



# Cost recovery for environmental assessments under the *Environment Protection and Biodiversity Conservation Act 1999*

## Frequently Asked Questions

Department of the Environment and Energy, October 2016

---

### 1. What is cost recovery?

Cost recovery is the charging of a fee to cover the cost of specific services provided by the Australian Government for work that benefits particular groups or individuals. The [Australian Government Cost Recovery Guidelines](#) set out the policy objectives for the Commonwealth's cost recovery activities, including that those who create the need for regulation should incur the costs, rather than the costs being borne by the wider community.

The implementation of cost recovery for environmental assessments under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) results in:

- each person proposing to take an action that will have or is likely to have a significant impact on a matter of national environmental significance will pay for the services required to assess their application; and
- a more equitable sharing of the cost of protecting the environment between the community and those who obtain a private benefit from environmental assessments.

### 2. When did cost recovery commence?

Cost recovery for environmental assessments and some strategic assessments commenced on 1 October 2014. Revised cost recovery arrangements commenced on 1 October 2016 (see FAQ #5).

### 3. What about projects referred prior to 1 October 2014?

Fees for assessment activities apply to any action referred under Part 7 of the EPBC Act on or after 14 May 2014, and for assessment work undertaken on or after 1 October 2014.

For example, if Project X was referred on 4 June 2014, it will not be subject to a cost recovery fee at the referral stage. If Project X was deemed a controlled action, assessment fees will be payable for each stage of the assessment process beginning on or after 1 October 2014.

If an action is referred on or after 1 October 2014, then cost recovery will apply to both the referral and any assessment activities undertaken.

Cost recovery may also apply where a person wishes to undertake a strategic assessment under Part 10 of the EPBC Act from 1 October 2014.

#### 4. What policy guides cost recovery for environmental assessments?

The Department has a *Cost Recovery Implementation Statement* to provide guidance on how the Australian Government implements cost recovery for environmental assessments and strategic assessments under the EPBC Act ([Cost Recovery Implementation Statement 2016](#)). This Statement includes details of fees and methods for determining fees, exemptions and waivers applicable from 1 October 2016.

#### 5. Cost recovery for environmental assessments as at 1 October 2016

On 1 October 2016, the Department implemented key changes to cost recovery for environmental assessments under the EPBC Act. The revised Cost Recovery Implementation Statement reflects the key changes which include:

- reductions in base and set fees for referral, assessment, post approval and contingent activities
- fees for additional contingent activities
- updates to complexity fees and methods for determining complexity
- updates to the proportions of base and complexity fees to be paid at each fee stage
- updates to the definitions of some assessment stages and for contingent fees for additional information requests
- improvements to administrative processes and
- transitional arrangements for projects currently under assessment to move onto the new fee structures.

#### 6. Which assessment activities are subject to cost recovery?

The Australian Government has introduced cost recovery for the referral of proposals and environmental assessments under the EPBC Act. This covers assessment by:

- Assessment on Referral Information (ARI)
- Preliminary Documentation (PD)
- Public Environment Report (PER)
- Environmental Impact Statements (EIS)
- Bilateral Agreement or accredited assessment process
- Public Inquiry
- strategic assessments

In instances where the Minister determines under section 162 of the EPBC Act that an action must be assessed and approved under the EPBC Act, the assessment of those actions is also subject to cost recovery (see FAQ #21).

Cost recovery includes some contingent fees. These only apply where there is a need for the Department to undertake further work as a result of a statutory requirement under the EPBC Act. This might occur, for example, where fees are incurred because the information provided

by the person proposing to take an action is inadequate to assess the project and the Department needs to request further information.

Cost recovery also applies to a number of post approval activities. These are assessment rather than compliance activities, and include:

- the assessment of management action plans; and
- contingencies such as the person proposing to take an action requesting a variation to conditions of approval.

## 7. Who pays the fees?

Fees apply to the 'person proposing to take an action' under the EPBC Act. The 'person proposing to take an action' is the person who plans to take an action which will have or is likely to have a significant impact on a matter of national environmental significance.

It should be noted that the person proposing to take an action and the designated proponent are not necessarily the same person. In most cases the Minister will designate the person proposing to take an action as the proponent when the controlled action and assessment approach decision is made. However, this will not always be the case. For instance, the designated proponent could be an environmental consultant acting on behalf of the person proposing to take an action. In this instance, the designated proponent is not liable for fees.

## 8. Does cost recovery apply to strategic assessments?

Yes, from 1 October 2014, and on a case by case basis. Full cost recovery will apply where there is an identifiable person responsible for a policy, plan or program, and where the assessment primarily provides private benefits. The Minister will determine on a case by case basis whether a new strategic assessment will be subject to cost recovery.

