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

Discussion Paper & Draft Regulations – September 2021

Submission to Department of Water and Environmental Regulation

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body for the resources sector in Western Australia. CME is funded by member companies responsible for more than 89 per cent of the State's mineral and energy workforce employment.[1]

The value of royalties received from the sector totalled $12.7 billion in 2020-21, accounting for 31.7 per cent of general government revenue.[2] The sector is a significant contributor to local, State and Australian economies.

Context

CME welcomes the opportunity to provide a submission to the Department of Water and Environmental Regulation (DWER; the Department) on the Implementing Cost Recovery for Part IV of the *Environmental Protection Act 1986* Discussion Paper (the Discussion Paper) and *Environmental Protection (Cost Recovery) Regulations 2021* (the Regulations), released for public consultation on 20 September 2021.

The Discussion Paper proposes a cost recovery model and timeframe for the implementation of fees and charges for environmental impact assessment (EIA) services administered under Part IV of the *Environmental Protection Act 1986* (EP Act).

Summary of recommendations

CME makes the following recommendations to address key concerns regarding the proposed Part IV cost recovery model:

Review and refine the model

- The Economic Regulation Authority and the Department of Treasury's Better Regulation Unit examine the proposed pricing model and its implementation options prior to finalisation to ensure pricing is reflective of effort and represents reasonable, efficient costs only.
- Prior to finalising and implementing the cost recovery model:
    - Publish the basis of the pricing model to allow for adequate consultation on the appropriateness and competitiveness of the model, including consultant report/s which informed the development of the model.
    - Demonstrate how the cost recovery model will improve regulatory efficiency and productivity, including defined metrics on the responsiveness of government activities and accountability for those services.
    - Establish a robust transparency framework for the tracking and reporting of time spent for cost-recovered items (correlated with the Department's current Key Performance Indicators), the outputs of which inform periodic public reviews and adjustment of the cost base in line with defined efficiency metrics (as above).
    - Clearly articulate how the Department expects to improve service delivery in a resource-constrained environment and use any funds to effectively "surge" departmental resources.
    - Undertake consultation with other government agencies to align expectations regarding precautionary referrals and ensure decision-making authorities understand their duties to refer under the EP Act.

Implementation timeframe and review

- Defer commencement of cost recovery until the 2022-23 Financial Year to allow for necessary analysis and refining of the new model to ensure it can meet its objectives.
- Halve the unit rate for the first twelve (12) months of implementation to embed the model and avoid perverse outcomes.

[1] Government of Western Australia, *2020-21 Economic indicators resources data*, onsite employment under State legislation, Department of Mines, Industry Regulation and Safety, 10 October 2021.

[2] Government of Western Australia, *2020-21 Annual report on State finances*, Department of Treasury, 24 September 2021, pp. 167-168.

- Engage an independent body, such as the Auditor General of WA, to undertake the 18-month post-implementation review.

Design principles

  - Amend the model to:
    - Account for the variable complexity (and therefore variable required effort) for assessment of different key environmental factors.
    - Recognise and distinguish between amendments to proposals, Ministerial Statements, and Environmental Management Plans (EMPs) which are administrative or otherwise minor in nature (and therefore require less effort).
    - Limit the number of units of effort charged for public submissions received to three units for over 50 submissions.
    - Move fees for consultation on draft recommended conditions under a fixed fee schedule.
    - Remove complexity fees for projects disturbing more than 2,500 hectares of land to avoid double-accounting.
    - Clarify how complexity factors are to be calculated for coexisting significant fauna and flora species and communities.
    - Clarify the application of fees for withdrawal of a Ministerial Statement.
  - Publish a worked example of the application of the transitional fees.
  - Publish the methodology for determining the Compliance Priority Rating of a Ministerial Statement, and incorporate opportunities for proponents to review and request to change their assigned priority level.
  - Amend the Regulations to:
    - Strengthen Regulation 7 to clarify what constitutes a chargeable request for further information.
    - Define in the Regulations the term “significant” as it relates to fauna and flora species and communities.
  - Amend the implementation plan to:
    - Defer the imposition of fees for EMP reviews to allow for adequate review and / or withdrawal of Ministerial Statements to align with the current Environmental Protection Authority (EPA) preference for outcome-based conditions.
    - Halve the unit rate for any portion of the 2021-22 Financial Year to support a more reasonable transition period and allow for testing and refining of the new model.
    - Engage an independent body, such as the Auditor General of WA, to undertake the 18-month post-implementation review.

