



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

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

Discussion paper consultation summary

December 2021



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December 2021

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Executive summary

Purpose

On 20 September 2021, the Department of Water and Environmental Regulation (the department) released the following for public consultation:

- the discussion paper [Implementing cost recovery for Part IV of the Environmental Protection Act 1986](#)
- the draft Environmental Protection (Cost Recovery) Regulations 2021 (Cost Recovery Regulations).

The paper and draft Cost Recovery Regulations outlined a draft pricing model for fees and charges on environmental impact assessments (EIA) and were available for public consultation for five weeks, closing on 22 October 2021.

The proposed model was designed to enable the State Government to better meet the expectations of industry and the community in protecting the environment. The department will use the funding received to provide a timely and effective service while ensuring strong environmental protection remains.

The public consultation process sought input on the following key areas:

- agreement with the design principles on which the model was developed
- fairness of the pricing model
- clarity on how the fees and charges would be applied
- any other comments.

This report summarises the feedback from all the submissions we received.

Consultation

After the release of the discussion paper and draft Cost Recovery Regulations, the department held seven briefing sessions with peak organisations to give a detailed overview and answer questions.

We received 28 submissions during the consultation period. This included a joint submission from two peak bodies which has been counted twice.

We received submissions in two formats: an online survey via the Consultation Hub with the option to add a free-form submission, and free-form email submissions. The total submissions included:

- 11 via online survey
- six via online survey including PDF attachment
- 11 via email (10 as PDF attachments; 1 in email format).

Analysis of feedback

The online survey had closed questions with a yes/no answer and open-ended questions that asked for an explanation.

For example:

- Do you agree with the design principles on which the pricing model has been developed?
- If you answered no, why not?

The department conducted an issues-based analysis of the submissions.

Analysis of the open-ended questions in the online survey involved the qualitative interpretation of responses to develop key themes that were common to multiple responses. The responses were then aggregated, or *coded*, against these themes.

The free-form email submissions were analysed using the same coding framework as the online survey submissions. Where the email submissions did not address the specific closed questions, these responses were analysed and categorised as either yes/no/unclear.

Feedback

The public consultation process showed considerable high-level support for cost recovery in the EIA process: 45 per cent of respondents supported it in principle, 21 percent did not support it and 34 percent did not clearly indicate whether or not they supported cost recovery. There was agreement across sectors that efficient and timely service delivery was important. Additionally, there was considerable support that users should pay and that a fee structure should be based on the project's complexity.

Table 1 provides a snapshot of support for each key element of the cost recovery model.

Table 1: Summary of support for key elements of the cost recovery model

Consultation topic	Supportive	Not supportive	Unclear
General support for cost recovery	45%	21%	34%
Design principles	31%	62%	7%
Fairness of pricing model	11%	79%	10%
Clarity on how fees and charged will be applied	27%	45%	28%

Support for the design principles

While there was considerable general support for cost recovery as a means of improving efficiencies and environmental outcomes, support for the design principles on which the pricing model has been developed was more moderate. The dominant reasons for people not supporting the design principles included a need for clarification on how costs in the model had been derived, concerns about negative environmental outcomes that could result from fewer/simplified referrals, and a perception the department had over-estimated how long it would take staff to undertake tasks in the EIA process.

Fairness of pricing model

There was limited support for the pricing model among respondents. Various reasons for this were presented in the submissions although two dominant themes emerged. Respondents called for the department to be more transparent about the breakdown of time spent on each task in the EIA process. In addition, there were strong concerns the public submission process could be weaponised by opposition campaigners, causing proponents to incur additional fees.

Pricing clarity

There was a moderate amount of clarity among respondents about which fees and charges would be applied. Almost all of the themes that emerged consisted of respondents being uncertain about the department's implementation of cost recovery. These included uncertainties about the risk classification system, the definition of key terms, and when requests from the department for more information would trigger fees and how these would be issued.

General comments

Respondents provided an array of other comments, including recommendations for how to improve the cost recovery model. Across sectors concerns were raised about the proposed implementation timing of the cost recovery model, specifically that the process did not allow sufficient time for businesses to budget for the changes before enforcement. Respondents also highlighted the importance of departmental staff resourcing, with some suggesting we needed to build in-house assessment capability and to work to retain these skills, particularly during surge or peak periods.

Next steps

The feedback from this consultation process has informed the final cost recovery model, including the *Policy: Implementing the Environmental Protection (Cost Recovery) Regulations 2021* (implementation policy) and the final Cost Recovery Regulations. The regulations and charging of fees will come into effect on 1 January 2022.

The pricing model will be reviewed in detail after 18 months of operation.

Actions taken to address feedback

In response to feedback and in consultation with the Minister for the Environment, the department has modified the fee structure and implementation policy for cost recovery as follows:

- All assessment fees for proposals referred prior to 1 January 2022 will be deferred until 1 July 2022.
- With respect to the complexity component in the fee calculations:
 - a fee of one unit for reviewing a proponent-prepared scoping document will no longer be charged
 - the fee relating to public submissions will be capped at two units for 50+ submissions.
- An option will be included for small businesses to apply to extend the timeframe in which to pay fees.
- In circumstances when it would not be appropriate to extend the period within which the fee is payable, the department will consider fee waivers and reductions where:
 - the payment of the fee will represent, in light of relevant exceptional circumstances, an extreme financial impost to the proponent, or
 - the proponent can demonstrate that not waiving or reducing the fees for a proposal would be detrimental to the public interest, or
 - an inquiry under s.46 of the EP Act to change the implementation conditions is initiated without a request from the proponent.

