



Government of **Western Australia**
Department of **Water and Environmental Regulation**

Implementing cost recovery for Part IV of the *Environmental Protection Act 1986*

Discussion paper

Department of Water and Environmental Regulation

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1 Introduction

1.1 Background

The Department of Water and Environmental Regulation (the department) has developed a cost recovery model to implement fees and charges for the environmental impact assessment (EIA) process under Part IV of the *Environmental Protection Act 1986* (EP Act).

The proposed model is designed to enable government to better meet the expectations of industry and the community in protecting the environment. The funding received will be used by the department to provide a timely and effective service while ensuring there remains strong environmental protection.

The *Environmental Protection Amendment Act 2020* was passed by the Parliament of Western Australia in November 2020. The EP Act amendments include a head power through s.48AA to allow for fees and charges to be prescribed or determined for the referral, assessment and implementation of proposals under Part IV Divisions 1 and 2 of the EP Act. The fees and charges are payable by proponents whose projects are to be assessed by the Environmental Protection Authority (EPA).

In order to implement the amendments to Part IV of the EP Act, the EPA is revising its EIA Procedures suite. The amendments to Part IV of the EP Act apply to the entire EIA process and changes have been made to the full suite of documents, including the EPA's Administrative Procedures and Procedures Manual. Consultation was undertaken between April and May 2021 and the revised EIA Procedures are intended to be finalised when the Part IV amendments are proclaimed. The revised EIA procedures have been developed to allow for alignment with the cost recovery model and regulations.

The key deliverables for cost recovery under Part IV of the EP Act are:

- **A pricing model** – to set fees and charges that will be applied to applications (presented in this paper)
- **A demand management model** – to manage and expend funds collected (presented in this paper)
- **Cost recovery regulations** – to enact cost recovery (refer to draft Environmental Protection (Cost Recovery) Regulations 2021 [the Regulations])
- **Implementation planning** – including policy for application of fees and charges and regulation, expenditure of funds and review of pricing structures (under development).

Feedback through consultation on the proposed cost recovery model and consultation draft of the Regulations will be used to finalise the pricing model and the Regulations.

1.2 Purpose and scope

This discussion paper is intended to provide stakeholders with information on the proposed pricing model developed to recover costs associated with referral, assessment and implementation of proposals under Part IV of the EP Act.

The pricing model has been developed in accordance with the State Government's *Guidelines for the Costing and Pricing of Government Services (2015)* and reflects the need for a fair and reasonable true cost of services.

The department provides services to the EPA to enable it to undertake a range of functions under the EP Act. This includes undertaking environmental impact assessment of significant proposals and developing guidance and procedures to protect the environment. The pricing model has been designed to recover costs incurred by other government agencies where they are incurred for EIA, such as specialist advice by the Department of Biodiversity Conservation and Attractions.

During 2019–20, 45 development proposals were referred to the EPA under the EP Act and the EPA completed 40 assessment reports.

During 2019–20 the department monitored significant proposals authorised through Ministerial Statements, completing 59 targeted audits of high-risk proposals, including iron ore mining activities, oil and gas facilities and large infrastructure projects.

The pricing model provides for fees and charges for functions of assessment and implementation, including compliance activities.

This discussion paper provides stakeholders with information on how the Regulations propose to give effect to the pricing model and cost recovery in general. Each section of this paper contains references to specific regulations drafted. A consultation draft of the Regulations is included in the consultation package on the department's Consultation Hub.

1.3 Objectives of the pricing model

The primary objective of introducing the pricing model for Part IV of the EP Act is to improve the capacity and agility of the department to manage an increasing environmental assessment workload without compromising the environmental values of the state.

All funds received are to be held by the department and must be applied towards assessment and overseeing the implementation of proposals assessed under Part IV (this includes compliance activities).

To build baseline capacity for delivering EIA, funds generated will secure positions for assessment officers. In periods of high demand, funding can be used to engage additional staff. There is also the potential for the department to use qualified consultants to assist in delivering key elements of the environmental assessment

process in periods of high demand, or to provide specialised advice to inform assessments.

