOPR taking over all petroleum regulation in State and Territory waters seaward of the low tide mark, including islands within those waters, which is currently performed by petroleum and other agencies in each jurisdiction. An alternative, to the NOPR model, would be to establish a national offshore petroleum regulator for Commonwealth waters (NOPR-CW) which would be responsible for regulation in Commonwealth waters only. States and Territories could retain their existing responsibilities over State and Territory waters seaward of the low tide mark, including islands within those waters.

As with the NOPR model, NOPR-CW would take on the regulatory functions from RET and Geoscience Australia and would be a single point of contact for regulation in Commonwealth waters rather than the JA and DA. In this case, the DA's current administrative role in the approval of exploration permits, production licences and environmental approvals in Commonwealth waters would be taken over by the new authority. The main advantages of the NOPR-CW model would be to:

- reduce the potential for duplicative, iterative processes and delays that arises from the joint administrative role of the Australian Government and State and Territory Governments in Commonwealth waters under the OPGGSA

-
- improve governance arrangements by separating the regulatory role for Commonwealth waters from the policy role of the Australian Government and State and Territory petroleum agencies.

While it could be possible that the current JA powers might be retained, with NOPR-CW providing advice to both Commonwealth and State and Territory Ministers, the preferred option is that NOPR-CW would advise the Commonwealth Minister who would have exclusive responsibility for Commonwealth waters (as is the case with carbon capture and storage legislation). Removing the JA powers under a NOPR-CW model would provide greater jurisdictional clarity, with clear boundaries between Commonwealth and State and Territory responsibilities. This could potentially improve transparency and accountability for the regulatory performance and decision making performed by each jurisdiction.

However, this model would not take advantage of the harmonised legislative arrangements under the OPGGSA and (intended) mirror State and Territory Acts. Further, for the majority of projects that are cross-jurisdictional, regulatory inconsistencies and duplication between regulation of activities in Commonwealth waters and coastal waters would not be improved. In fact, regulation of offshore areas would be split between NOPR-CW, State and Territory petroleum regulators (the DA in each jurisdiction) and NOPSA — in contrast to the current arrangements performed by the JA, DA and NOPSA.

While in principle the NOPR model is preferred, the NOPR-CW model could also be used as a vehicle to establish a NOPR on a bilateral ‘opt-in’ basis with each State and Territory Government. Indeed, this is the process that led to the current form of NOPSA, with individual jurisdictions electing to opt-in and confer powers on NOPSA for their coastal waters at different stages. Specifically, the NOPR-CW could be established with the option being provided on a bilateral basis for each State and Territory to confer regulatory responsibilities for their waters seaward of the low tide mark, including islands within those waters, on NOPR-CW. This underscores that the NOPR model would be most effective and efficient compared to current arrangements if individual States and Territories were prepared to give NOPR clear responsibility for their current regulatory functions in their waters seaward of the low tide mark, including islands within those waters.

Issues of duplication and inconsistency appear to be primarily a problem where there are cross-jurisdictional activities, specifically pipelines. Therefore, regardless of the final views of governments in regard to NOPR and NOPR-CW, there may still be merit in focussing on improving the coordination of pipeline approvals.

FINDING 9.2

A national offshore petroleum regulator (with local offices in most States and Territories) could undertake resource management, pipeline approval, and environmental approval and compliance in all waters seaward of the low tide mark, including islands within those waters. The main potential benefits of the model include:

- reducing administration inconsistencies between Commonwealth, coastal and internal waters and between different States and Territories*
- removing the iterative and duplicative role of Australian Government and State and Territory agencies in Commonwealth waters under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth)*
- improving governance arrangements by separating the regulatory role from the current policy role of the Australian Government and State and Territory agencies*
- administrative economies of scale, consolidation of specialist resources and improved ability to attract and retain staff*
- through appropriate cost recovery mechanisms, ensuring that the regulator has the necessary resources and expertise to provide a timely and efficient response.*