An independent party will undertake the 18-month review of the fee structure, as well as consider the accuracy of the cost model, equitable application of costs across proposals, unintended or perverse outcomes and efficiency measures. The final regulations have been amended to reflect this.

1 Background

Amendments to the *Environmental Protection Act 1986* (EP Act) were passed by State Parliament in November 2020. The amendments allow for cost recovery for the referral, assessment and implementation of proposals under Part IV of the EP Act.

The department has subsequently developed a cost recovery model to implement fees and charges for the environmental impact assessment (EIA) process under Part IV of the EP Act. The proposed model is designed to enable government to better meet the expectations of industry and the community in protecting the environment. We will use the funding received to provide a timely and effective service while ensuring strong environmental protection remains.

Cost recovery complements other measures being introduced to improve environmental assessments, including Environment Online and the establishment of a Biodiversity Information Office led by the Department of Biodiversity, Conservation and Attractions.

For five weeks from 20 September 2021, we sought feedback on the draft pricing model for fees and charges on EIAs. The submission period officially closed on 22 October 2021, although late submissions were accepted until 27 October 2021.

The consultation focused on asking the community and stakeholders to respond to the design principles, pricing fairness and clarity of fees and charges. It also provided an opportunity for respondents to make any further comments or to submit a free-form response to the discussion paper. We engaged directly with nine peak bodies via briefings and received a total of 28 submissions from a range of sectors.

This report analyses the 28 submissions we received.

2 Consultation overview

2.1 Submissions

The department received 28 submissions during the consultation period. This included a joint submission from the Urban Development Institute of Australia (WA) and Property Council of Australia (WA). We received submissions from a wide range of stakeholders, highlighting the many sectors with a high level of interest in the EIA process under Part IV of the EP Act. The largest proportion of submissions (38 per cent) came from peak industry bodies, followed by environmental consultants and State Government agencies. Submissions are available on request. Table 2 lists the bodies, authorities, businesses and individuals who submitted feedback.

Table 2: List of respondents who completed a submission

Organisation	Role
Alinta Gas	Government trading enterprise
Australian Petroleum Production & Exploration Association	Peak industry body
Association of Mining and Exploration Companies	Peak industry body
Barto Gold Mining Pty Ltd	Company
Cement Concrete and Aggregates Australia	Peak industry body
Chamber of Commerce and Industry Western Australia	Peak industry body
Chamber of Minerals and Energy	Peak industry body
City of Cockburn	Local government
Coterra Environment	Environmental consultant
Environment Institute of Australia and New Zealand	Peak industry body
Environmental Consultants Association of WA	Peak industry body
Environmental Defenders Office	Non-government organisation
Environmental Protection Authority (EPA)	Government
Main Roads Western Australia	Government
MBS Environmental	Environmental consultant
Metropolitan Environmental Health Managers Group	Peak industry body
Private citizen	Environmental consultant
Private citizen	Environmental consultant
Private citizen	Private citizen
Property Council of Australia (WA) (combined submission with UDIA WA)	Peak industry body
Urban Development Institute of Australia (WA) (combined submission with PCA WA)	Peak industry body
Waste Management and Resource Recovery Association of Australia	Peak industry body

Organisation	Role
Western Australian Local Government Association	Government
Western Power	Government
Woodsome Management	Company
<i>Name withheld at request</i>	Aboriginal Corporation
<i>Name withheld at request</i>	Company
<i>Name withheld at request</i>	Environmental consultant
<i>Name withheld at request</i>	Local government

2.2 Briefing sessions

The department held seven briefing sessions with peak bodies in person or online between 30 September and 11 October 2021. The purpose of these briefings was to give stakeholders the opportunity to ask questions to clarify aspects of the discussion paper to help them to prepare their written comments and submissions.

Table 3 summarises the stakeholder groups that attended briefings.

Table 3: Summary of department briefings with stakeholders

Peak body	Date
Conservative Council of Western Australia and the Environmental Defenders Office	30 September 2021
Chamber of Minerals and Energy	30 September 2021
Australian Petroleum Production and Exploration	30 September 2021
Western Australian Local Government Association	1 October 2021
Environment Institute of Australia and New Zealand and Environmental Consultants Association (WA)	1 October 2021
Association of Mining and Exploration Company	5 October 2021
Urban Development Institute of Australia (WA)	11 October 2021

Key themes that emerged in these briefing sessions included:

- potential for financial support from cost recovery to help third-party respondents meet the costs of participating in Part IV EIA processes
- potential for perverse outcomes relating to the fees set based on the numbers of submissions received during public consultation phases
- clarification on the 'request for further information' fee
- reference to the unit model in relation to the 'specialist resources' and staffing structure
- clarification on the compliance priority rating
- regulations providing for waiving or delay of fees on request
- competency and efficiency of EPA officers to review work
- cost distribution across activities to ensure efficiency.