1.4 Evaluation of the pricing model

The department is developing an implementation plan to support the introduction of cost recovery. Revenue and expenditure will be reported and published annually in the department's annual report. Reporting will be based on an annual evaluation. This will enable tracking and reporting of cost recovery and inform future reviews of fees and charges. Data on assessment activity will underpin these evaluations. It is intended that the introduction of a digital environmental impact assessment database (Environment Online) will coincide with the introduction of fees.

1.5 Review of charge structure

It is proposed that the pricing model, including fees and charges, be reviewed in detail after 18 months of operation. This timing will ensure that a full financial year of data is available to inform the review. The review will also provide an opportunity to assess the effectiveness of measures put in place to improve assessment timeframes.

1.6 Efficiencies in EIA

The delivery of timely assessments is reliant on both proponents ensuring information provided is of a required standard and submitted in a timely manner, and the department and the EPA having efficient and effective process and systems.

As an example of where proponents can assist in an efficient assessment process, all components of a proposal should be referred together, rather than separated out into individual referrals. If proponents refer the whole proposal, there will be both cost and time savings as a result.

The EPA and the department are implementing a range of initiatives to improve processes, reduce unnecessary regulatory obligations and ensure strong environmental protection.

As a result of the amendments to Part IV of the EP Act, the EPA is amending its procedures. The overarching objectives of the changes are to ensure efficient processes and maintain strong environmental protection. There are a number of key changes being made to procedures and practices that will drive efficiency improvements. In particular:

- the instructions for Environmental Scoping Document (ESD) have been simplified to focus on project-specific issues
- the instructions for Environmental Review Documents (ERD) have been amended to focus on key EIA matters

- there is new guidance on the EPA's preference on having environmental outcomes rather than environmental management plans as conditions of approval
- decision-making authorities that can mitigate environmental impacts will be able to be taken into account by the EPA when determining the level of assessment and recommending conditions of approval
- the EPA focus on proportionality of information based on the complexity of project and environmental issues will save time for both proponents and the EPA.

Collectively, these changes are anticipated to improve efficiency and reduce assessment timeframes.

The department is also progressing its new digital 'one stop shop' for environmental assessments, approvals and compliance, through Environment Online.

Environment Online will improve the transparency, certainty and consistency of environmental approvals and provide a quality experience for staff, industry and customers.

Environment Online will provide many benefits including:

- faster and more consistent environmental assessments
- a single online portal for all environmental assessments under the department
- easy integration of case and customer relationship management, GIS data and information, advanced data analytics, workflow management, smart forms and mobility services
- removal of 'information silos' – providing centralised and connected information from multiple systems in 'real time'
- easier use for industry and environmental assessment officers, reducing duplication and costs and assisting decision-making
- more efficient self-service use, decreasing internal administration and speeding up overall turnaround times
- cost savings from reduced assessment times.

The department is implementing Environment Online in stages, with environmental impact assessment under Part IV of the EP Act being the first function implemented. It is intended this stage of Environment Online will be operational in February 2022.

1.7 Assessment timeframe certainty

The department expects that through the EP Act amendments and implementation of cost recovery there will be greater certainty on assessment timeframes provided to proponents. The EP Act amendments (s.40) now require scoping documents to publish an indicative outline of the timing of the environment review. While this has

historically been done by the EPA, now that it will become a statutory requirement there will be greater rigour applied and project specific timelines published.

2 Approach to cost recovery

The department has developed a proposed cost recovery model for Part IV of the EP Act in a staged manner. External financial consultants with relevant experience were engaged to assist in developing a model for cost recovery, including pricing and demand management models.