- Following passage of the *Mining (Amendment) Bill 2021*, administratively amend all Ministerial Statements associated with *Mining Act 1978* (Mining Act) tenure (i.e. with a default three-yearly review of Mine Closure Plans) to remove the three-yearly review and instead refer to the review period as established under the Mining Act.
- Include in the Environment Online system technology solutions to better manage departmental work effort associated with proforma submissions.

Transparency and accountability

- Publish a detailed annual report providing full transparency on the time spent and revenue obtained for each cost-recovered work item, and expenditure of funds for internal and external resources, IT systems maintenance and improvement, and other non-staff costs incorporated in the unit of effort calculated cost basis (e.g. motor vehicles, office accommodation, meals, and accommodation).
  - The production of an annual report should clearly outline performance against statutory timeframes and other identified efficiency metrics, including cross-agency activities where relevant, consistent with the WA Government’s established objectives under *Streamline WA*.

- CME strongly recommends for the annual report publication and its minimum content to be enshrined in the regulations.

Response to the Discussion Paper

CME has consulted extensively with its members to inform its submission in response to the Discussion Paper and Draft Regulations. In addition, CME hosted a member briefing session with DWER's EPA Service division to help ensure members clearly understood the pricing model proposed by DWER in the Discussion Paper. Detailed comments on the proposed cost recovery model are captured below.

Increased cost of doing business

WA is well-known as a stable and attractive place to invest and operate compared to competing jurisdictions with similar mineral and energy resources. As a predominately export-based economy that cannot set the price for its products, a critical element for attracting and maintaining investment is a stable cost of doing business across the life of a project.

The quantum of costs for Part IV assessments under the proposed model are orders of magnitude greater than comparative cost recovery pricing models. For example, assessment costs for approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) exist in the average range of $20,000 to $50,000 – 10 times less than costs proposed to be recovered for Part IV approvals. While it is acknowledged that these assessment processes do differ, some elements and assessments from both schemes are comparable given indicative order of magnitude cost for delivery of government services. The proposed Part IV costs are drastically higher and are not reflective of cost recovery for proportional effort.

The lack of transparency on the basis of the pricing model, including the failure to release supporting consultant reports, hinders proper evaluation of the appropriateness of the proposed model thereby making it difficult to provide informed feedback. Additionally, no information has been provided on how government intends to apply received funds in order to (a) improve timely service delivery, or (b) increase efficiency of government services.

CME recommends the basis of the pricing model be published to allow for adequate consultation on the appropriateness and competitiveness of the model, including publication of the consultant report/s which informed the development of the model.

Additionally, given this will have an economically significant impact to some parts of the economy,[3] **CME strongly recommends the proposed pricing model and its implementation options are examined by the Economic Regulation Authority (ERA) and the Department of Treasury's Better Regulation Unit prior to finalisation to ensure pricing is reflective of effort and represents reasonable, efficient costs only and indicate how government services will be improved as a consequence of charging for services.** The review should assess the efficiency of DWER's activities, and any other cost-recovered activities of other decision-making authorities and related agencies, across the Part IV assessment process (from referral to Ministerial Statement conditions) and provide recommendations for fees and charges to recover the proportion of the department's assessment and compliance costs assessed as being efficiently incurred on behalf of private parties.

A similar review was undertaken by the ERA in 2009 prior to the implementation of a water licensing cost recovery scheme.[4] This review should also consider whether pricing of these public services should be subject to a policy of competitive neutrality between government and business.[5] If the services charged by DWER exceed their full resource cost, there will be less resources (time, money, and skills) available.