3 General support for cost recovery

3.1 Overall

While every submission raised concerns about aspects of the proposed cost recovery model as presented in the discussion paper, almost half of them indicated general support for cost recovery for the EIA process, with 45 per cent expressing in-principle agreement with the concept. Thirty-four per cent of respondents did not provide a clear stance and 21 per cent did not support the concept. Figure 1 highlights an overall level of support from all sectors for cost recovery.

These statistics were gathered based on clear language that asked for support or opposition. Submissions with mixed views and without clearly indicating support or appreciation for the overall discussion paper have been labelled unclear.

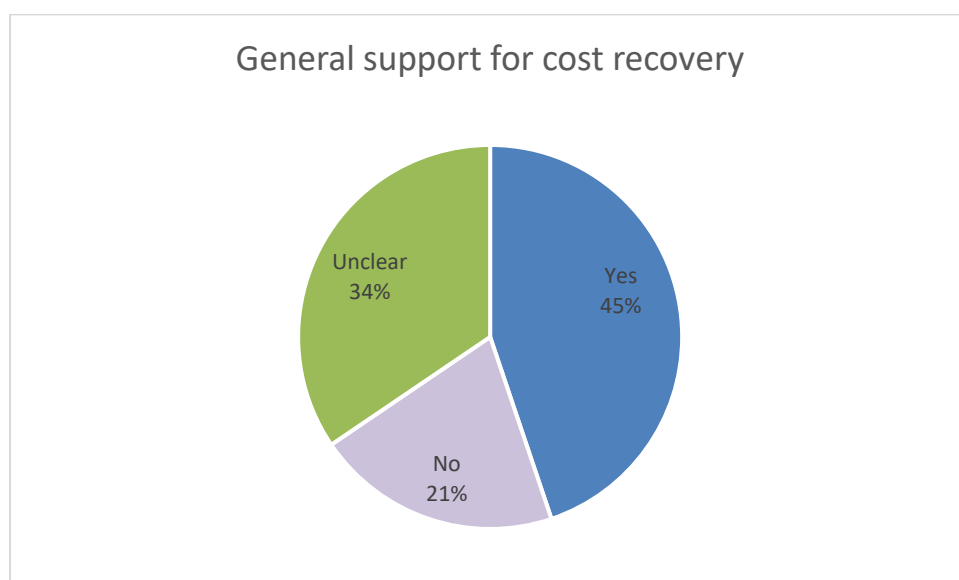


Figure 1: Support for cost recovery in principle

3.2 What did the submissions say?

Support for cost recovery was outlined in submissions as follows:

- in-principle support of cost recovery and the design principles underpinning the model
- the principle of 'user pays' is fair, with higher fees payable by proponents with more complex projects
- supportive of a model that will help streamline assessments and deliver efficient and timely service delivery
- the model is reflective of time and effort.

Response

The department notes the support for cost recovery initiatives for assessment processes.

4 Agreement with the design principles

4.1 Overall

While there was considerable support for the concept of cost recovery, there was only moderate support for the design principles on which the pricing model was based. Thirty-one per cent of respondents agreed with the design principles, while 62 per cent did not agree and seven per cent gave unclear answers. Figure 2 provides a breakdown of these findings.

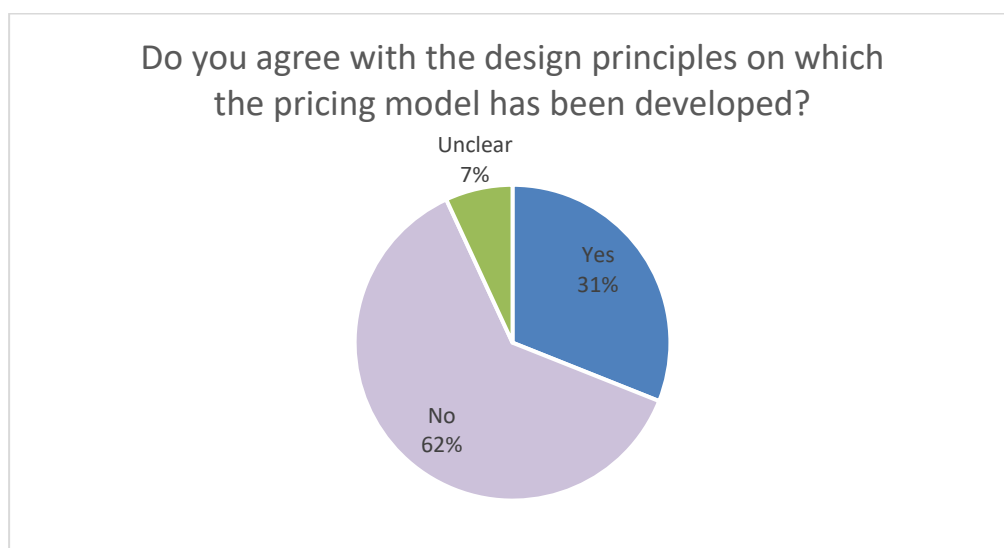


Figure 2: Support for design principles

4.2 Assessment of the design principles

Respondents were not asked explicitly if they supported each design principle or not, but if they did not support the design principles, they were asked to explain why. These comments have been analysed and categorised under the appropriate design principle.

Table 4 gives an overview of the support for each design principle, as interpreted through open-ended responses and comments.

