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Environmental Protection Act Part 4 – Cost Recovery Review

Summary and Recommendations

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A Marsden Jacob Report

Prepared for Department of Water and Environmental Regulation

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Review summary and recommendations

In Western Australia, the Department of Water and Environmental Regulation (DWER) supports the Environmental Protection Authority (EPA or the Authority) to undertake a range of functions under the *Environmental Protection Act 1986* (EP Act or the Act). That support includes advice and management of environmental impact assessments (EIAs) for significant proposals under Part IV of the EP Act and creating procedures to safeguard the environment.

The Environmental Protection (Cost Recovery) Regulations 2021 (the Cost Recovery Regulations or the regulations) came into effect in December 2021. The regulations introduced fees and charges for DWER to recover costs for proposals referred to the EPA under the EIA process in Part IV of the Act.

Division 6 of the Cost Recovery Regulations requires a review of the general fees as soon as practicable after 1 July 2023. Marsden Jacob Associates (Marsden Jacob or the project team) was appointed by DWER to conduct an independent review, with a slightly broader scope than that stipulated under Division 6. The review scope given to the project team is outlined below.

Marsden Jacob applied a range of strategies to each of the agreed review questions (Table 1).

Table 1: Review questions and approach

Key review questions	Review strategies used
Are the fees legal (review of fee triggers)?	Review of documentation
Were the fees identified and determined using a suitable approach?	Review of documentation Internal consultation with DWER
Do the fees align with the objectives proposed?	Review of documentation Internal consultation with DWER Targeted consultation with stakeholders
Are the fee levels appropriate (achieving full cost recovery)?	Review of model and financial reports
Are there any fees that should be charged, but are not currently? / Should any fees be removed?	Review of documentation Internal consultation with DWER Targeted consultation with stakeholders
Do the fees appropriately balance precision and simplicity?	Review of documentation Internal consultation with DWER Targeted consultation with stakeholders
Should any be changed?	Review of documentation Internal consultation with DWER Targeted consultation with stakeholders
Are there any unintended or perverse outcomes of the Cost Recovery Regulations?	Internal consultation with DWER Targeted consultation with stakeholders

Review of the development of the fees and charges

A review of the documentation from the development of the fees and charges reveals that the fees were established with the aim of:

- being feasible and legal
- being cost-effective and practical
- being imposed on those that benefit from, or whose actions give rise to the need for, EIAs
- being simple, easy to understand and communicate
- being transparent, with clear accountability
- allowing full cost recovery.

EIA service costs across all directorates should inform cost recovery analysis and benchmarking.

Those aims align well with WA Government guidance on fees and charges, as outlined in:

- *Costing and pricing government services* (May 2020)
- the Treasurer's instruction 810 as found in the Financial Administration Bookcase
- *Operating subsidy guidelines*.

The process used to develop the fees and charges framework, and model was reviewed to ensure that they are consistent with the WA Government guidelines for cost recovery.

An in-depth review of the model was undertaken to ensure that all the input formulas were being calculated correctly. Checks of the model indicated that the calculations were all correct. However, a few observations were made that the calculations could be amended to make the model more robust. Those changes were non-critical and did not affect the fees. The calculations were then provided to DWER, and changes were made where necessary. The changes made did not alter the calculation of the fees but rather ensured that the model was operating efficiently.

The review aimed to assess the validity of the model in terms of the demand estimates and the expected versus actual number of referrals. However, since the fees have come into effect only on 1 January 2022, there is a limited amount of historical data on referrals and assessments.

Due to the lack of historical data, it is important that forecast demand and historical levels of demand be reviewed when data is available.

The exact timing of the further review and the trigger for the review can be settled outside of this review process. However, it may be suitable to align this review with recommendation 14 that seeks to provide for future reviews of the regulations.

Determining required services

A detailed review of DWER's approach to determining and defining the required services indicates that the services included in the cost recovery framework align with key performance indicator 7 that DWER reports within its Budget papers (Figure 1).