2.1 Design principles

The department used a number of design principles to guide development of the cost recovery model. These principles include:

- **Consistent and repeatable** – The model is required to demonstrate consistent outcomes across proposals
- **Proven** – The model should be tried and tested and have demonstrated success in achieving targeted cost recovery
- **Flexible** – The model should allow for flexibility and appropriate discretion to be applied
- **Transparent** – The workings of the model should be transparent to build confidence and trust in the integrity of the process
- **Contemporary** – The model should adopt an approach that is relevant and reflective of how proponents currently operate while allowing for innovation
- **Practical and efficient** – The model should deliver equitable cost recovery outcomes while being practical and efficient to administer
- **No perverse outcomes** – The model should ensure all outcomes are aligned with the objectives of the EP Act and there are no adverse impacts on the environment, for proponents, for the department or for the EPA
- **Impactor pays** – this principle requires that charges are borne by those driving the proposal and subsequently the potential environmental impacts
- **Reflective of effort** – The model should accurately and appropriately reflect the amount of time and effort required to provide EIA services to the proponent.

2.2 Methodology

First stage

As a first stage for development of a cost recovery model, the department engaged EY to undertake a review of cost recovery approaches applied in other jurisdictions and to provide advice on cost recovery.

An assessment of key EIA activities performed by the department was undertaken to inform volume analysis, work effort drivers and logical allocation of costs. The

activities that should have fees and charges applied were also determined, together with items that would be excluded from the model.

Second stage

For the next stage of developing the proposed cost recovery model, the department engaged Lisa Byrne Consulting to develop pricing and demand management models. This incorporated and built on work completed in the earlier stage.

A review of the department's EPA Services work effort and time analysis was undertaken against the budget expenditure of recently completed assessments. The allocation of time taken for specific tasks was also determined.

A cost base for recovery was developed through a comprehensive review of financial costs, from across department business areas, associated with Part IV of the EP Act.

To support fee determination, a pricing model was developed for referral, assessment and implementation activities. The pricing model was tested to determine model robustness and compatibility with agreed design principles by applying it to 50 assessments (referred under s.38) completed since 2017.

Third stage

The proposed charges and the methodology for determining fees have been reviewed from a legal perspective to ensure they fall within the head powers provided under s.48AA. Regulations have been drafted on this basis.

In June 2021, the department engaged EY to undertake a validation of the pricing and demand management models. The validation procedures indicated the methodology and assumptions applied by the department were logical and reasonable.

2.3 Extent of cost recovery

In developing the pricing model, all costs incurred in implementing environmental impact assessment under Part IV of the EP Act were considered. These include the direct and indirect costs associated with environmental impact assessment and compliance. This is provided for in Regulation 3.

Direct costs relate to workforce salary costs and indirect costs include management costs and corporate overheads.

Several items and activities are excluded from the pricing model and therefore the cost base.

3 Proposed fees and charges

3.1 Overview of charges - assessment

The proposed pricing model provides for a mixture of fixed and variable charges. These are provided for in Regulations 4 and 5. Fixed fees apply throughout the referral, determination, assessment and implementation phase of proposals. Variable fees apply in the assessment phase only.

Following the principles of **impactor pays** and **reflective of effort**, a tiered approach to charging has been developed. This includes variable charges for complexity and highly complex referrals. The tiered approach to fees and its application is presented in Table 1.

Table 1: Tiered model of fees adopted for the pricing model

Charge type	Application
Fixed charges (refer to Table 2)	Apply to requests in all stages of the EIA process
Variable charges (refer to Table 3)	<p>Complexity</p> <p>Limited in application to referral of:</p> <ul style="list-style-type: none"> - new proposals (referred under s.38) - Strategic proposals (referred under s.37B) <p>Highly complex</p> <p>Limited to when set criteria are triggered</p>

The complexity fees have been based on an existing approach to determining the level of effort required to complete an assessment. This methodology is used to determine Key Performance Indicator (KPI) reporting by the department. It includes complexity fee categories identified as proxies for effort in completing assessments. This method addresses the principles of **consistent, repeatable** and **transparent**.

Additional fees will apply to proposals that are highly complex. These fees will apply to assessments with the highest level of complexity and therefore requiring the greatest level of effort to complete. It is proposed that the criteria for triggering the application of these fees be based on the area of disturbance of proposals and the quantum of threatened or priority species of flora and fauna which are to be impacted or require management.