Strategic assessments that primarily provide benefits to the general public and community will continue to be funded by the Australian Government. There may be circumstances where a proposed strategic assessment has both a public and a private benefit, and will be partially cost recovered (i.e. result in a mixture of budget funding and cost recovery).

In cases where full or partial cost recovery is deemed to be appropriate, fees will be determined in consultation with the person responsible for the policy, plan or program.

## 9. How much are the fees?

The fees are detailed in the EPBC Regulations available on the Federal Register of Legislative Instruments [www.comlaw.gov.au](http://www.comlaw.gov.au). A detailed list of applicable fees is also available in the Cost Recovery Implementation Statement that is published on the Department's website at <https://www.environment.gov.au/epbc/publications/cost-recovery-implementation-statement-2016-17>. This contains the current fee structure for cost recovery.

Each project referred under the EPBC Act will be subject to the following fees:

- a set referral fee at the time the EPBC referral form is submitted;
- base fees if the project proceeds to assessment; and
- complexity fees, as appropriate.

Fees for assessment by public inquiry or by strategic assessment will be determined by the Minister on a case by case basis, in consultation with the person taking the action or the person responsible for the policy, plan or program, as applicable.

## 10. What if I don't agree with the schedule of fees issued to me?

If you do not agree with the schedule of fees issued to you by the Department, you can apply for a '*reconsideration of fees*' within 30 business days of receiving the schedule of fees. You can only apply once in respect of a fee. Once the Department receives a reconsideration request, a person senior to the person who calculated the original fee will reconsider the method used to calculate the fee, and either confirm the fee or work out a new fee. A new fee can be higher or lower than the original fee.

The methods used to calculate a schedule of fees are:

- determining the level of complexity for a fee component;
- adding together the complexity fees;
- the amount of a partial refund (see FAQ #14); and
- a notification as to whether a variation to an action management plan is administrative or not.

## 11. How are fees paid to the Department?

There are several payment options, including payment by credit card, electronic transfer or cheque. The Department will provide invoices to proponents (except for the referral fee), detailing the required payment information and payment methods.

## 12. When are fees paid?

A set referral fee is payable by the person proposing to take an action following the receipt of an EPBC Act number.

For environmental assessments, the entire cost of an assessment (base fees plus complexity fees) is identified at the start of the process. The cost is broken down for each assessment stage. Fees must be paid before each stage of the assessment process begins, following receipt of an invoice from the Department. Fees may also apply if additional information is requested by the Minister during either the referral or assessment processes.

All environmental assessment processes under the EPBC Act have four assessment stages, set out in the legislation and EPBC Regulations, with the exception of Assessment on Referral Information, which only has three stages. Fees for each assessment stage must be paid prior to the commencement of each stage of assessment. Work will not commence on a stage of assessment until the respective fee is paid.

For example, if a project is being assessed by Preliminary Documentation, and is ready to proceed to Stage 2 of that process, an invoice will be issued with the fees for Stage 2 and these fees will need to be paid before Stage 2 can proceed.

If the project is withdrawn, lapsed, reconsidered or otherwise does not commence, the person proposing to take an action is not charged the fees associated with the remaining stages of the assessment.

Details of how cost recovery fees for each stage of the assessment process are calculated is included in the [Cost Recovery Implementation Statement 2016](#).

### 13. What happens if I don't pay the fees?

Fees are paid by the person proposing to take an action prior to each stage of the assessment. The referral fee must be paid prior to work commencing for a referral decision. Work will not commence on a stage of the assessment until the fees for that stage are paid. The statutory assessment clock will not commence until the fee is paid.

### 14. Are there exemptions or waivers?

There are exemption and waiver criteria for environmental assessments. Individuals and some small businesses may apply for an exemption from fees. This exemption may apply to small agricultural businesses, farmers, small tourism operators and individuals that are conducting research. For instance, if a person referring an agriculture project is an individual they will be exempt from cost recovery fees, including referral fees.

The Minister will have discretion to waive fees for environmental assessments in particular circumstances:

- where the Minister determines that the action's primary objective is to protect the environment; or
- where the Minister determines it is in the public interest to do so; or
- where the Minister determines there are other exceptional circumstances justifying the waiver.

The process of notifying that a person qualifies for an exemption and applying for a waiver is outlined in the EPBC Regulations <http://www.comlaw.gov.au/>.

### 15. Are there any refunds?

The Department will refund fees in limited circumstances, including if a person pays a fee that the person is not required to pay or if a person overpays a fee. A partial refund of a fee may occur if a person requests a reconsideration of the fees paid and the fee is reduced following the reconsideration process.