The WA Government has over time implemented multiple cost recovery frameworks which cumulatively increase the cost of doing business in WA of mandatory government services. While CME supports cost recovery in principle as a mechanism to ensure efficient and timely service delivery, uncompetitive regulatory costs (along with processing timeframes) present a barrier to new market entrants and further industry development (including diversification, downstream processing, and circular economy projects), many of whom will not have existing revenue streams, disincentivising investment in WA. This can also lead to issues of cross-subsidisation, inequitable application, a lack of performance reporting, transparent accounting

[3] https://www.wa.gov.au/sites/default/files/2021-07/bru-guidance-note-1-economically-significant-impacts.pdf

[4] https://www.erawa.com.au/inquiries/completed-inquiries/2009-inquiry-into-water-resource-management-and-planning-charges

[5] https://www.wa.gov.au/sites/default/files/2020-06/costing-and-pricing-government-services-guidelines.pdf; https://www.wa.gov.au/sites/default/files/2020-01/policy-on-competitive-neutrality.pdf

reporting, and a lack of incentives to drive efficiency in government services. As these various cost increases are in addition to existing taxes, royalties and fee payments made to all levels of government, this contributes to the negative perception of a "death by a thousand cuts" scenario whereby industry becomes less competitive and at the same time subsidises or masks inefficient government services.

Efficiency and effectiveness, transparency and accountability

As above, CME supports cost recovery in principle where it is efficient and competitive, and acknowledges that some components of government services do produce a private benefit that may be reasonably cost recoverable. However, CME does not agree that all government services (including any existing inefficiencies in service delivery) should be wholly cost-recovered as there is a component of public good and the potential loss of incentives for efficient service delivery. Accordingly, cost recovery frameworks must be underpinned by the key principles of:

- Efficiency and effectiveness, and
- Transparency and accountability.

A framework based on the above principles would promote a cost recovery framework that is successful from the viewpoint of both regulator and business, facilitating a culture of efficient, best-practice regulation. The proposed cost recovery model does not reflect these core principles.

The proposed model does not support or incentivise any continual improvement of Part IV assessment or compliance services or specify accountability of the regulator for time spent and fees imposed.

Implementing a fee-for-service framework inherently transforms the relationship between proponents and regulators from a regulator-centric model to a customer-centric model. This fundamentally shifts the requirements and expectations of each party. As a customer paying for a service, proponents reasonably expect an efficient and high standard of service, improving over time, with a high degree of transparency and accountability for the cost basis of fees charged. The proposed model does not deliver on this basic expectation.

CME strongly recommends the cost recovery model demonstrates improved efficiency and productivity, including defined metrics on the responsiveness of government activities and accountability for those services.

CME acknowledges that DWER are implementing a number of changes anticipated to improve efficiency and reduce assessment timeframes, namely introduction of Environment Online and implementation of revised procedures. Fundamentally, a pricing model based upon a historic unit of effort will not be reflective of actual costs in future years. The model must therefore be developed to allow for the adjustment of the cost base to reflect actual costs of service, expected to be reduced over time with improved process efficiencies, update of technology solutions and reduced administrative burden. This must particularly be the case for cost recovery for EP Act Part IV given the impending release of Environment Online, the Biodiversity Information Office initiative, EP Act amendments and objectives of the McGowan Government's *Streamline WA* initiative – all of which have been promoted by Government as expecting to deliver material regulatory efficiency benefits in the near to medium term. The inverse risk is that the model will become exponentially more expensive if the cost-base of agency activities continue to grow in the absence of efficiency improvements – for example, through the hire of additional resources without any lift in productivity.

Fundamental to ensuring this adaptability, and the currency of the fee structure, will be the consistent and transparent accounting reporting of time spent on cost-recovered work items. As State agencies move towards newer information technologies and improved internal efficiency, this flexibility needs to be built in.

CME strongly recommends a robust transparency framework be established for the tracking and reporting of time spent for cost-recovered items, the outputs of which inform periodic public reviews and adjustment of the cost base in line with defined efficiency metrics.