FINDING 9.3

An alternative would be to establish a national offshore petroleum regulator for Commonwealth waters (with local offices in most States and Territories) that would be responsible for upstream petroleum regulation. The main potential benefits of this model relate to removing the duplicative and iterative processes and delays from the current joint arrangements in Commonwealth waters. Such a regulator could be established independently by the Australian Government. The main weaknesses compared to the national offshore petroleum regulator would be:

- the potential for inconsistencies between Commonwealth and State and Territory offshore areas*
- not taking full advantage of the harmonised legislative arrangements*
- reduced economies of scale due to its more limited scope.*

The full effectiveness and efficiency of a national offshore petroleum regulator depends on the States and Territories agreeing to give it (and the Commonwealth Minister) the responsibility for petroleum regulation in State and Territory waters seaward of the low tide mark, including islands within those waters, currently performed by petroleum and other agencies in each jurisdiction. Without such an agreement there would be diseconomies of scale and greater complexity in replicating current administrative and decision-making arrangements with other State and Territory agencies.

Similarly, establishing a national offshore petroleum regulator that reports and advises the Commonwealth Minister when the particular project/decision is in Commonwealth waters, and reports and advises the State or Territory Minister when the particular project/decision is in State or Territory waters, would limit the gains from removing the Joint Authority–Designated Authority arrangements and streamlining of regulatory arrangements. This might increase regulatory burdens as the Commonwealth and States and Territories might duplicate regulatory resources.

Alternatively, a national offshore petroleum regulator for Commonwealth waters could be established with the option being provided by the Australian Government for each State and Territory to confer regulatory responsibilities, on a bilateral basis, for State and Territory waters seaward of the low tide mark, including islands within those waters, on this regulator.

A national pipeline authority

Many of the issues of overlap and duplication identified in this study thus far, arise from projects that are cross-jurisdictional in nature — this is almost always highlighted in the case of pipeline approvals. While there are clearly issues that could be addressed through expanding NOPSA’s role, or establishing a national offshore regulator, there may be merit in considering specific ways of enhancing pipeline approval processes as distinct from other changes to upstream petroleum regulation. The current regulatory framework for pipelines consists of:

- licensing and consent approvals under the OPGGSA — including pipeline management and safety plans approved by NOPSA (for safety aspects of pipeline consents), the JA (for pipeline licence approvals) and the DA (for pipeline environmental consents)
- State and Territory petroleum Acts and regulations, which contain pipeline provisions for offshore areas covering pipeline licensing and technical approvals

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- separate onshore pipeline Acts and regulations in several jurisdictions, which also cover pipeline licensing and technical requirements — in some jurisdictions pipelines are regulated under onshore petroleum legislation
 - State and Territory environmental and planning Acts, which cover significant development projects such as pipelines.

There is an additional regulatory burden placed on cross-jurisdictional pipelines that arises from duplication in regulatory responsibilities across jurisdictions and resulting delays in obtaining multiple approvals. Therefore, there is potential for a significant reduction in approval timelines through the introduction of a single regulatory authority for cross-jurisdictional pipelines.

As the Victorian Government highlighted:

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 ... As noted above for petroleum production licence approvals, there is potential to reduce approvals times by approximately half. (sub. 7, p. 8)

Under the current regulatory regime for pipelines there are significant inconsistencies between some jurisdictions, including between onshore and offshore requirements (chapter 5). Some States and Territories have introduced more harmonised pipeline arrangements. Specifically, the onshore pipeline regulations for Victoria are aligned with those offshore (which mirror the pipeline regulations under the OPGGSA):

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. (Victorian Government, sub. 7, p. 8)

One option to address the duplication, delays and regulatory inconsistencies associated with cross-jurisdictional pipelines is the establishment of a national pipeline authority together with the necessary legislative harmonisation. Such a model could draw on the Canadian model for the regulation of cross-jurisdictional pipelines.