It is proposed that proponents are charged at set trigger points throughout the EIA process (

Figure 1). This is provided for in Regulations 6–11. Fixed fees are to be charged at the point of request. Variable fees will be estimated at the start of the assessment

process and based on information provided by the proponent. A maximum of 80% of the estimated fee for assessment will be invoiced following *Stage 2: Determination*. At the conclusion of *Stage 4: EPA report and recommendation*, a revised fee will be derived, and the residual invoiced to proponents.



Figure 1: Charging points for fixed and variable (complexity) fees for assessments

A summary of the charging points together with the associated charges and fees to be applied are provided in Table 2. Further detail on the complexity fees and fees for highly complex referrals are provided in Table 3.

As provided for in Regulation 5, the Chief Executive Officer (CEO) of the department can determine a method for calculating a complexity fee (as outlined in Table 4) and require the publishing of the method on the department’s website. This would be limited to fee criteria stipulated in Regulations.

Development of unit model

The pricing model is based on units of effort. A unit measure was derived from staffing level and outputs. A unit comprises one week of effort of a senior environmental officer plus the portion of hours of other staff required to deliver assessment, totalling 162 hours of staff time. The unit of effort includes support from specialist resources.

The total resourcing included within a unit of effort is provided in Figure 2. Based on the pricing model, the cost of one unit of effort is set at \$16,000. In hourly rate terms, this equates to a cost of approximately \$100 per staff hour.

Units of effort have been applied to each charge identified for inclusion in the cost recovery model to determine a fee value.

Figure 2: Staff resources that comprise a unit of effort



Regulating the unit model for fee determination

As drafted, Regulation 5 requires the method for fee calculation to be published on the department's website. The department proposes to publish the dollar value of a 'unit of effort' together with the methodology for calculation of complexity fees. This will provide a more administratively efficient process for any future amendment of fees required to meet the objectives of cost recovery. Adoption of this approach does not preclude future consultation on amendments to the value assigned to 'unit of effort'.

An alternative approach is to publish the cost of a 'unit of effort' in the Regulations. This approach would require changes to the Regulations each time the unit cost requires updating. As this is a formal statutory process it is less flexible and requires an additional administrative and legal effort.

In considering these options, it is important to understand that the head powers in s.48AA limit the department to recovering costs incurred; that is, the scheme cannot over-recover.

Fixed fees

A number of fixed fees are attached to powers exercised by the EPA. These fees will be charged when a formal request has been made by the independent Chair of the EPA. For example, requests for further information fees will be limited to when the information request is formally made by the department of the EPA. This will also apply to the recovery of costs incurred by the department resulting from requests from the EPA to seek additional advice such as peer review or other external advice related to the assessment.

Table 2: Proposed charging structure together with fixed fees and charges for EIA activities as provided for in Regulation 4

Stage of Assessment	EP Act	Charge	Fee	Further detail
1. Referral	s.38	Referral charge (proponent referred)	\$32,000	One-off fee
	s.38C	Change to proposal during referral	\$16,000	Charged per request
	s.38F(2)	EPA requests for further information	\$16,000	Charged per request
2. Determination	s.38G	Referral charge (third party referred, determination to assess, includes 'calling in' of proposals by Minister or EPA)	\$32,000	One-off fee
3. Assessment	s.38E	Derived proposal	\$16,000	One-off fee per proposal
	s.38G	Base assessment fee	\$16,000	One-off fee
		Fees based on complexity methodology	Variable	Refer to Table 3
4. EPA Report and Recommendations	s.41A	Minor and preliminary works	\$16,000	Charged per request
	s.43A	Change to proposal during assessment	\$16,000	Charge per request
	s.40(2)(a)	EPA requests for further information	\$16,000	Charge per request
	s.40(2a)	Independent peer review commissioned by the EPA	Variable	Full cost to be passed on to the proponent
	N/A	Costs incurred (eg. site visit)	Variable	Full cost to be passed on to the proponent
		EPA Report and Recommendations	\$48,000	Transitional one-off fee per proposal
5. Implementation	s.45C	Change to proposal after decision	\$48,000	Charge per request
	s.45C(2)	Minister requests further information	\$16,000	Charge per request