Resource constraints impede surge ability

The Discussion Paper explains that the primary objective of the proposed cost recovery model is to "improve the capacity and agility of the department to manage an increasing environmental assessment workload without compromising the environmental values of the state." DWER have further clarified that the purpose of the model is to fund the resources required to undertake Part IV assessments and compliance activities and to enable the department to surge resources during peak times (i.e. industry booms).

Labour market constraints will inevitably impede the department's ability to recruit and train surge resources during periods of peak industry activity. During boom times, there is high competition for a small labour pool

of which industry has and will consistently out-compete government for professionals. Furthermore, during these times departmental resources are often reduced as experienced professionals move into industry positions.

For the model to effectively facilitate the surging of departmental resources, mechanisms need to be put in place to ensure access and development of public service resources during both peak and quieter times. If there is no mechanism to address this, the services delivered by DWER may be considered partially rivalrous (congested) because it impedes the ability for another proponent to progress their project approval process due to a lack of resourcing within DWER. Should this be the case, it would constitute a market failure and it would be more appropriate to fund these surges from general government revenue.

No indication or details have been provided in the Discussion Paper as to how DWER proposes to address this dilemma. Given the current uptick in economic activity and additional resource constraints linked to COVID-19, it appears likely that the proposed timing of cost recovery will correspond to a significant strain on government service levels.

The Department must clearly articulate how it expects to improve service delivery in a resource-constrained environment and use any funds to effectively "surge" departmental resources.

Implementation timeframe and review

It is evident that cost recovery will not deliver any discernible benefits for government or proponents at the time of implementation - with regards to resourcing, process efficiency, or approval timeframes. Cost recovery should therefore be implemented via a staged transition plan to allow for a more reasonable, incremental transition to achieve its objectives and avoid perverse outcomes.

There also should be no expectation that cost recovery is achieved during the initial implementation phase. For several Commonwealth agencies, the early years of implementation did not demonstrate actual cost recovery as infrastructure, systems, and processes were developed and maintained to support the transition. Based on these experiences, it would be more appropriate to progressively increase the proportion of costs recovered with time.

CME strongly recommends that commencement of cost recovery be deferred until the 2022-23 Financial Year to allow for necessary analysis and refining of the new model to ensure it can meet its objectives.

The proposed implementation timeframe does not align with financial year budget cycles for proponents or government. Consequently, proponents have not budgeted for the expected cost of Part IV approvals for FY22. Given the magnitude of the new fees proposed, lack of forewarning of the magnitude and the absence of this revenue from inclusion in the State budget,

Furthermore, **CME recommends the unit rate be halved for the first twelve (12) months of implementation** to support an incremental transition and improvement in efficiencies, and to avoid perverse outcomes (such as proposals flooding the Department immediately prior the implementation date).

CME recommends the 18-month post-implementation review is undertaken by an independent body, such as the Auditor General of WA, to ensure the appropriate rigour and independence of assessment of the processes and governances underpinning the cost recovery model. An independent post-implementation review is crucial to improving stakeholder confidence in the system and ensuring transparency and accountability of the Department.

Design principles

Reflective of effort

While CME acknowledges the inherent challenge in developing a sufficiently simple cost recovery model which equitably accounts for the variable complexity of proposals and their subsequent assessment, CME believes the proposed model does not meet the core design principle of being reflective of effort.

It is CME's understanding the model has been developed using a top-down approach (looking at historic departmental services expenditure) and identifying non-subjective points at which a charge can be applied, rather than identifying the value-adding services for proposals and how much those services (delivered efficiently) should cost. It is likely this approach has contributed to the significant magnitude of the fees then proposed and hence is potentially flawed.

Feedback received from members (including environmental consultant associate members) indicates that for some proposed charges, the activity would result in the proponent paying more to government for the assessment than to the consultant for undertaking the work. DWER assessment effort should not exceed proponent and consultant effort. If this were the case, this would indicate significant inefficiencies in departmental services as the magnitude and complexity of the work required to prepare assessment documentation far exceeds that required to undertake its subsequent assessment. A comparative assessment of Department versus proponent costs indicates the pricing model does not reflect value-add effort. Should the private sector be able to provide these services more easily, it may create actual or potential competition and therefore should be subject to a competitive neutrality investigation by the Department of Treasury.

