

Environmental Protection (Cost Recovery) Regulations 2021

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Consultation Draft

Environmental Protection (Cost Recovery) Regulations 2021

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Environmental Protection (Cost Recovery) Regulations 2021*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2022.

3. Terms used

In these regulations —

accredited assessment process means a process under Part IV of the Act that the Commonwealth Minister has, under the EPBC Act section 87(1), decided to use for an assessment for the purposes of the EPBC Act;

agency has the meaning given in the *Public Sector Management Act 1994* section 3(1);

Commonwealth Minister means the Minister referred to in the EPBC Act;

compliance priority rating, for an approved proposal, has the meaning given in regulation 12;

costs, of the Department —

(a) means —

- (i) costs of employing Departmental staff who assess proposals; and
- (ii) costs of employing Departmental staff, to the extent that they manage or support staff referred to in subparagraph (i); and
- (iii) indirect costs of the Department; and
- (iv) costs of funding staff of another agency for the purposes of the other agency assisting, or providing advice, in relation to the Department assessing proposals;

but

(b) does not include external costs of the Department;

[Drafting note: “costs”, of the Dept, used in r. 4 item 5]

Departmental staff means persons referred to in section 22 or 24 of the Act;

Department’s website means a website maintained by or on behalf of the Department;

ecological community has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

EMP means an environmental management plan, environmental management system or environmental improvement plan;

environmental offset means a requirement intended to offset the impact of the implementation of a proposal on the environment, including a requirement of the kind referred to in section 45A(1)(b), (c) or (d) of the Act;

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth);

external costs, of the Department, means —

- (a) costs of acquiring services in the nature of advice; and
- (b) costs (including of meals and accommodation) of Departmental staff travelling to the site of a proposal or a related site;

fee includes charge;

indirect costs, of the Department, means costs that are not directly attributable to the performance of a particular function, including —

- (a) costs relating to office accommodation, motor vehicles and equipment; and
- (b) costs of licensing, including of equipment and intellectual property; and
- (c) depreciation;

scoping document means a document in which the Authority determines the form, content, timing and procedure of an environmental review, under section 40(3) of the Act;

species has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1).

Part 2 — Fees for Part IV of Act

Division 1 — General fees

4. General fees for referral, assessment and implementation of proposals

- (1) The fees set out in the Table to this regulation are, subject to regulations 6(3) and (4) and 7(2), payable in the prescribed circumstances in relation to the referral, assessment or implementation of a proposal.
- (2) The proponent of a proposal is liable to pay a fee payable under subregulation (1) in relation to the proposal.
- (3) When a fee is payable is determined in accordance with the Table.

Fees

Item	Prescribed circumstance	Fee	When payable
1.	Referral of proposal, under s. 38	\$32 000	In accordance with r. 6
2.	Request by proponent for approval to amend proposal, under s. 38C	\$16 000	On the day on which the request is made
3.	Request by proponent to declare proposal a derived proposal, under s. 38E	\$16 000	On the day on which the request is made

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Fees for Part IV of Act

Part 2

General fees

Division 1

r. 4

Item	Prescribed circumstance	Fee	When payable
4.	Request by Authority for additional information, under s. 38F	\$16 000	In accordance with r. 7
5.	Assessment of proposal, under Part IV Division 1	\$16 000 plus the amount, determined by the CEO under r. 5, for costs of the Department in assessing the proposal Note: costs of the Department do not include external costs	In accordance with r. 8
6.	Requirement by Authority for information, under s. 40(2)(a)	\$16 000	In accordance with r. 7
7.	Request by proponent for consent to minor or preliminary works, under s. 41A(3)	\$16 000	On the day on which the request is made

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Part 2 Fees for Part IV of Act

Division 1 General fees

r. 4

Item	Prescribed circumstance	Fee	When payable
8.	Request by proponent for approval of assessment of amended proposal, under s. 43A	\$16 000	On the day on which the request is made
9.	Request by proponent for approval of amendment to, or amendment of conditions relating to, approved proposal, or both, under s. 45C	\$48 000	On the day on which the request is made
10.	Request by Minister for additional information, under s. 45C(2)	\$16 000	In accordance with r. 7

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Fees for Part IV of Act

Part 2

General fees

Division 1

r. 4

Item	Prescribed circumstance	Fee	When payable
11.	The submission of an EMP for confirmation, endorsement or approval (however described) under implementation conditions applying in relation to proposal	\$16 000	On the day on which the EMP is submitted
12.	Inquiry by Authority into implementation conditions relating to approved proposal, under s. 46	\$64 000	In accordance with r. 9

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Part 2 Fees for Part IV of Act

Division 1 General fees

r. 5

Item	Prescribed circumstance	Fee	When payable
13.	Issue by Minister of interim conditions and procedures, under s. 46A	\$16 000	Within the period of 28 days after the day on which the proponent is given notice of the interim conditions and procedures