Table 4: Negative comments received on design principles

Design principle	Definition	Percentage of respondents submitting negative comments
No perverse outcomes	<i>The model should ensure all outcomes are aligned with the objectives of the EPA Act and there are no adverse impacts on the environment, for proponents, for the department or for the EPA.</i>	65%

Design principle	Definition	Percentage of respondents submitting negative comments
Transparent	<i>The workings of the model should be transparent to build confidence and trust in the integrity of the process.</i>	41%
Practical and efficient	<i>The model should deliver equitable cost recovery outcomes while being practical and efficient to administer.</i>	38%
Reflective of effort	<i>The model should accurately and appropriately reflect the amount of time and effort required to provide EIA services to the proponent.</i>	38%
Proven	<i>The model should be tried and tested and have demonstrated success in achieving targeted cost recovery.</i>	31%
Impactor pays	<i>This principle requires that charges are borne by those driving the proposal and subsequently the potential environmental impacts.</i>	28%
Flexible	<i>The model should allow for flexibility and appropriate discretion to be applied.</i>	3%
Contemporary	<i>The model should adopt an approach that is relevant and reflective of how proponents currently operate while allowing for innovation.</i>	0%
Consistent and repeatable	<i>The model is required to demonstrate consistent outcomes across proposals.</i>	0%

4.3 What did the submissions say?

The analysis below is broken down by the design principles, ranked from least supported (most negative comments received) to most supported (least negative comments received), with a summary of the key themes raised against each principle.

No perverse outcomes

‘No perverse outcomes’ was the least supported of the design principles, with 65 per cent of respondents providing a negative comment. Reasons for not supporting this principle have been grouped into two key themes:

- negative environmental outcomes resulting from fewer or simplified referrals
- negative impacts to local businesses and investment.

Response

The department believes that any potential impacts on non-referral of proposals due to fees will be adequately managed through provisions in the EP Act that enable the EPA and the Minister to call in proposals not referred, as well as provisions enabling referrals from third parties.

Regulations 13 and 14 were drafted to help address the potential for cost recovery to impact on business and investment. These regulations provide proponents with an opportunity to seek reductions in fees and extensions to payment timeframes.

Transparent

From the submissions, 41 per cent of respondents provided a negative comment about the design principle 'Transparent'. Reasons for not supporting this principle have been grouped into four key themes:

- clarification is needed on how costs in the model have been derived
- unclear accountability regarding how the department will manage the revenue, expenditure and benefits associated with the model
- need for a reporting mechanism to measure the department's performance, including key performance indicators (KPIs)
- need for results to be reported and made publicly available to ensure transparency and fairness in application.

Response

The cost recovery model has been designed to recover the costs of delivering EIA under Part IV Divisions 1 and 2. The cost base was derived from the direct and indirect costs of currently resourcing this function. External financial consultants with relevant experience were engaged help develop a model for cost recovery. The model was subsequently validated by EY, which concluded that the department's methodology and assumptions were logical and reasonable. The EY validation report was tabled in Parliament on 8 December 2021.

During consultation, we extended an offer for stakeholders to join a further briefing on the details of the pricing model, in particular the financial information used to develop the fees.

Funds are to be managed through the establishment of a special purpose account under s.16(1)(d) of the *Financial Management Act, 2006*. Use of this type of account will ensure that revenue will be held separately to consolidated funds for other functions in the department. We will report on revenue and expenditure annually in our annual report.

We have committed to reviewing the cost recovery approach and fees, starting 18 months after they come into effect. Following consultation, this commitment has been formalised with the addition of a new regulation (regulation 21).

A digital environmental impact assessment database (Environment Online) will become operational for Part IV of the EP Act in the first quarter of 2022. This will allow for more efficient and accurate collection of data relating to assessments and will inform review processes.

Practical and efficient

‘Practical and efficient’ received negative comments from 38 per cent of respondents. Reasons for not supporting this principle have been grouped into three key themes:

- the department’s estimation of time taken to complete reviews is too high and reveals inefficiencies
- the cost recovery model will not deliver the promised efficiencies
- without a detailed methodology, it is difficult to evaluate whether efficiencies can be achieved.

Response

The department is implementing a range of significant reforms that aim to improve environmental assessment timeframes and outcomes. Through amendments to Part IV of the *Environmental Protection Act 1986* (EP Act), which were proclaimed on 22 October 2021, the EPA has revised its entire EIA procedures suite. The revised procedures improve processes, reduce unnecessary regulatory obligations and ensure strong environmental protection. Key changes include the streamlining of environmental scoping documents, use of outcome-based conditions, proportionality of information based on significance, and the ability for the EPA to refer to other decision-making authorities to regulate impacts to the environment.

Through the EP Act amendments, proponents will also gain greater certainty on assessment timeframes. Changes to section 40 of the EP Act now require the EPA to publish an indicative outline of the timing of the environmental review. This will mean greater rigour is applied to establishing appropriate assessment timeframes.

Collectively these changes will improve efficiency and reduce assessment timeframes and improve certainty on timeframes for proponents.

In addition, significant investment is going into Environment Online, the digital ‘one-stop-shop’ for environmental assessment, approvals and compliance. Environment Online will improve the transparency, certainty and consistency of environmental approvals and provide a quality experience for staff, industry and customers.