It may be necessary to benchmark the reasonableness of the proposed prices, whether it be with other State agencies subject to economic regulation or government departments in other states and territories. Market testing or contracting out of some of the services will help gauge efficiency of costs.[6] There is an established and mature private market for similar services in Western Australia and hence it should not be difficult to assess the reasonableness of the proposed costs to be recovered.

The proposed model does not adequately allow for the scalable assessment of project complexity. Fees for key environmental factors are not scaled, reflecting an incorrect assumption that the same or similar amount of effort is required to assess each key environmental factor across all proposals. The level of complexity for assessment of key environmental factors differs considerably depending on the type, size, and location of a proposal. For the model to be equitable for all proponents, this variable complexity, and the consequent variability in required assessment effort, must be incorporated.

CME recommends the model be amended to account for the variable complexity (and therefore variable required effort) for assessment of different key environmental factors. This could be achieved by introducing a complexity scale (high versus low) to be applied for key environmental factors identified for a proposal. The complexity of the key environmental factors can be assessed upfront, and the proponent charged 80 per cent of the estimated fee with the differential charged or refunded to the proponent post-assessment based on actual time spent. CME recommend that a low complexity factor only incur two (2) units (rather than three (3)).

The proposed model also does not recognise the reduced effort required for administrative or minor amendments to proposals (section 43A and 45C applications), Ministerial Statements (section 46 applications), or environmental management plans (EMPs).

Further, the Discussion Paper does not explain the application of fees where a proposal amendment triggers additional amendment processes. For example, where a s45C triggers the need for a s46, the assessment work would have already been completed for the s45C and it is therefore likely the s46 process is administrative in nature[7]. The model does not appear to account for this variability in required effort to avoid duplication of fees.

CME recommends the model be amended to recognise and distinguish between amendments to proposals, Ministerial Statements, and EMPs which are administrative or otherwise minor in nature (and therefore require less effort). This could be achieved by amending the fee structure to move s43A, s45C, and s46 charges under a complexity fee schedule:

- For minor / administrative amendments to proposals required by the proponent under a s43A, the fee is zero (0) units. For all other amendments, the fee is one (1) unit.
- For minor / administrative amendments to Ministerial Statements required by the proponent under a s46, the fee is zero (0) units. For all other amendments, the fee is two (2) units.
- For minor / administrative amendments to EMPs required by the proponent, the fee is zero (0) units. For all other amendments, the fee is two (2) units.
- For minor / administrative amendments to proposals, Ministerial Statements, or EMPs required by the department or Minister, the fee is zero (0) units.
- Where a s45C prompts a s46, the fee for a s46 is one (1) unit.

[6] https://www.pc.gov.au/inquiries/completed/cost-recovery/report/costrecovery2.pdf, pp. 23.

[7] For example, a proponent of an existing approved proposal applies to increase clearing through a s45C, however the era of the Ministerial Statement is such that there is no existing offset condition for clearing of good-excellent native vegetation consequently requiring an administrative s46 to insert the standard offset condition.

Proposed fees and charges

Assessment – Fixed fees (Table 2)

Precautionary referrals

There exists a misalignment of expectations across government agencies regarding precautionary referrals. While precautionary referrals are discouraged by DWER (only referrals likely to have a significant environmental impact should be referred), members have been required by other government agencies (particularly the Department of Jobs, Tourism, Science and Innovation), or where there is potential risk for a third party referral, to precautionarily refer proposals to demonstrate that Part IV approval is not required prior to progressing other approvals.

CME recommends DWER undertake consultation with other government agencies to align expectations regarding precautionary referrals and ensure decision making authorities understand their duties to refer under the EP Act.

Requests for further information

The charge for requests for information has been an area of significant confusion within the Discussion Paper. Proponents are often requested numerous times by formal and informal mechanisms to provide additional information to assessing officers. Further, information requests received by proponents have at times been characterised as superfluous, irrelevant to primary risks, out of scope, or otherwise requests for information already provided by the proponent.