5. Assessment fees for proposals

- (1) The CEO must, when determining an amount for the purposes of item 5 of the Table to regulation 4, do so in accordance with the method most recently published under subregulation (2) prior to the day on which the proposal is referred.
- (2) The CEO must publish a method for determining amounts for the purposes of item 5 on the Department's website.
- (3) A method may take into account any or all of the following matters —
 - (a) whether the proposal is a strategic proposal;
 - (b) whether the proposal, or an aspect of the proposal, is dealt with as a bilateral matter under Part VIIIA of the Act;
 - (c) whether the proposal, or an aspect of the proposal, is assessed under an accredited assessment process;

- (d) whether an environmental review is undertaken under section 40(2)(b) of the Act;
- (e) whether a scoping document is prepared for an environmental review under section 40(2)(b) of the Act and whether it is prepared by the Department or the proponent;
- (f) whether a public inquiry under section 40(2)(c) of the Act is conducted;
- (g) whether information or a report is made available for public review under section 40(5) of the Act;
- (h) the extent of the public response to —
 - (i) the proposal, if made available for public comment prior to the decision to assess it; or
 - (ii) a scoping document made available for public comment; or
 - (iii) any other information or report made available for public comment or review;
- (i) the number of key environmental factors identified in the Authority's assessment report under section 44 of the Act;
- (j) whether the Authority engaged in consultation on conditions recommended in the Authority's assessment report under section 44 of the Act;
- (k) whether the Authority's assessment report under section 44 of the Act recommends 1 or more conditions imposing environmental offsets;
- (l) the size of the development envelope;
- (m) the size of the disturbance footprint;
- (n) the number of species or ecological communities in relation to which assessment of the impact of

implementing the proposal, and assessment of ongoing investigation or management requirements, is needed.

Examples for this paragraph:

1. Threatened species or threatened ecological communities, as defined in the *Biodiversity Conservation Act 2016* section 5(1), or listed threatened species or listed threatened ecological communities, as defined in the EPBC Act.
 2. New or undescribed species.
 3. Species or ecological communities categorised as Priority 1 or 2 under the Conservation Codes at <<https://www.dpaw.wa.gov.au/images/documents/plants-animals/threatened-species/Listings/Conservation%20code%20definitions.pdf>>.
 4. Vegetation units of regional significance.
 5. Stygofaunal or troglofaunal communities.
- (4) A method may use units of costs that are applied cumulatively, according to the matters in subregulation (3), to produce an aggregate amount.

Note for this subregulation:

A unit of costs may, for example, be an amount that represents the average cost to the Department of a unit of staff time associated with assessing proposals.

- (5) If a proposal was referred in compliance with a requirement under section 38A(1) of the Act, then, for the purposes of subregulation (1), the proposal is taken to have been referred on the day on which the requirement was made.

6. Referral of proposal: payment of fee

- (1) This regulation has effect for the purposes of item 1 of the Table to regulation 4.
- (2) If the proposal is referred by the proponent, the fee is payable on the day on which the proposal is referred.
- (3) If the proposal is referred other than by the proponent, the fee —
 - (a) is payable if, and only if, the Authority decides to assess the proposal; and

(b) in that case, is payable within the period of 28 days after the day on which the proponent is given notice of the decision.

(4) However, if the proponent refers the proposal in compliance with a requirement under section 38A(1) of the Act, subregulation (3), rather than subregulation (2), applies in relation to the referral of the proposal.

7. Request for further information: payment of fee

(1) This regulation has effect for the purposes of items 4, 6 and 10 of the Table to regulation 4.

(2) A fee is only payable under item 4, 6 or 10 if the request or requirement is made of the proponent.

(3) A fee payable under item 4, 6 or 10 is payable within the period of 28 days after the day on which the request or requirement is made of the proponent.

8. Assessment of proposal: payment of fee

(1) This regulation has effect for the purposes of item 5 of the Table to regulation 4.

(2) The CEO must determine the fee for the assessment of the proposal (the *assessment fee*) as soon as practicable after —

(a) the report on the outcome of the assessment of the proposal is given to the Minister; or

(b) the assessment is terminated (under section 40A of the Act).

(3) The CEO must, as soon as practicable after the Authority decides to assess the proposal, determine an estimate of the assessment fee based on the information set out in the Authority's decision to assess.

- (4) 80% of the estimate of the assessment fee is payable within the period of 28 days after the day on which the proponent is given an invoice by the CEO for the amount payable.
- (5) The amount by which the assessment fee exceeds the amount paid under subregulation (4) is payable within the period of 28 days after the day on which the proponent is given an invoice by the CEO for the amount payable.
- (6) If the amount paid under subregulation (4) exceeds the assessment fee, the proponent must be refunded the difference.
- (7) An invoice must set out how the assessment fee, or the estimate of the assessment fee, was determined.

9. Inquiry into implementation conditions: payment of fee

- (1) This regulation has effect for the purposes of item 12 of the Table to regulation 4.
- (2) The CEO may, on receipt by the Authority of a request under section 46(1) of the Act to carry out the inquiry, give the proponent an invoice for the fee.
- (3) The fee is payable within the period of 28 days after the day on which the proponent is given the invoice.