In response to this consultation, we have also committed to undertaking a review of the relevant KPI relating to ‘*Percentage of assessments that met agreed timelines*’ that is reported annually in our annual report. While we will aim to continue meeting this KPI, we acknowledge some limitations with its use. In particular, that it relates to

the time between the EPA's endorsement of the final assessment and the release of the report and recommendations to the Minister for Environment. We will review the KPI in parallel with the 18-month review of the cost recovery model. See Section 8 of the implementation policy for further detail on the review.

Reflective of effort

'Reflective of effort' received negative comments from 38 per cent of respondents. Reasons for not supporting this principle have been grouped into two key themes:

- over-estimation of time required by departmental staff to undertake tasks
- over-utilisation of senior staff hours in the department's processes, resulting in inflated costs.

Response

The cost recovery model was developed based on activity data from staff time and motion studies. Fees were based on the cost of delivering activities. Financial data forming the basis of the model, together with fee determination, were reviewed during the model validation process undertaken by EY.

Changes in process resulting from recent amendments to the Act, as well as the efficiencies expected from the introduction of Environment Online, will mean updates to the activity data. This will be established by detailed time-in-motion studies starting in early 2022.

Proven

From the submissions, 31 per cent of respondents made negative comments about the design principle 'Proven'. Reasons for not supporting this principle have been grouped into two key themes:

- lack of proven correlation between the proposed methodology and expected efficiencies
- fee structure is based on past assessment procedures and ignores the efficiencies that key amendments will bring.

Response

Amendments to Part IV of the EP Act came into effect in October 2021. The department acknowledges that the cost recovery model is based on activities and processes that were in place before these amendments. In recognition of this, we plan to collect updated activity data and use this to review the model after 18 months of operation. This is outlined in the implementation policy.

Impactor pays

'Impactor pays' received negative comments from 28 per cent of submissions. Reasons for not supporting this principle have been grouped into four key themes:

- recovering the entire cost of assessment is an approach that is inconsistent with other regulators in Western Australia
- fees paid under this model will subsidise referrals exempt from charges and other unrelated activities of the department
- requiring all costs to be covered by the business(es) submitting the proposal ignores the broader public benefits occurring as a result of these projects
- reduced environmental impact should result in reduced fees for proponents.

Response

In developing the cost recovery model, the department followed the principles outlined in the Department of Treasury *Costing and pricing government services – May 2020*. Fees are based on recovering a maximum of 80 per cent of the total costs of resourcing EIA activities. This is built into the model through a series of included and excluded tasks. Excluded tasks will not be recovered and the costs of delivering these services will be funded through consolidated revenue provided to the department from the Department of Treasury.

In developing the cost recovery model, we considered tiered fees based on the environmental impacts of proposals. We did not adopt this approach as classifying and quantifying environmental impacts within regulations is problematic.

Flexible

Just one respondent (3 per cent of submissions) provided a negative comment about the design principle 'Flexible', suggesting the model did not account for tasks that required a lower level of effort.

Response

The department considered cost recovery models incorporating tiered fees. These models were based on the varying levels in effort required to complete certain activities, with fees reflecting this. Powers to implement cost recovery for EIA are provided through s.48AA of the EP Act. Working within the powers provided, and to address the potential for cross-subsidisation of assessments, additional fees for highly complex projects are included in the fee structure. These include additional fees (or a unit premium) triggered when projects either disturb greater than 2,500 hectares of land and/or impact on, or require ongoing investigation or management for, a threshold number of species of ecological communities.

Contemporary

No submissions provided negative comments for this design principle.

Consistent and repeatable

No submissions provided negative comments for this design principle.

4.4 Recommendations

Several recommendations for the design principles were provided, such as:

- greater flexibility in the model to enable costs to be scaled according to actual effort
- transparent reporting of effort in completing assessments to enable proponents to review the effort and benefit gained
- amending the model to account for variations in complexity of assessment across each of the different key environmental factors.

Response

Fees were developed based on the activity data collected during a time and motion study. The department understands that the ability to scale fees would address the range in levels of effort required to complete a number of tasks. Data at a range of scales was not available during initial model development. Therefore an average cost to assess activity items was used. We will include refined activity data in the 18-month fee review.

5 Fairness of pricing model

5.1 Overall

Responses showed limited support for the fairness of the pricing model, which was consistent across industries. Eleven per cent of respondents outlined clear support for the pricing model, 79 per cent did not support it, and 10 per cent did not provide a clear response. Figure 3 provides a breakdown of these findings.