CME understands that only formal requests for information in writing authorised by the EPA Chair (or Deputy Chair acting as the Chair) or Minister are to be subject to cost recovery charges. CME supports this approach and recognises this as an opportunity for improvement of the current request for information process. In CME's view however, this is not sufficiently clear in the Draft Regulations and greater clarity is required regarding the type of requests for information for which fees will be charged.

CME recommends strengthening Regulation 7 to clarify what constitutes a chargeable request for further information.

Transitional fees

Greater clarity is required regarding the application of transitional fees for assessments in progress at the time of proclamation. CME understands that the "EPA Report and Recommendations" transitional one-off fee is to apply only to those proposals which, at the time of cost recovery implementation, are undergoing assessment and for which the EPA report and recommendations are yet to be published. CME supports this approach and **recommends a worked example of the application of the transitional fees be published.**

Environmental management plan reviews

The Discussion Paper lacks substantive explanation as to what constitutes an EMP for the purposes of cost recovery, and how fees would be charged for EMP reviews under the various circumstances:

- Where a Ministerial Statement has multiple EMPs, is the proponent charged per EMP?
- Where a single EMP sits across multiple Ministerial Statements, is the proponent charged once for the single EMP review, or charged per Ministerial Statement?
- Are lingering EMPs (i.e. EMPs associated with completed projects for which a Ministerial Statement still exists) subject to EMP review fees?
- Are Mine Closure Plans (MCPs) subject to EMP review fees?
- Are EMPs that are submitted on a regular review cycle (e.g. every three (3) years) which are not reviewed before the next submission still charged or will the fee be refunded?

In determining the application of fees for EMP reviews, the equity of the era of Ministerial Statement needs to be considered. As the EPA Board, internal policies, and departmental personnel have changed over time so too has the style and focus of Ministerial Statement conditions. An early era of Ministerial Statements favoured a single, consolidated EMP capturing all key environmental factors, another era favoured multiple EMPs for individual key environmental factors, and another era favoured outcome-based conditions over EMPs.

CME does not support a cost recovery model which disproportionately impacts select proponents as a result of changing regulator expectations, preferences, and conditions over time. To ensure equitability of costs, **CME recommends imposition of fees for EMP reviews be deferred to allow for adequate review and /**

or withdrawal of Ministerial Statements to align with the current EPA preference for outcome-based conditions.

The application of the proposed model for the review of MCPs requires clarification. Firstly, it is unclear whether MCPs are considered EMPs for the purposes of cost recovery.

Secondly, under the *Mining Act 1978* (the Mining Act), the Department of Mines, Industry Regulation and Safety (DMIRS) sets the review period for MCPs and undertakes their regular review. Proposed amendments to the Mining Act are expected to remove the three-yearly mandatory review period for MCPs, allowing proponents greater flexibility in setting a review frequency most appropriate for their operations. Should MCPs be captured under the cost recovery model, this change would result in select proponents being disproportionately impacted due to the age of their MCPs.

Where MCP review periods are set in conditions of a Ministerial Statement (mirroring DMIRS's previous three-yearly mandate), it is understood that under the proposed model proponents would be subject to a $64,000 fee to amend the review period. As a fee for service, this cost is not reflective of effort and is entirely unreasonable. Furthermore, it is impractical to have a different review cycle imposed for MCPs with DMIRS through Ministerial Statements from that which DMIRS establishes through the Mining Act.

CME recommends that following passage of the *Mining (Amendment) Bill 2021*, all Ministerial Statements associated with Mining Act tenure (i.e. with a default three-yearly review of MCPs) be administratively amended to remove the three-yearly review and instead refer to the review period as established under the Mining Act.

Withdrawal of Ministerial Statement

It is unclear how the model applies to applications for the withdrawal of a Ministerial Statement under section 47A. Any fee to be applied for the withdrawal of a Ministerial Statement must be reflective of effort and not result in perverse outcomes.

CME recommends clarification of the application of fees for withdrawal of a Ministerial Statement.