Division 2 — Fees for external costs

10. Fees for external costs incurred by the Department

- (1) If the Department incurs external costs for the purposes of receiving or assessing a proposal, the CEO may give the proponent an invoice for a fee of an amount not exceeding the costs.
- (2) The fee is payable by the proponent within the period of 28 days after the day on which the proponent is given the invoice.
- (3) An invoice must set out the purposes for which the costs were incurred.

- (4) The CEO must give the proponent a copy of the original invoices for the costs if the proponent requests that the CEO do so.

Division 3 — Annual compliance fees

11. Annual compliance fees

- (1) A fee is payable for each financial year for each approved proposal in effect immediately before the commencement of the financial year.
- (2) The proponent of an approved proposal is liable to pay a fee payable under subregulation (1) in respect of the proposal.
- (3) The amount of a fee is the amount set out in the Table according to the compliance priority rating for the approved proposal in effect immediately before the commencement of the financial year.

Amount of fee

Compliance priority rating			
Low	Medium	High	Very high
\$3 500	\$7 000	\$14 000	\$21 000

- (4) If there is no compliance priority rating for an approved proposal in effect immediately before the commencement of a financial year then, for the purposes of this regulation, the compliance priority rating for the proposal for the year is Low.
- (5) A fee is payable within the period of 28 days after the day on which the proponent is given an invoice by the CEO for the fee.
- (6) An invoice must set out —
- (a) the compliance priority rating for the approved proposal; and

- (b) how it was determined; and
- (c) when it was last determined.

12. Compliance priority rating

- (1) The *compliance priority rating* for an approved proposal is the rating determined from time to time by the CEO for the purposes of monitoring the implementation of the proposal under Part IV Division 2 of the Act.
- (2) The rating determines the priority of a proposal in relation to compliance activity.
- (3) The rating is based on the following —
 - (a) the risk to the environment of implementing the proposal;
 - (b) the complexity of the proposal;
 - (c) the level of ongoing compliance by the proponent.

Division 4 — Miscellaneous provisions

13. Fee waiver, reduction or refund

The CEO may, on a case by case basis, refund, reduce or waive, in whole or in part, a fee paid or payable under this Part if the CEO considers it appropriate to do so.

14. Extension of time within which to pay fee

- (1) The CEO may, on a case by case basis —
 - (a) postpone the day on which a fee is payable; or
 - (b) extend the period within which a fee is payable.
- (2) If the CEO does so —
 - (a) these regulations have effect accordingly; and
 - (b) the CEO must give written notice of the postponement or extension to the proponent as soon as practicable.

- (3) The CEO may grant a postponement or extension even if the fee has become payable. In that case, these regulations have effect as if the CEO granted the postponement or extension before the fee became payable.

15. Interest on outstanding amounts

- (1) If a proponent does not pay a fee in full on the day, or within the period, for payment, interest on any outstanding amount is payable at the prescribed rate.
- (2) The *prescribed rate*, for an outstanding amount, is the interest rate that is 3% higher than the cash rate target, as determined and published by the Reserve Bank of Australia, in effect on the 1st day the amount became outstanding.
- (3) Interest does not accrue on interest that becomes payable under subregulation (1).

16. Recovery of unpaid amounts

- (1) The CEO may recover a fee that is unpaid in whole or in part, together with any interest payable, from the proponent, as a debt in a court of competent jurisdiction.
- (2) The CEO may, in a certificate —
- (a) specify an amount as being all or part of a particular fee;
 - (b) specify an amount as being interest payable under regulation 15(1);
 - (c) specify a proponent as being liable to pay the specified amounts;
 - (d) state that the specified amounts are unpaid.
- (3) In proceedings under subregulation (1), a certificate is, without proof of the appointment of the CEO or of the authenticity of the signature, sufficient evidence of the matters specified or stated.

Division 5 — Transitional provisions

17. Term used

In this Division —

commencement day means 1 January 2022.

18. Pre-commencement circumstances, costs and fees

- (1) A fee under these regulations is not payable in relation to —
 - (a) a prescribed circumstance that occurs before commencement day; or
 - (b) an external cost of the Department incurred before commencement day.
- (2) The fee in item 5 of the Table to regulation 4 does not apply in relation to a proposal in relation to which a decision to assess under section 39A of the Act was made before commencement day.
- (3) The fee in item 12 of the Table to regulation 4 does not apply in relation to an inquiry the request for which was made before commencement day.
- (4) Subregulations (2) and (3) do not limit the generality of subregulation (1).

19. Assessments commenced, but not completed, pre-commencement

- (1) This regulation applies in relation to a proposal if, before commencement day —
 - (a) a decision to assess the proposal was made; and
 - (b) a report on the outcome of the assessment of the proposal had not been given to the Minister; and
 - (c) the assessment of the proposal was not terminated.

- (2) If a report on the outcome of the assessment of the proposal is given to the Minister, the proponent is liable to pay a fee of \$48 000.
- (3) The fee is payable within the period of 28 days after the day on which the proponent is given an invoice by the CEO for the fee.

20. Application of regulation 11

Regulation 11 does not apply in relation to a financial year that commences before 1 July 2023.

Clerk of the Executive Council