Figure 1: DWER service summary from the 2023–24 Budget statements

Service Summary

Expense	2021-22 Actual $'000	2022-23 Budget $'000	2022-23 Estimated Actual $'000	2023-24 Budget Year $'000	2024-25 Outyear $'000	2025-26 Outyear $'000	2026-27 Outyear $'000
1. Water Information and Advice	23,273	37,771	33,967	32,631	32,747	31,240	31,497
2. Water Planning, Allocation and Optimisation	33,951	35,792	43,078	41,413	42,280	39,947	38,997
3. Water Regulation, Licensing and Industry Governance	15,807	18,427	19,464	19,236	20,115	19,399	19,702
4. Environmental Regulation	41,069	44,280	47,081	48,393	48,737	47,232	45,494
5. Water and Environment Policy	16,371	37,386	35,360	46,495	50,911	37,292	27,708
6. Waste Strategies	32,731	75,886	41,278	76,266	33,448	27,314	27,632
7. Environmental Impact Assessment Services to the EPA	13,542	17,463	17,531	20,852	19,923	20,020	20,297
8. Environmental Management Services to the EPA	3,872	5,419	4,861	5,384	4,799	4,825	4,918
9. Compliance Monitoring Services to the Minister	1,757	4,008	2,019	2,254	1,801	2,050	2,154
Total Cost of Services	182,373	276,432	244,639	292,924	254,761	229,319	218,399

Source: *2023–24 Budget statements, Budget paper no. 2, volume 2.*[1]

Figure 1, from the WA Budget statements, shows service summary for DWER by key areas. Area 7, 'Environmental impact assessment services to the EPA', is the key service area that is relevant to this review.

Additionally, there are activities that have been excluded from consideration in the pricing model. That was done to ensure that elements that are not directly related to the assessment of a proposal are not considered while setting the fees and charges. Documentation provided by DWER shows the service functions that are considered under the pricing model (Table 2). The table contains elements that are included or excluded for cost recovery.

Table 2: EPA service functions considered under the pricing model

Inclusions	Exclusions
Valid referrals by proponents	Advice—pre-referrals
Referrals by third parties, including decision-making authorities (DMAs), that are assessed (payable by the proponent)	Invalid referrals
Environmental impact assessments (EIAs)	Referrals by third parties / DMAs that are not assessed

[1] Available here.

Inclusions	Exclusions
Specialist advice (DWER internal or external)	Administration errors
Advice from other agencies [a]	Schemes/planning
Policy and strategy related to assessments [b]	Policy and strategy not related to assessments [b]
Environmental management plans (EMPs)	Appeals
Compliance activities	Costs of EPA members and their direct support staff
Changes to proposals	Research and development activities
Changes to implementation conditions	Ministerial support / communications
Strategic assessments	Advice to other agencies
Bilateral assessments	Inquiries

Source: *DWER.*

We note two key items from Table 3 that are worth considering in relation to determining required services:

- a—Advice from other agencies is included in the functions considered under the pricing model. However, we note that the regulations (and model) as they currently are do not provide for fees that recover this cost. We provide further comment on this in the following section.
- b—Policy and strategy related to assessments is included in the model, while policy and strategy not related to assessments is not. We note that, in practice, this may be a marginal decision.

Noting the above, we consider that an appropriate framework has been used to determine the required services within service area 7 in the Budget papers.

Determining the cost base

DWER's costs

The cost base is determined in the model by calculating the total expenses for DWER in the model. Conceptually, the cost base calculation is as follows:

Expense = fixed costs + variable costs + overheads

'Fixed costs' refers to work done by specialists within other parts of DWER. For example, they may include hydrogeologists, aquatic science officers or staff working on water allocation planning:

- Fixed costs are allocated as FTEs.
- Variable costs relate to the costs borne by directorates within EPA Services (EIA North, EIA South, EIA Infrastructure etc.) in conducting EIAs.

- Overheads for EIA-related services are calculated as a percentage of total overheads.
- Total overheads are calculated as direct overheads relevant to the assessment group plus corporate-level overhead costs.
- Direct overheads are costs borne by compliance and enforcement, EPA Services, Regional Delivery, Regulatory Services, Science and Planning, and Strategic policy.
- Corporate-level overhead costs are the costs for corporate services, entity level, Office of the DG, Strategy and Engagement.

We consider that this methodology applied to the calculation of the total costs base is appropriate and follows the WA Government guidelines on cost recovery.

Cost recovery information provided by DWER as part of this review indicated that, for the 2023–24 year, 79% cost recovery was achieved for assessments. This provides more confidence that the determination of the cost base and the development of the cost recovery model was done correctly and that there are no gross miscalculations or errors.

Other costs

Within the Environmental Protection (Cost Recovery) Regulations 2021, Part 2, Division 1 deals with general fees, while external costs are addressed in Division 2.

The current interpretation used by DWER is that Division 1 relates to DWER's costs and Division 2 relates to external costs (such as from a consultant).