Stage of Assessment	EP Act	Charge	Fee	Further detail
	N/A	Post-assessment review of an EMP	\$16,000	Charge per request
	s.46	Change to implementation conditions	\$64,000	Charge per request
	s.40(2)(a)	EPA requests for further information	\$16,000	Charge per request
	s.46A	Interim conditions	\$16,000	One-off fee charged at request

Table 3: Proposed complexity fees for assessment of referrals under s.38 and s.37B (Strategic proposal) as provided for in Regulation 5

Factor	0 units	1 unit	2 units	3 units	4 units	5 units	6 units
Strategic assessment	No			Yes			
Assessment based on referral information	No	Yes					
Accredited assessment (as approved by the Commonwealth)	No		Yes				
Number of submissions received seven-day public comment period	0	1+					
Scoping document		Proponent prepared	EPA prepared				
Review of proponent prepared scoping document required	No	Yes					
Number of public submissions received on proponent prepared scoping document	0	1–9	10–49	50–99	100–999	1000–4999	5000+
Review of environmental review document required	No	Yes					
Public consultation required on ERD or RI	No		Yes				
Number of public submissions received through public consultation on ERD or RI	0	1–9	10–49	50–99	100–999	1000–4999	5000+
Number of key environmental factors*	0			1			2
Consultation required on draft recommended conditions	No	Yes					
Environmental offsets required	No		Yes				

Factor	0 units	1 unit	2 units	3 units	4 units	5 units	6 units
Additional fees that apply to highly complex proposals							
Projects disturbing more than 2,500 hectares of land	No			Yes			
Greater than ten significant** fauna and flora species or communities that may be impacted, require further investigation or management as a result of the proposal	No			Yes			

* each key environmental factor will be charged at 3 units

** defined in the methodology

3.2 Overview of charges - compliance

It is proposed an annual fee is charged for compliance monitoring and auditing of Ministerial Statements issued under the EP Act. This fee will apply to each active Ministerial Statement. It will recover costs incurred by the department in reviewing annual compliance statements as well as undertaking detailed auditing of Ministerial Statement requirements. These fees, together with how they are to be applied, are provided for in Regulations 12–14.

Development of an annual compliance fee

It is proposed the fee charged for monitoring compliance of a Ministerial Statement is based on the department's Compliance Priority Rating assigned to each Ministerial Statement. Proposed fees for compliance are outlined in Table 4. The priority rating of Ministerial Statements is established as either very high, high, medium or low. The level of priority is proportionate to the level of risk to the environment of implementing the proposal, the complexity of the proposal and the level of ongoing compliance by the proponent (Regulation 12).

Table 4: Compliance fee schedule

Level of priority	Annual fee
Low	\$3,500
Medium	\$7,000
High	\$14,000
Very high	\$21,000

3.3 Indicative fees and charges

To provide an indication of costs likely to be incurred for assessment, fees were applied to proposals that were referred under s.38 of the EPA Act during the past four financial years (52 proposals between 2017–18 to present).

Assessment of new proposals (s.38)

The cost of undertaking an assessment of a new proposal referred under s.38 will vary, depending on the level of assessment and the complexity. It is anticipated total cost will start from \$175,000, with the average cost of an assessment about \$436,000.

Examples of application of fees and charges to proposals are provided in Table 5, Table 6, Table 7 and Table 8.

Table 5: Example of proposal subject to fixed and complexity fees

Scenario: proposal to construct a power plant in the Pilbara. Assessment on referral information with additional information and public review.

Assessment stage	Fee type	Activity	Fee/number of units
Referral	Fixed	s.38 referral (proponent referred)	\$32,000
Determination	Fixed	N/A	-
Assessment	Fixed	Base assessment fee	\$16,000
		EPA request additional information	\$16,000
	Complexity	Submissions on seven-day public comment	1
		Public consultation required	2
		Number of environmental factors – 2	6
Total fixed fees			\$64,000
Total units			9
Total cost (pricing model \$16,000/unit)			\$208,000

Table 6: *Example of project subject to fixed, complexity and highly complex fees*
 Scenario: proposal to produce sulphate of potash from groundwater. Assessed as Environmental Review without public review.