The national pipeline authority could be responsible for:

- the administration and approval of licences and works approvals for proposed pipelines crossing two or more jurisdictions — including the environmental and safety aspects. It could be designated as a ‘responsible authority’ under the OPGGSA (and mirror petroleum submerged lands Acts) and each State and Territory onshore pipeline (or relevant) Act
- environmental assessments before approval, and compliance audits during construction, operation and decommissioning. The national pipeline authority would also be accredited to undertake any environmental assessments required under the EPBC Act and State and Territory environmental Acts
- other approval requirements, depending on the type and ownership of the land to be disturbed by the pipeline. Administrative agreements would need to be established to coordinate other approvals that Commonwealth and State and Territory legislation may require.

A national pipeline authority could be established as a stand-alone authority or could be incorporated in an extended version of the NOPR discussed previously.

Benefits and costs of a national pipeline authority

A national regulator for cross-jurisdictional pipelines has the potential to provide more streamlined and consistent approval arrangements for such pipelines. In order to implement such a model there would need to be significant amendments to harmonise current State and Territory pipeline regulations — particularly requirements under onshore pipeline regulations that differ significantly across jurisdictions.

In addition to a more harmonised regulatory regime for pipelines across jurisdictions, the Victorian Government supported, at least in principle, a national pipeline authority model:

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. (sub. 7, p. 8)

In addition, a national pipeline authority would address potential complications where pipelines cross between jurisdictions. In such circumstances, there is a risk that inefficient or unnecessarily restrictive regulatory regimes in one jurisdiction could affect the construction of the same pipeline in another jurisdiction — potentially imposing significant costs and lost economic activity as a consequence of delays or the imposition of approval conditions.

As with the national petroleum regulator model — applying to both onshore and offshore — concerns about this model stem from the degree of legislative reform required and the range of activities some jurisdictions have included in their onshore petroleum and pipeline legislation. In the case of Victoria, there are already harmonised regulatory provisions for pipelines, which could form the basis of a harmonised pipeline regime. However, other States and Territories may need to substantially amend their onshore — and in some cases offshore — pipeline regulations to enable a cross-jurisdictional pipeline regulator to operate.

Implementing a harmonised regulatory framework for pipeline licensing and other approvals could reduce inconsistencies in regulatory provisions and requirements. However, to minimise unnecessary duplication in approvals and inconsistent decision making a national pipeline authority is likely to be required. The advantages of such an authority in terms of streamlining cross-jurisdictional pipeline approvals would need to be carefully weighed against the potential disadvantages in relation to costs, particularly if the national pipeline authority is established as a stand-alone agency with responsibility only for cross-jurisdictional upstream petroleum pipelines.

If a national offshore petroleum regulator is not considered to be a feasible option, then there may not be sufficient efficiency gains from a single purpose pipeline regulator in comparison to the next alternative, which would be harmonised legislation between States and Territories and the OPGGSA. An alternative is to provide NOPR (or the NOPR-CW with conferred responsibility for State and Territory waters and islands within those waters) with responsibility for onshore pipelines that are cross-jurisdictional.

FINDING 9.5

Pipelines that cross two or more jurisdictions are likely to face significant regulatory overlap and potential duplication of regulatory requirements. In addition, for such pipelines there may also be significant negative effects from an inefficient regulatory regime in any particular jurisdiction. Consequently there appears to be a strong argument for a more harmonised approach to such cross-jurisdictional pipelines. The Canadian national pipeline regulator provides one apparently useful model for a cross-jurisdictional pipeline regulator in a federal system of government.

9.4 Cost recovery arrangements

Depending on the regulatory model there are a range of possible funding mechanisms. The Commission considered the issue of cost recovery for the

provision of government services more broadly in 2001 (PC 2001a). The funding of NOPSA is currently undertaken on a full cost recovery basis (box 9.8).

Box 9.8 Cost recovery arrangements for NOPSA

The National Offshore Petroleum Safety Authority is funded on a full cost recovery basis under the *Offshore Petroleum (Safety Levies) Act 2003* (Cwlth). Levies are based on the *Offshore Petroleum (Safety Levies) Regulations 2004* (Cwlth). The levies include:

- a safety case levy: an annual levy to be imposed in relation to the safety case that is in force in relation to a facility
- a pipeline safety management plan levy: an annual levy to be imposed in relation to the pipeline safety management plan that is in force in relation to a pipeline
- a safety investigation levy: to be imposed on the operator of a facility in relation to the investigation, by NOPSA, of an accident or dangerous occurrence at that facility, above a set threshold of \$30 000.

