



Environmental
Defenders Office

13 February 2023

Cost Recovery Team

Department of Climate Change, Energy, the Environment and Water

By email: EPBC.Cost.Recovery@dcceew.gov.au

Dear Cost Recovery Team,

Cost Recovery for Environmental Assessments under the *Environment Protection and Biodiversity Conservation Act 1999*

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission in relation to cost recovery for environmental assessments under the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**).

This consultation on cost recovery is occurring in parallel to broader consultation and reform processes aimed at implementing the Federal Government's *Nature Positive Plan* (**the Plan**). The Plan outlines the Government's intention for 'nature positive' laws, which address the significant shortcomings of the current EPBC Act identified in the Samuel Review and most recent State of the Environment Report.¹ This submission should be read in the context of the need to modernise Australia's environmental laws, address the extinction and climate crises, and ultimately achieve the Government's goal of protecting and restoring nature through a nature positive framework.

Cost recovery and secure, long-term funding for the EPA

The Plan outlines the Government's intention to establish a National Environment Protection Agency (**EPA**), which will undertake environmental assessments, make decisions, and undertake compliance and enforcement activities. The consultation paper has indicated that cost recovery will partially fund EPA activities.

Cost recovery is a necessary part of the environmental legal framework, and EDO is supportive of the Department's focus on increasing the share of costs recovered throughout the environmental assessment process. This is consistent with the 'polluter pays' principle, such that project proponents should take responsibility for external costs (such as impacts on the environment) arising from the proposed project. However, cost recovery mechanisms should not be a substitute for public funding. To achieve the Government's goal of nature positive outcomes, the new EPA must be adequately resourced and have secure, long-term committed funding to perform its duties and ensure community confidence.

¹ [Graeme Samuel, Independent Review of the EPBC Act \(October 2020\), 2021 State of the Environment Report.](#)

Access to information and access to justice

Community trust in the functions of the new EPA is essential for the new laws to work. Civil society should be able to meaningfully participate in environmental decision-making, have access to comprehensive information within reasonable timeframes, and be able to access justice mechanisms to challenge or enforce decisions, policies and conditions where appropriate. The ability for third parties to seek information about decisions made by the EPA (or Minister where relevant) is a critical aspect of the environmental legal framework that ensures integrity in decision making, and accountability in regulatory culture.

As such, EDO is concerned by the proposal to charge a fee for third party applications for a statement of reasons, and for reconsiderations of controlled action decisions. Charging fees to access information or reassess decisions reduces transparency by imposing a potential cost barrier, and may dissuade third parties from not only challenging and rectifying invalid or improperly made decisions, but simply seeking information about the exercise of decision making discretion. This is contrary to the Government's intention to foster greater transparency and accountability through *Nature Positive Plan* reforms. The introduction of a fee for these third party applications is a disincentive for community oversight, and EDO **recommends** this proposal is not implemented.

Robust, comprehensive and objective decision making

The efficacy of assessment and approval processes should not be judged solely on assessment processing timeframes or project approval rates, but on whether the process incorporates comprehensive environmental impact assessment, genuine public consultation and produces ecologically sustainable outcomes. EDO is concerned that the proposal to allow proponents to pay higher fees to access an accelerated assessment pathway, through provision of more staff or a greater number of senior staff, may shift the regulatory focus onto decision making timeframes – rather than the need for legally sound and merits-based decisions. Faster approvals that deliver poor-quality, high-risk or unsustainable development are not in the public interest.

It is important that fee payment by proponents and decision making by the regulator remain separate and distinct exercises. The payment of fees should not create an expectation of approval, or a 'fee-for-service' culture, which places pressure on the decision maker to make decisions commensurate with the fees paid by the proponent. The proposal for accelerated pathways, subject to higher fees, risks creating this expectation. In any event, this accelerated pathway would not result in any greater recoupment of fees (as the additional fee would directly recover the increased cost created by the new pathway) and simply represents a bonus for proponents that can afford to pay more for their assessments. EDO does not see merit in this proposal, but does see risks of potential or perceived regulatory capture of senior staff who are in effect working to further the interests of particular proponents. EDO **recommends** that this proposal does not proceed.

For further information, please contact rachel.walmsley@edo.org.au or (02) 9262 6989.

Yours sincerely,

Environmental Defenders Office

A handwritten signature in black ink, appearing to read 'R Walmsley', written in a cursive style.

Rachel Walmsley

Head of Policy & Law Reform