Assessment stage	Fee type	Activity	Fee/number of units
Referral	Fixed	s.38 referral (proponent referred)	\$32,000
Determination	Fixed	N/A	-
Assessment	Fixed	Base assessment fee	\$16,000
	Complexity	Submissions on seven-day public comment	1
		Scoping document prepared by proponent	1
		EPA review of scoping document required	1
		Review of Environment Review document	1
		Number of environmental factors – 4	12
	Highly complex	Disturbance footprint greater than 2500 ha	6
		Total fixed fees	\$48,000
		Total units	22
		Total cost (pricing model \$16,000/unit)	\$400,000

Table 7: Example of project subject to fixed, complexity and highly complex fees
 Scenario: proposal to construct a rail-line. Assessment on referral information with additional information and public review.

Assessment stage	Fee type	Activity	Fee/number of units	
Referral	Fixed	s.38 referral (proponent referred)	\$32,000	
Determination	Fixed	N/A	-	
Assessment	Fixed	Base assessment fee	\$16,000	
		41A minor and preliminary works request	\$16,000	
		43A change to proposal during assessment	\$16,000	
		EPA request additional information	\$16,000	
	Complexity		Accredited assessment (Commonwealth approved)	2
			Submissions seven-day public comment – between 49–99	3
			Public consultation required	2
			Number of public submissions on assessment – between 100–999	4
			Number of environmental factors – 6	18
			Environmental offsets required	2
Total fixed fees			\$96,000	
Total units			31	
Total cost (pricing model \$16,000/unit)			\$592,000	

Table 8: Example of project subject to fixed, complexity and highly complex fees
 Scenario: proposal to extend an existing iron ore mining project. Public environmental review.

Assessment stage	Fee type	Activity	Fee/number of units
Referral	Fixed	s.38 referral (proponent referred)	\$32,000
Determination	Fixed	N/A	-
Assessment	Fixed	Base assessment fee	\$16,000
	Complexity	Accredited assessment (Commonwealth approved)	2
		Proponent prepared scoping document	1
		Review of scoping document	1
		Review of ERD required	1
		Public consultation required	2
		Number of public submissions on assessment – between 1–9	1
		Number of environmental factors – 6	18
		Environmental offsets required	2
		Highly complex	Greater than 2500ha of land disturbed
		Total fixed fees	\$48,000
		Total units	34
		Total cost (pricing model \$16,000/unit)	\$592,000

Assessment of requested changes to approved proposals (s.45C & s.46)

Fixed fees apply to requests to amend proposals or implementation conditions for proposals that have been approved and are in the implementation stage. Examples of the fees that will apply to these assessments are provided in Table 9 and Table 10.

Table 9: Example of fees for request under s.45C of the EP Act

Assessment stage	Fee type	Activity	Fees
Implementation	Fixed	s.45C change to proposal after decision	\$48,000
		s.45C(2) Minister requests further information	\$16,000
Total cost			\$64,000

Table 10: Example of fees for request under s.46 of the EP Act

Assessment stage	Fee type	Activity	Number of units
Implementation	Fixed	s.46 request to change implementation conditions	\$64,000
	Fixed	s.46A request for interim conditions	\$16,000
Total cost			\$80,000

Changes to use of provisions in s.45C

Amendments to the EP Act include new provisions for requests to amend approved proposals or implementation conditions without inquiry or assessment under s.45C of the EP Act. These changes will mean that any amendment considered to be significant (significant amendment) will need to be referred through s.38G for assessment. In instances where this may occur, it is proposed fixed and complexity fees for s.38 referrals would apply and any fees collected for a s.45C submission will be refunded. This is outlined in the example of fees provided in Table 11.

Table 11: Example of fees when significant amendments are requested under s.45C
Scenario: proposal to increase discharge of groundwater from mine dewatering into the mouth of a river. Assessed on referral information with no public review.