The Cost Recovery Impact Statement for NOPSA noted the following:

- The operator, not the regulator, must take full responsibility for the safety of its workforce (and its assets) and cost recovery of regulatory oversight and guidance is consistent with this.
- Imposing a dedicated safety levy was more efficient than the previous system because the charges will be directly linked to the service being provided, and will be reported in detail to industry.
- The prime beneficiaries of an efficient and consistent best practice safety regulatory regime are the owners and operators of offshore facilities. It is the owners who create the need for safety regulation and it is therefore appropriate to recover the costs of safety regulation from owners. Investigations act as a safeguard of investment and revenue streams and do not undermine the objectives of safety regulation in the petroleum sector.
- If there was no levy applied to the major incident investigations then all participants in the industry would have to be levied to recover the regulatory costs. This would be inequitable, is an unacceptable level of cross-subsidisation and would penalise good performers. Moreover, it was not proposed that the total cost of large investigations be passed on to industry. The investigation levy is intended to cover incremental costs only.

Source: DITR (2004).

The Commission concluded that: cost recovery should involve the use of fees for service where possible (at efficient cost); that cost recovery should apply to activities rather than agencies; and that cross-subsidisation between groups should be avoided. The Commission's principles enunciated in 2001 also suggested:

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- partial cost recovery is generally inappropriate — either the costs of an activity or product are recovered in full or funded from general taxation revenue. Deviating from this rule involves making subjective decisions about the degree of public and private benefits involved. For example, the public should not have to pay to avoid being potentially injured as a result of the regulated activity
 - registration, monitoring compliance and issuing of exclusive rights would be assessed for cost recovery, while other activities would typically be funded from general taxation revenue (such as community education, investigation and enforcement, and policy development).

In relation to the current cost recovery model for NOPSAs, APPEA argued that a partial cost recovery model would be more appropriate:

This system of full cost recovery is unique to the oil and gas industry's safety regulation globally and within Australia. While the industry recognises the expansion of activity in the sector since 2005, there is no public oversight and very limited accountability to the industry in terms of the appropriate regulatory priorities, appropriate levels of regulator activity, appropriate levels of expenditure, and efficient program delivery. (sub. 16, p. 19)

APPEA also argued that a partial recovery model would be most appropriate for the potential establishment of a new national regulator:

Without a degree of public funding under a joint funding model that recognises the public benefit derived from regulation and the public oversight this brings, there will remain a high level of reluctance by industry to additional costs to fund a new regulatory regime, regardless of the benefits that nationally harmonised regulation will bring. (sub. 16, p. 19)

APPEA and other industry participants reiterated their opposition to the full cost recovery model following the Commission's draft report. APPEA stated:

APPEA strongly disagrees with this recommendation ... Clearly with the significant public benefits derived from regulation ensuring the secure provision of energy to meet the everyday life demands and expectations of the Australian public, there should be some degree of public funding in recognition of this public benefit. (sub. DR29, pp. 18–19)

The Commission acknowledges that partial public funding might enhance public oversight of expenditure by NOPSAs or a new national offshore petroleum regulator, and also reduce industry concerns about any new NOPSAs-like model. Nonetheless, as previously found by the Commission, a partial cost recovery model is generally inappropriate due to the high degree of subjectivity involved in estimating the distribution of private and public benefits.

Using a full cost recovery model for a new national regulator is the Commission's preferred approach. Full cost recovery is most appropriate for the registration, monitoring compliance and issuing of exclusive rights (PC 2001a). Regulation of petroleum activities under the OPGGSA is consistent with these functions. In addition, many of the arguments in favour of full cost recovery in relation to NOPSA also apply to any new regulatory agency. Further, the advantage of a full cost recovery model is that NOPSA, or a NOPR, is then able to better attract and retain experienced and specialist staff required for them to be able to efficiently perform their regulatory function.