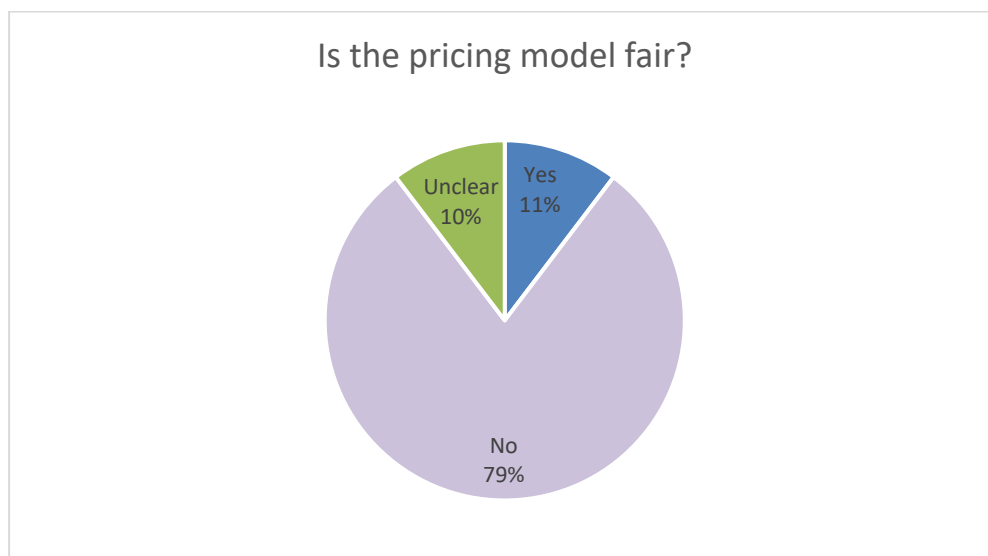


Figure 3: Support for the pricing model

5.2 Reasons for not supporting the pricing model

Respondents were then asked to provide reasons for their answers. Table 5 identifies the themes present in the key reasons why respondents did not support the fairness of the pricing model, as interpreted through open-ended responses and comments.

Table 5: Negative comments received on pricing model

Reason for not supporting fairness of the pricing model	Percentage of all respondents who said this
No transparent breakdown by the department of time spent per task	38%
Weaponisation of public submissions by opposition campaigners will cause proponents to incur additional fees	38%
Inefficiencies in the department's processes, when compared with the private sector or the Commonwealth	31%
Fees should correlate with task complexity, however the department's definition of 'complexity' is unhelpful	27%
Fees should be waived for essential or public good projects delivering benefit to the community	24%

Response

The department intends to refine activity estimates for future reviews of cost recovery by undertaking time and motion studies.

After consideration of feedback during public consultation, we have amended complexity fee categories related to the number of public submissions received during consultation processes throughout the EIA process. Fee categories have been amended in the complexity fee methodology, as outlined in the implementation policy, as follows:

Factor	0 units	1 unit	2 units
Number of public submissions received on proponent-prepared scoping document	0	1–49	50+
Number of public submissions received through public consultation on ERD or RI	0	1–49	50+

Assessments under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (herein referred to as the Commonwealth process) are limited to consideration of factors that have been recognised as nationally significant. There are nine Matters of National Environmental Significance. In the Western Australian context some of these do not apply (Great Barrier Reef Marine Park) or are rarely triggered (world heritage properties, national heritage places, nuclear actions). EIA assessments completed under Part IV of the EP Act consider a greater number of key environmental factors (14 in total). These assessments consider the Western Australian context and therefore often require more effort to complete. Comparing the effort required to complete assessments under the Commonwealth process with assessments completed under Part IV does not provide an accurate comparison.

Further, the October 2020 *Independent Review of the EPBC Act – final report* by Professor Graeme Samuel AC identified that the:

Existing Commonwealth cost recovery arrangements are not sustainable because they do not cover many indirect costs that are currently born by the Commonwealth Government. Examples of some key costs that are not cost recovered include resourcing of data collection, management and IT systems, and receiving legal advice.

As the department moves to Environment Online, more data on proposals will be available to inform future reviews of the cost recovery model. The ability to include additional complexity models will be considered at that time.

Regulation 13 enables proponents to request a fee reduction or waiver by putting a case to the CEO (the department's Director General) for consideration. The implementation policy provides guidance on circumstances under which a fee reduction or waiver may be considered.

5.3 Recommendations

Recommendations on the fairness of the pricing model included requests for the department to:

- explain why a cost model of 100 per cent recovery was chosen over introducing fees in stages
- include the rationale for why the learnings and approaches of other jurisdictions were not considered in the preparation of the model
- demonstrate how the cost model will improve regulatory efficiency and productivity, including defined metrics on the responsiveness and accountability of government activities.

Response

As outlined in the department's response to Section 4.3 – 'Impactor pays', we followed the principles outlined in the *Department of Treasury Costing and pricing government services – May 2020*. Fees are based on recovering a maximum of 80 per cent of the total costs of resourcing EIA activities. This was based on learnings from the Commonwealth's cost recovery arrangements for EPBC Act which were found to be unsustainable.

Recommendations relating to regulatory efficiency and productivity are addressed in our response in Section 4.3 – 'Practical and efficient'.

6 Clarity on fees and charges

6.1 Overall

There was moderate support from submissions for the clarity around how fees and charges would be applied. Twenty-seven per cent of respondents felt the model presented pricing clarity, while 45 per cent disagreed. Significantly, 28 per cent of respondents did not provide a clear response. Figure 4 provides a breakdown of these findings.