Assessment stage	Fee type	Activity	Fee/number of units
Referral	Fixed	s.38 referral (proponent referred)	\$32,000
Determination	Fixed	N/A	-
Assessment	Fixed	Base assessment fee	\$16,000
	Complexity	Number of environmental factors – 1	3
Implementation	Fixed	s.45C Change to proposal after decision	3
Total fixed fees			\$48,000
Total units			3
Total Cost (pricing model \$16 000/unit)			\$96 000

Transitional arrangements

Regulations 14 and 19–21 outline how fees are to be applied to projects that have been referred or called in before commencement of the Regulations. It is proposed fees for stages of assessment already underway at the date of commencement of the Regulations will not apply. This is outlined in more detail in Table 12.

Table 12: Fees applicable to proposals at date of commencement of Regulations

Scenario	Fees to apply
Proposal 'called in' before commencement but not actually referred	All fees except referral fee
Proposal referred (either by proponent, third party or 'called in') but no decision to assess	All fees except referral fee
Proposal referred by proponent but no decision on whether to assess	All fees except referral fee
Proposal referred, EPA decision to assess, assessment underway, no EPA Report and Recommendations transmitted to Minister for decision on approval	Assessment fees: s.41A, s.43A, s.40(2)(a), s.40(2a) Fixed fee for EPA Report and Recommendations (transitional fee only) Implementation & Compliance fees
Proposal approved before commencement (Ministerial Statement in place)	Implementation & Compliance fees

4 Payment of fees

4.1 Exclusions

The head power enabling cost recovery (s.48AA EP Act), stipulates fees and charges are to be applied to proponents in prescribed circumstances under Division 1 or 2 of Part IV of the EP Act. This means that the following are not included in cost recovery:

- Assessment of schemes (s.48A) as this falls Division 3 and 4 of the EP Act.
- Thirty-party referrers as they are not proponents. Where a third-party referral leads to a decision to formally assess a proposal, proponents will be required to pay the referral charge and any subsequent charges throughout the stages of the assessment.

4.2 Extension of time

It is proposed that the cost recovery regulations include the ability for the Director General (DG) to consider extensions to the time proponents will have to pay fees. Requests to postpone or extend the period in which fees are to be made will be considered on a case-by-case basis. This will enable proponents to defer payment of fees in circumstances where the financial means to pay fees may be delayed. This is provided for in Regulation 14.

4.3 Waiving of fees

It is proposed that the cost recovery regulations include the ability for the DG to waive some or all fees associated with environmental impact assessment under Part IV of the EP Act. This is consistent with the current Environmental Protection Regulations 1987, which allow some or all fees to be waived for works approvals, licences and registration. It is also consistent with the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, which allows some or all fees to be waived for clearing permits. This is provided for in Regulation 13.

Fee reductions or waivers

It is proposed that an application to request the DG consider a waiver or reduced fees may be submitted by proponents. Principles outlining circumstances in which fee reduction or waiver will be considered will be outlined in policy which will support implementation of the Regulations. Applications would need to clearly state the reasons for the request. Examples of circumstances in which the provisions of Regulation 15 may be considered include where proponents are individuals or small business entities (as defined by s.328.110 of the *Income Tax Assessment Act 1997*).

Fee refunds

Where the application is withdrawn before the department completes validation and formally accepts the referral, a full refund will be available to the applicant. The

department will generally not refund any fee after the application has been validated and accepted.

Automatic fee waiver

Proponents of non-significant third-party referrals

It is proposed that the referral charge be automatically waived in the instance where a third-party refers the proposal but the EPA determines not to formally assess the proposal. This applies to referrals which are not considered valid. This is provided for in Regulation 6.

Decision-making authorities

It is proposed that the referral charge be automatically waived in the instance where a Decision-Making Authority (DMA) refers a proposal because of a statutory obligation.

Changes initiated by the Minister

In the situation whereby the Minister initiates an administrative change to a proposal under s.45C of the EP Act, the department will automatically waive the charge.