When compared with the arrangements for NOPSA, current charging and funding arrangements for regulatory arrangements under the OPGGSA are less than ideal. Currently, under the OPGGSA fees are payable to the Australian Government for activities including lodging applications, registering transfers and dealings (typically a fee of 1.5 per cent of the consideration of the dealing), annual fees to maintain a title and requests for data and material. These fees, particularly the registration fee for transfers and dealings, do not accurately reflect the costs incurred in administering these activities.

The Australian Government does not, in effect, retain the fees collected from activities in the offshore areas of States and Territories. Rather, amounts equivalent to the fees collected are paid to the State and Territory Governments for their administration of these areas on behalf of the Australian Government. Costs associated with Australian Government regulatory activities are not recovered. (RET and Geoscience Australia estimated that these unrecovered Australian Government costs for administrative and technical advice, policy advice, acreage release and data management, but excluding pre-competitive data acquisition, were about \$13 million per annum (RET, pers. comm., 19 March 2009)).

Revenues collected by the Australian Government and passed to the States and Territories from offshore petroleum fees fluctuate significantly over time, more than doubling from \$17 million to about \$40 million between 2006-07 and 2007-08 (table 9.1), reflecting significant variability in transfers and dealings, not changes in the government costs of regulation. In contrast, NOPSA's revenue has been relatively stable — ranging between \$9.6 million and \$12.1 million in the past three years — and is directly linked to its activities.

Table 9.1 Australian Government revenues from offshore petroleum fees

Year	Offshore areas of States and Territories ^a	Ashmore and Cartier Islands	Total
	\$'000	\$'000	\$'000
2004-05	16 868	1 978	18 846
2005-06	20 096	2 261	22 357
2006-07	15 180	1 534	16 714
2007-08	na	na	41 328

^a These revenues are effectively passed back to the States and Territories. **na** Not available.

Source: RET (pers. comm., 19 March 2009).

Improvements to funding arrangements under the OPGGSA should be made with the establishment of a new national offshore petroleum regulator. As noted in chapter 5, the Commission recommends that the 1.5 per cent registration fee for transfers and dealings should be removed as a precondition to the full cost recovery model for NOPR being introduced.

As with the NOPSAs funding model, if the regulator is to be industry funded it is important that there are appropriate ‘checks and balances’ to ensure the regulator is operating efficiently, and that related processes to determine funding levels are transparent. (With an appropriate cost recovery framework, and the efficiencies that a national regulator and the adoption of cost reflective pricing could promote, it is not certain that costs to industry would necessarily increase after the adoption of full cost recovery, particularly relative to peak years, such as 2007-08). Determination of funding arrangements should be determined by the relevant government department (currently RET), involve industry consultation and could also involve scrutiny through formal government budgeting processes. Importantly, clear and transparent funding arrangements for a new offshore petroleum regulator would provide greater clarity on what are appropriate costs to be funded by industry, compared to current arrangements where government employees may have various responsibilities, only some of which relate to regulation under the OPGGSA.

FINDING 9.6

The current cost recovery model for activities under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth) could be significantly improved. Currently:

- *Australian Government costs associated with administering the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth) are not recovered*
- *State and Territory costs are at least partially recovered, although charges to proponents do not reflect all the costs incurred by all relevant State and Territory regulatory agencies*

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- *the registration fee for transfers and dealings is not cost reflective, can result in significant variation in annual fees and charges collected, and has other undesirable consequences.*

A full cost recovery model for a new national petroleum regulator is the preferred approach. Full cost recovery is most appropriate for the registration, monitoring compliance and issuing of exclusive rights. Regulation of petroleum activities under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth) is consistent with these functions. Many of the arguments in favour of full cost recovery in relation to the National Offshore Petroleum Safety Authority also apply to any new national regulatory agency.

The process of setting the appropriate charges should be transparent, accountable, involve industry consultation and be subject to independent scrutiny and regular review. With the establishment of a new standalone national offshore petroleum regulator it should be easier to identify the costs of regulation.