That interpretation results in services provided by other agencies—such as the Department of Biodiversity, Conservation and Attractions and the Department of Planning, Lands and Heritage—not being included in the calculation of costs.

That approach does not align with the costing and pricing guidelines,[2] which set out that:

> *Any resources received free of charge from other government agencies should be allocated to each of the services.*

We note that charging for services provided by other government agencies would increase the complexity significantly. Some services provided by other government agencies are included in their own cost recovery processes.

Collecting funds on behalf of another department to defray resourcing costs would be complex and risks creating multiple financial transactions for a government service. This would also require analysis of current levels of resourcing and expected demand for the other agencies.

While the current approach does not align with the State Government's guidance on services provided by other agencies, it is not clear that this is an issue, or that an alternative arrangement

[2] Minister for Planning, *Costing and pricing government services: guidelines for use by agencies in the Western Australian public sector*, WA Parliament, May 2020, p. 19; see Section 3.3.

would be preferable. For this reason, this review does not provide any recommendation relating to recovering costs for services provided by other government agencies.

Additionally, DWER indicated that external consultants' costs are being incurred as part of undertaking assessments. External costs are primarily related to third-party site visits and specialist advice sought as part of assessments. Based on the information received as part of this review, these costs are largely being recovered. However, as these fees to not arise often, there was some uncertainty as to whether these are being appropriately charged. If there is uncertainty around the charging of these fees, then DWER should develop clear internal guidance and processes to ensure that cost recovery is achieved consistently as and when the costs are being incurred.

Determining who pays, cost allocation and charging structure

Through the documents from the preparation of the fees and charges, the project team found that the underlying philosophy for the fees is an 'impactor pays' approach. As noted above, this philosophy aligns with WA guidance on fees and charges and is closely aligned with the fees being charged on a cost-reflective basis.

The fees and charges are based on the average time taken (and resulting salary costs) for each of the fee triggers.

The use of an average cost for each fee trigger results in the fees being simpler to understand and estimate ahead of time but being less cost-reflective than other options—such as charging for staff time on an hourly basis.

The structure used in WA is that all the fees are a flat fee for each trigger—except for the complexity calculation. The complexity calculation allocates points based on a number of characteristics, and then the complexity fee is calculated based on $16,000 per point allocated.

Concessions and waivers

One thing to note that has been raised by some stakeholders is that the state government has committed to various programs to support new industries in WA. Diversify WA[3] and various other grants are available to different industries to help grow WA's economy. A concern that was raised during consultations was that having high fees defeated the purpose of having government support, as it created a 'money-go-round'. These stakeholders suggest that consideration could be made around reduced fees, waivers and operating subsidies for projects of this kind.

However, introducing concessions or waivers of this kind would increase the complexity of the fees and charges framework. It is also not clear that these projects align with the WA Government guidance on concessions, waivers and operating subsidies.[4] Based on our assessment of the topic, it appears that while this is an issue, it is not significant (as it can be worked around) and does not arise

[3] Department of Jobs, Tourism, Science and Innovation, 'Diversify WA economic development framework', WA Government, updated 27 March 2024.

[4] Department of Treasury, *Operating subsidy guidelines*, WA Government, June 2015

very often. As preferable arrangement is not immediately apparent, we consider that the topic should be monitored, but do not provide an explicit recommendation in this review.

Overall conclusion

Fees and charges under Part 4 of the EP Act came into effect on 1 January 2022. The fees were established with the following aims:

- Feasible and legal
- Cost-effective and practical
- Costs imposed on those that benefit from, or whose actions give rise to the need for, an EIA
- Simple, easy to understand and communicate
- Transparent with clear accountability
- Full cost recovery
- EIA service costs across all directorates should inform cost recovery analysis and benchmarking.

Prior to the introduction of the fees in 2022, it is important to note that assessments under Part 4 were provided for without a charge or levy. Cost recovery was introduced in line with WA Government policy for cost recovery and the need to reflect a fair and reasonable true cost of services.[5]

The review undertook a series of consultations with stakeholders to gather their feedback. The regulations were analysed to identify perverse or unintended outcomes. Feedback provided during consultations was considered as part of the analysis of the regulations.

Overall, the aims used when establishing the fees align well with WA's guidance on cost recovery. The cost model works as intended and has been built using best practice approaches. The review did find that some aspects of the regulations have resulted in unintended or perverse outcomes.

Issues about transparency and the efficiency of assessments were raised during consultation. Responses to those issues are provided below.