Charges will similarly be waived for administrative changes under s.46, s.46A or s.46C triggered because of an error made on the part of the department or the EPA.

5 Regulations enabling cost recovery

Regulations developed through the head power provided in s.48AA will provide the mechanism for mandating the costs, fee methodology and implementation items outlined throughout this paper. The information presented in this paper is intended to further explain the Regulations as provided for consultation. These include provision for the following:

- Fixed fees, including when payable (as outlined in Sections 3.1 and 3.2 above and in Regulation 4 General fees together with Regulations 6–10).
- Assessment or complexity fee methodology, including when payable (as outlined in Section 3.1 above and in Regulation 5 Assessment fees for proposals together with Regulation 8).
- Additional costs incurred during assessment that are to be passed on to proponents (as outlined in Section 3.1 above and Regulation 11).
- Compliance fees, methodology for determining fee and scheduling of fees (as outlined in Section 3.2 above) and in Regulations 12–14).
- Powers to reduce, waive or refund fees (as outlined in Section 4.0 above and in Regulation 15)
- Transitional arrangements for fees (as outlined in Section 3.3 above and in Regulations 14 together with Regulations 19–21)
- Terms used (as outlined in Regulation 3)
- Miscellaneous provisions relating to payment of fees, interest on late payments and recovery of unpaid amounts are outlined in Regulations 16–18 respectively.

The Regulations will be finalised following consultation and consideration of submissions made through this discussion paper.

6 Additional considerations

6.1 Activities relating to existing Ministerial Statements

The department proposes to implement fees for applicable activities when the cost recovery regulations commence. It is proposed that this applies to proponents who request a change to a proposal or change to conditions for an existing Ministerial Statement, or when an Environmental Management Plan relating to an existing Ministerial Statement is submitted for approval. Costs for these requests are included in Table 2 and provided for in Regulation 4, Items 9–13.

It is proposed that a transition period for compliance fees be applied to all existing Ministerial Statements. This means that annual compliance fees will not be charged from the date of commencement of fees in the cost recovery regulations. New provisions under s.47A of the EP Act are scheduled for proclamation later in 2021. These will enable proponents to apply to withdraw Ministerial Statements where it can be demonstrated that the conditions have been implemented or can be mitigated by some other form under the EP Act (e.g. licensing). Fees will not be applied where Ministerial statements have been withdrawn.

6.2 Bilateral assessments

Current negotiations between the State and the Commonwealth may lead to the introduction of an approval or assessment bilateral. If this occurs, fees and charges will be revised. In line with the cost recovery design principles, the State Government will work with the Commonwealth to ensure bilateral or accredited assessments do not attract duplication of costs associated with EIA.

7 Having your say

7.1 How to provide feedback

The department is seeking your input on the proposed cost recovery model for Part IV of the EP Act.

Your feedback will help inform and finalise the cost recovery model and the development of the related regulations.

You are invited to share your views by making a submission to the department.

If you are raising an issue outside of the scope of the cost recovery model, please make this clear. Submissions can be made [online](#) through department's Consultation Hub.

You can also send hard copy submissions to: EP Act Discussion Paper, Department of Water and Environmental Regulation, Locked Bag 10, Joondalup DC WA 6919

7.2 Your legal rights and responsibilities

If you make a submission, please be aware that in doing so, you are consenting to it being treated as a part of a public document. Your name will be published; however, your contact address will be withheld for privacy. If you do not consent to your submission being treated as part of a public document, you should either mark it as confidential, or specifically identify what information you consider to be confidential and include an explanation. Please note that even if your submission is treated as confidential by the department, it may still be disclosed in accordance with the requirements of the *Freedom of Information Act 1992*, or any other applicable written law. The department reserves the right before publishing a submission to delete any content that could be regarded as racially vilifying, derogatory or defamatory to an individual or an organisation.

Shortened forms

DMA	Decision Making Authority
EIA	Environmental impact assessment
EPA	Environmental Protection Authority
EP Act	<i>Environmental Protection Act 1986</i>
EY	Ernst & Young Australia