The full details of refunds are outlined in the EPBC Regulations <http://www.comlaw.gov.au/>

### 16. How much information should I provide with my referral?

The referral form on the Department's website and the EPBC Regulations detail the information you should provide with your referral.

The information provided in a referral is used to determine the complexity fees that will be payable. An estimate of these complexity fees will be included in the schedule of fees provided to you at the time of the assessment approach decision.

Where, during stages 1 and 2 of the assessment, you provide additional necessary information, the final amount of additional complexity fees may be reduced from the estimated amount. If the required information is not provided, then you will be required to pay the full estimated amount of the additional complexity fees during stages 3 and 4 of the assessment. Refer to Examples 2 and 3 in the [Cost Recovery Implementation Statement 2016](#) for further information about how additional complexity fees may be reduced.

## 17. When will my referral be processed?

The referral process and respective statutory timeframe do not commence until the referral fee has been paid. Once the fee is paid and a valid referral has been submitted, the referral will be processed in 20 business days subject to EPBC Act requirements.

## 18. How will projects that transition from Commonwealth assessment to a state or territory approval process be dealt with?

If a project is withdrawn from a Commonwealth assessment and approval process to be assessed under a state or territory approval bilateral agreement, then no further fees will be due for assessment stages that are not undertaken by the Commonwealth.

## 19. Does cost recovery guarantee approval?

No. Cost recovery does not guarantee project approval under national environmental law.

Cost recovery covers the cost of assessing applications and these costs are incurred whether the assessment is approved or not. Similarly, a referral fee applies whether or not the proposal is either determined to be a 'controlled action' requiring further assessment and approval, or determined to be a 'not controlled action' not requiring further assessment and approval.

## 20. Do I need to refer if I don't want to pay the fees?

If you are proposing to take an action that could have a significant impact on a matter of national environmental significance, you should submit a referral of action form. The purpose of the referral process is to determine whether a proposed action requires assessment and approval under the EPBC Act. Contact the Department at [epbc.referrals@environment.gov.au](mailto:epbc.referrals@environment.gov.au), if you are not sure if your action may have a significant impact on a matter of national environmental significance.

A referral fee (\$6577) is payable at the time of referral. A referral will not be processed if the applicable fee has not been paid.

If you proceed with an action that has or is likely to have a significant impact on a matter of national environmental significance, and you have not received an approval or notification that it is 'not a controlled action', you may be in breach of the EPBC Act and subject to penalty.

## 21. Do I pay fees under sections 160 to 162 of the EPBC Act?

The cost recovery arrangements for sections 160 to 162 are as follows:

- The Minister's advice given under section 160 will not be subject to cost recovery fees.
- The referrals under section 161 of the EPBC Act will not be subject to the referral fee, whether or not the referral is made under section 161(1) (referral by the Commonwealth) or section 161(2) (where the Minister requests the Commonwealth to refer an action).
- If the Minister determines that Part 8 of the EPBC Act applies under section 162, that is, the action must be assessed and approved under the EPBC Act, then cost recovery assessment fees will be payable (see FAQ #6).

## 22. What consultation was undertaken?

During 2011-12 the Department consulted widely with a range of affected interested parties.

- In September 2011 a consultation paper was published on proposed cost recovery measures under the EPBC Act.
- Written comment was sought from peak industry bodies, relevant non-government organisations, and relevant state and territory departments and agencies.
- A draft Cost Recovery Impact Statement was published in May 2012 with a six week public consultation period.
- Written comment was sought from repeat referrers under the EPBC Act, peak industry bodies, relevant non-government organisations, and relevant state and territory departments and agencies.
- A stakeholder workshop was hosted by the Department in June 2012.

The Department gave thorough consideration to the range of verbal and written stakeholder feedback received during the consultation period. As a result of this feedback, amendments to increase transparency and certainty for stakeholders were made to the cost recovery model, including:

- detail on contingency fees;
- a commitment to the development of guidance material on strategic assessments;
- clarification on the staging of fees and timing of payments;
- clarification on the charging structure of the complexity matrix; and
- clarification of intra/inter governmental charging arrangements.

A number of interested parties sought a commitment to improved service and efficiency following the introduction of cost recovery. A high priority for the Department is improving services to meet statutory timeframes. A [Client Service Charter](#) has been developed.

## 23. What if I have further questions on cost recovery?

If you have any additional questions, please call the Department's Community Information Unit on 1800 803 772 or email your query to [environment.protection@environment.gov.au](mailto:environment.protection@environment.gov.au).