Recommendations on changes to the regulations are summarised here.

Concessions and waivers

A topic raised by some stakeholders is that the state government has committed to various programs to support new industries in WA. Diversify WA[6] and various other grants are available to different industries to help grow WA's economy. The concern that was raised during consultations was that having high fees defeated the purpose of having government support, as it created a 'money-go-

[5] DWER, *Modernising the Environmental Protection Act: discussion paper*, WA Government, October 2019.

[6] Department of Jobs, Tourism, Science and Innovation, 'Diversify WA economic development framework', WA Government, updated 27 March 2024.

round'. These stakeholders suggest that consideration could be made around reduced fees, waivers and operating subsidies for projects of this kind.

However, introducing concessions or waivers of this kind would increase the complexity of the fees and charges framework. It is also not clear that these projects align with the WA Government guidance on concessions, waivers and operating subsidies.[7] Based on our assessment of the topic, it appears that while this is an issue, it is not significant (as it can be worked around) and does not arise very often. As preferable arrangement is not immediately apparent, we consider that the topic should be monitored, but do not provide an explicit recommendation in this review.

Transparency

Some responses from the stakeholder consultation indicated that there is a lack of transparency about Part 4 fees and charges.

Specifically, there were calls for the publishing of the cost recovery model, the time spent by staff on assessments, and performance metrics of staff related to assessments.

We do not consider that the department is required to publish this information. Additionally, the review does note that the Ernst & Young report that reviewed the pricing and demand model is publicly available.[8]

Transparency of calculation of fees

We consider that the cost recovery model built for the development of Part 4 fees and charges aims to balance simplicity and transparency and to achieve full cost recovery. No cost recovery model will be able to achieve all three, as those are conflicting aims. Noting this, we find that the cost recovery model is built appropriately and provides a good estimation of costs associated with assessments.

Another important point to note is that the WA fees compare favourably with the fees for similar assessments undertaken in a few of the other jurisdictions.

The WA fees are clearly published and so can be estimated ahead of time. In addition, the complexity fee is based on elements that relate to cost drivers for the assessment teams. This contrasts with the practice in some jurisdictions that use tiered fees based on the value of the project, rather than the complexity of the environmental assessment.

Noting all those points, the approach used by the department to implement cost recovery accounting for the complex and bespoke nature of the proposals is appropriate.

Transparency on expenditure of income from fees

As per section 48 AA(1) of the Act, the fees collected as part of cost recovery must be spent on receiving and assessing proposals and monitoring the implementation of proposals. Noting this,

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[7] Department of Treasury, *Operating subsidy guidelines*, WA Government, June 2015

[8] Ernst & Young, *Environmental Protection Act 1986 Part IV cost recovery: pricing and demand model validation*, 25 June 2021.

DWER indicated that a special purpose account holds the cost recovery funds received.[9] DWER also indicated that the process to increase staff within EPA Services would need to follow the Expenditure Review Committee process. Based on that advice, it is not clear that the current process to increase staffing is conducive to scaling up and down as demand fluctuates.

Efficiency of assessments

While we note industry's concern about a perceived lack of efficiency in undertaking assessments, that concern is not easily supported or refuted with the available information.

Productivity could be measured over time by recording and reporting metrics such as assessments per full-time equivalent (FTE) staff member and tracking the spread of complexity points that are allocated against each project over time. We note that DWER currently reports on key efficiency indicators for services in the Budget papers,[10] and a detailed explanation is also provided to explain significant movements and changes. Efficiency indicators from the latest Budget papers are shown in Figure 2.

Figure 2: Efficiency indicators for service area 7

7. Environmental Impact Assessment Services to the EPA

The Department conducts environmental impact assessments of significant proposals and schemes for the EPA.

	2021-22 Actual	2022-23 Budget	2022-23 Estimated Actual	2023-24 Budget Target	Note
	$'000	$'000	$'000	$'000	
Total Cost of Service	13,542	17,463	17,531	20,852	1
Less Income	3,047	1,092	4,188	5,692	2
Net Cost of Service	10,495	16,371	13,343	15,160	
Employees (Full-Time Equivalents)	80	74	81	100	3
Efficiency Indicators					
Cost per standardised unit of assessment output	$45,444	$58,209	$74,285	$69,506	4

Source: *Budget papers 2023–24.*

We also note that, additionally, outcomes and key effectiveness indicators published in the Budget papers[11] show that DWER's services on EIA processes meet the satisfaction targets (Figure 3).