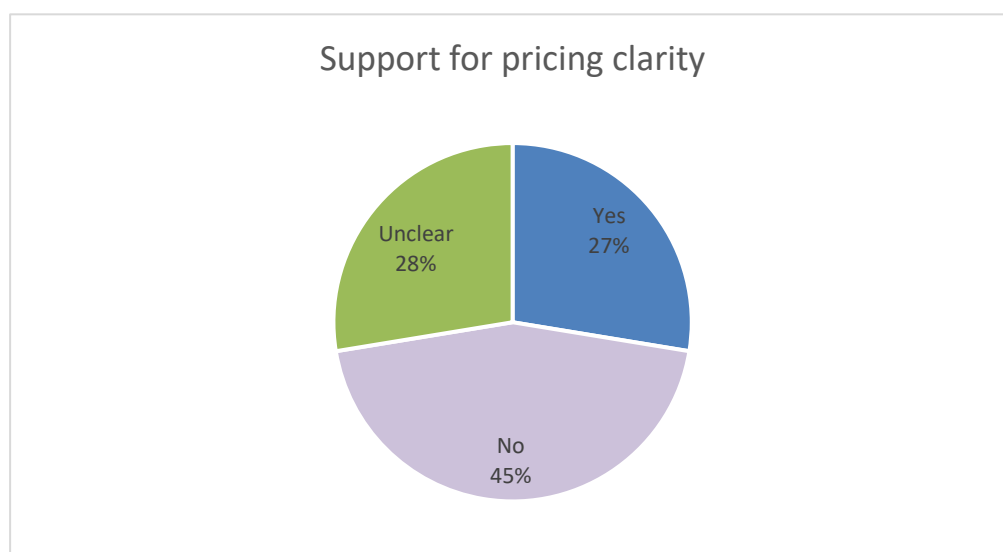


Figure 4: Support for how fees and charges would be applied

6.2 Reasons the fees and charges were not clear

The respondents who were unclear about how the fees and charges would be applied, were asked to say why. There were various explanations, with many centred around critical uncertainties about the department. Comments were categorised under two key themes and further grouped into six distinct concepts.

Theme 1

Forty-eight per cent of respondents said they were uncertain about risk classification, definitions and duplicate charges. This theme has been broken down into the following four concepts:

- potential for duplicate charges to be incurred
- lack of clarity on the risk classification system used for compliance fees
- unclear definition of 'significant' in relation to flora, fauna and communities, with substantial cost implications
- unclear definition of 'specialist resources' and when they will be utilised.

Response

The department considered assessment scenarios in developing the cost recovery model to ensure that duplication of fees did not occur. We included additional complexity fees for highly complex projects to address the potential for cross-subsidisation of assessment costs by proponents with less complex projects. To address this, we included highly complex fee criteria to meet the ‘impactor pays’ criteria for fees.

Annual compliance fees are scheduled for implementation from 1 July 2023. Before this, we will provide additional policy clarification together with the methodology for determining risk classification. This is outlined in the implementation policy.

The implementation policy explains how the fee associated with regulation 5(o) (the application of fees based on the number of species or ecological communities) will be applied.

‘Specialist resources’ include staff within the department whose specialist skills are required as part of the EIA process. These include staff with specific skill sets from our Science and Planning directorates, including those with specialist skills in noise, air, terrestrial ecosystems and marine ecosystem environments. It also includes staff with specialist legal and geographical information systems (GIS) skills.

Theme 2

The second theme, which 27 per cent of respondents commented on, was about uncertainties related to requests for information. This has been broken down into the following two concepts:

- uncertainty about when the department’s requests for more information would trigger fees
- uncertainty about how the department would issue its requests for more information

Response

See the implementation policy for an explanation of the process and circumstances in which requests for further information will be issued by the Chair of the EPA or under delegation by the Minister for the Environment.

6.3 Recommendations

The following recommendations are related to pricing clarity.

- develop a fee calculator and make it available online to assist proponents
- consider capping charges to avoid a disincentive for less thorough assessments
- review the fee unit to a lower amount to allow greater flexibility with complexity fees

- clarify how fees for requests for further information will be charged
- consider fee waivers for projects that are for the public benefit and not-for-profit activities
- extend the definition of 'external costs' to include costs associated with community consultation processes.

Response

The department is currently developing a fee calculator to include in Environment Online. Before Environment Online goes live and at a minimum, the implementation policy will include a manual template.

We will consider the capping of fees for complexity items and changes to the unit fee structure during future review processes.

Regulation 4(3) states that the Authority (items 4 and 6) or Minister (item 10) must issue the requirement for further information. See the implementation policy for further detail on how these regulations will be used in practice.

As outlined in Section 5.3, regulation 13 enables proponents to request a fee reduction or waiver by putting a case to the CEO for consideration. See the implementation policy for more information.

The costs the department incurs from conducting consultation processes are to be recovered through fees, as provided for in regulation 5(g), (h), (i). At this time we are not considering recovering the costs that other organisations incur during consultation.

7 Additional feedback

The final section of the online survey enabled respondents to make any other comments in relation to the cost recovery model, while free-form submissions allowed for comments throughout.

7.1 Additional comments

Submissions provided an array of additional comments, which have been analysed and grouped into key topics raised. These topics are presented in Figure 5, ranked in order of frequency of mention by respondents.

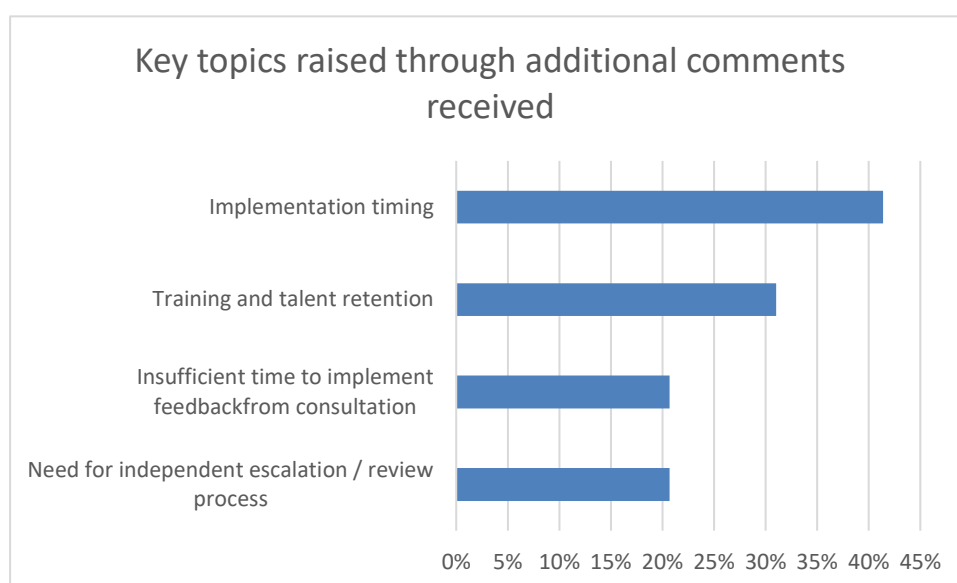


Figure 5: Additional comments received through submissions

Implementation timing

Across sectors there were concerns about the implementation timing of the cost recovery model, with 41 per cent of respondents referring to this issue. The primary concern was insufficient time to allow businesses to budget for the changes before they were enforced. In addition, some other respondents were worried that the model might be applied retrospectively to projects that had already been approved.

Response

The department has provided peak bodies with updates on the timing and status of cost recovery implementation on a regular basis during the past 12 months. We recognise that while stakeholders may not have understood the magnitude of the fees, the implementation date of January 2022 has been communicated widely.

The Cost Recovery Regulations (regulation 14) have made provision for proponents to apply for an extension of time for payment of fees. Proponents can apply to the

CEO for consideration of requests to postpone days on which fees are payable or to extend the period within which a fee is payable.

Further, following consultation the department has amended regulation 19 to defer payment requirements for transitional fees. Fees associated with regulation 19 are now payable from 1 July 2022.

Training and talent retention

Around one-third of respondents (31 per cent) made comments relating to training and talent retention of departmental staff. The need to build assessment capability within the department was a strong recurring theme, while some had uncertainties around how the department would overcome labour shortages during surge periods.

Response

The department acknowledges that training and talent retention needs to be addressed and has reinstated its graduate recruitment program, starting in 2022, with an emphasis on EPA services. This is to ensure a future supply of assessment officers. Further, we are developing a whole-of-agency workforce plan to ensure there is a culture of succession planning, retention of corporate knowledge, and professional development.

Under the Streamline WA initiative, we plan to host 'common understanding' workshops twice a year to strengthen relationships between officers in the approval chain in multiple agencies, and to identify specific training needs and business improvement opportunities.

The Agency Capability Review being undertaken by the Public Sector Commission may have further recommendations about training and talent retention in the department.

Insufficient time to implement feedback from consultation

Some respondents were concerned about the timeframe for implementing the cost recovery model. Twenty per cent felt there was insufficient time allowed to review the consultation feedback and make adjustments to the model before its launch in 2022.

Response

Several items raised during consultation have been addressed in the final Cost Recovery Regulations and included in the implementation policy. As outlined in more detail in responses in Section 4.3 of this report, we will be undertaking a detailed review of the model after 18 months of operation.

Need for independent escalation / review process

The need for an independent escalation and/or review mechanism for the department was raised by 20 per cent of respondents. These comments included calls for independent oversight and review of the department's assessment processes, and

the ability to refer adverse decisions by the department to another body for objective review.

Response

The inclusion of regulation 13 gives proponents the ability to seek a fee refund, reduction or waiver. We have decided that disputes about the setting of fees can be adequately managed through this process.

7.2 Additional recommendations

Some additional recommendations across various aspects of the cost recovery model were:

- develop mechanisms and processes to ensure access to resources at peak times
- link fees to decisions to formally assess proposals, creating an incentive for proponents to design proposals in an environmentally sustainable way
- add annual reporting requirements to the regulations.

Response

An outline of how the department proposes to resource assessments at peak times is provided in Section 7.1 above.

We note that the introduction of fees will create more incentive for proponents to design proposals in the most environmentally sustainable way. If proponents choose not to refer on the belief that their proposal design addresses environmental impacts, section 38A of the EP Act can be used. Under Section 38A, the EPA must require the proponent or a decision-making authority to refer a proposal if it considers that the proposal is a significant proposal or is of a prescribed class.

We will publish financial information relating to the funds received and expended in accordance with the appropriate Treasurer's Instructions (created under s.78 *Financial Management Act, 2006*). The specific Treasurer's Instructions of relevance for the reporting on cost recovery are:

- TI 802 Special purpose statements and trust statements
- TI 806 Specific purpose and other money (money held in trust)
- TI 1103 Statement of financial position.

We will include this reporting in our annual report. It will also be published in the budget papers.

Following consultation, a new regulation has been drafted (regulation 21) to address concerns raised with respect to the review of the fees.