[9] As mentioned in an email from DWER on 28 August 2024.
[10] 2023–24 Budget statements, paper no. 2, volume 2, p. 680.
[11] 2023–24 Budget statements, paper no. 2, volume 2, p. 674.

Figure 3: Outcomes and key effectiveness indicators

Outcomes and Key Effectiveness Indicators [(a)]

	2021-22 Actual	2022-23 Budget	2022-23 Estimated Actual	2023-24 Budget Target	Note
Outcome: Quality advice to the EPA and the Minister on significant proposals and environmental issues:					
The EPA's satisfaction with the Department's Environmental Impact Assessment (EIA) services, during the year, in line with best practice principles of EIA	95%	82%	82%	82%	
Percentage of project-specific conditions which did not require significant change following the appeal process	89%	82%	89%	82%	
Percentage of assessments that met agreed timelines	79%	75%	79%	75%	
The EPA's satisfaction with the Department's provision of environmental management services during the year	97%	82%	82%	82%	

Source: *Budget papers 2023–24, p. 674.*

Recommendations

Key recommendations from this review are summarised and listed here.

Recommendation	Impact on fee and event triggers
1. We recommend that a further review of forecast demand and historical levels of demand for EIA services be undertaken at a future time once further data becomes available.	No impact on fees and event triggers
2. We recommend that the regulations be amended to require that all payments be liable to be paid on the issue of a request, that payment be made within a 28-day period of notice and that provisions be included to state that substantial work on assessment will not take place until payment has been made in full.	No impact on fees and event triggers
3. We recommend that DWER review the interest regulation (15) and develop clear guidelines around how interest is applied. The guidance should cover interest calculations and consistent application. We recommend the Department consider whether the interest rate charged should be made consistent with the interest charged under other parts of the EP Act for simplicity and transparency. Further, we recommend the inclusion of provisions to allow the suspension of assessment processes in the event of extended non-payment.	No impact on fees and event triggers
4. For fees associated with requests for information, we recommend that the regulations be amended in line with the advice provided by the DWER Legal Services team. We suggest that the amendments include the provision that, in the case of a third-party referral, proponents do not incur any fees until the decision has been made to assess the proposal.	Introduces a new fee trigger – but aligns with an existing trigger
5. We recommend that the regulations be amended so that proponents are not required to pay an additional fee when given an extension of time to comply with a request for information.	Removes a trigger for an additional fee
6. We recommend that the regulations be amended to ensure that fees for confirmation, endorsement or approval for environmental management plans (EMPs) be charged only once (such as on final submission) to recognise the iterative nature of the confirmation process for EMPs.	Removes a trigger for additional fees
7. We recommend that the regulations be amended to indicate that approvals under section 45C(5) specifically for administrative changes and clerical errors be exempt from the fee.	Removes a trigger for additional fees
8. We recommend that section 46 inquiries be further investigated to understand how many are being initiated and the range of resourcing required to conduct inquiries. If the investigations indicate that fees for section 46 inquiries should be flexible to scale with the level of effort, we recommend that this be implemented.	May introduce a new fee trigger
9. We recommend that the fee relating to amendments under section 43A be investigated further by the department to understand whether the removal of the fee would result in any perverse incentives.	Removes a trigger for additional fees

Recommendation	Impact on fee and event triggers
10. We recommend that the waiver system be reviewed, and appropriate delegations established to ensure that the procedure aligns with due process while not being unduly burdensome.	No impact on fees and event triggers
11. We recommend that resource utilisation on section 47A requests be considered further. If section 47A requests prove to be highly resource intensive, we recommend that fees be introduced to recover the costs incurred by the department. However, any fee would require careful consideration and drafting to ensure that it does not affect any dormant ministerial statements.	May introduce a new fee trigger.
12. We recommend that the regulations be amended to indicate that, if a direction under section 43 results in a project being assessed for the first time, then the assessment be charged with the conditions aligning with section 38A. This would fall under regulation 6(3).	Introduces a new fee trigger – but aligns with an existing trigger
13. We recommend that the Part 4 fees be indexed to reflect movements in the Public Sector Wage Price Index.	No impact on fees and event triggers. Would impact fee levels
14. We recommend that the regulations be amended to include provision for a future review. A review in five years would be suitable.	No impact on fees and event triggers
15. We recommend that the process for increasing staffing resources be reviewed and be made flexible to react to demand levels.	No impact on fees and event triggers