Assessment – Complexity fees (Table 3)

"Number of public submissions received"

The proposed fee structure for the assessment of submissions received on a proponent-prepared environmental scoping document (ESD) and submissions received through public consultation of an environmental review document (ERD) or referral information (RI) will likely result in perverse outcomes and therefore is not supported. The model encourages more submissions, particularly proformas rather than substantively unique and material submissions. This will unnecessarily burden government, slow the assessment process, drive up costs, and not meaningfully contribute to better environmental outcomes through the assessment process. A robust process is needed to manage such perverse outcomes and ensure public engagement with the referral assessment process is meaningful.

In discussions with DWER, it was acknowledged that at most up to 100 of the public submissions received for ESD, ERD, or RI public consultation are substantively unique and material submissions with the number generally far less than this. Accordingly, **CME recommends the model be amended to limit the number of units of effort charged for public submissions received to three units for over 50 submissions**, as illustrated in Table 1. This change would prevent perverse outcomes and would not incentivise the vexatious use of proforma submissions.

Table 1: Recommended complexity fees for number of public submissions.

Factor	0 units	1 unit	2 units	3 units	4 units	5 units	6 units
Number of public submissions received on proponent-prepared ESD	0	1-9	10-49	50+			
Number of public submissions received through public consultation on ERD or RI	0	1-9	10-49	50+			

CME acknowledges that departmental resources are required to process proforma submissions, however simple and practical technological and process improvements can be implemented immediately to ensure efficient and effective use of staff time. For example, bots are often used to generate proforma submissions, similarly bots can also be used to process proforma submissions and filter unique information. Developing

such bots is an easy and inexpensive solution to an ongoing administrative burden for assessment staff. Additionally, it would be expected that consideration of public submission and management of proformas should already be a core design component for Environment Online and hence able to be implemented in the near-term as part of that initiative.

CME recommends technology solutions to better manage departmental work effort associated with proforma submissions are included in the Environment Online system.

"Consultation required on draft recommended conditions"

It is rare that consultation with the proponent and other decision-making authorities on draft recommended conditions does not occur. It is therefore logical that this step in the assessment process be captured under a fixed fee structure, rather than under complexity fees as proposed.

CME recommends the model be amended to move fees for consultation on draft recommended conditions under a fixed fee schedule.

"Projects disturbing more than 2,500 hectares of land"

The disturbance area of a proposal does not necessarily correlate with the complexity of the assessment. Whilst the area of disturbance might provide context relating to scale, the complexity of the assessment is influenced by key environmental factors and threatened or priority species and communities present within the area to be disturbed.

Introducing an additional complexity fee for projects disturbing more than a (arbitrarily) set number of hectares would effectively result in 'double accounting'. For such projects, impacts to vegetation, flora, and fauna would already be assessed for costs under "number of key environmental factors" and (most likely) by the "greater than ten significant fauna and flora species or communities" fee, and in addition, the proposal would also most likely trigger fee requirements for an environmental offsets assessment.

Furthermore, this approach does not align with that for cost recovery of native vegetation clearing permits (NVCPs). Costs recovered for NVCPs considers the location of the proposed clearing (i.e. Intensive versus Extensive Land Use Zones) and carries a maximum charge of $12,000 for Intensive Land Use Zone or $5,000 for Extensive Land Use Zone clearing exceeding 1,000 hectares. Comparatively, clearing under the proposed model incurs a $96,000 fee – 800 per cent higher than the maximum charge for a NVCP.

Designing a "cliff" fee structure that jumps dramatically from $0 to $96,000 on an additional one hectare of clearing from 2,499 to 2,500 hectares is a pricing model which is difficult to justify and clearly not correlated with actual departmental effort and could potentially lead to perverse outcomes.

CME does not support retention of the complexity fees for projects disturbing more than 2,500 hectares of land.

"Greater than ten significant fauna and flora species or communities […]"

The term "significant" fauna and flora species or communities is not defined in the Discussion Paper, merely annotated to be "defined in the methodology" for which consultation and publication details are omitted. The term "significant" needs to be defined and in so doing must distinguish between threatened and priority species and communities and consider short range endemic species.

CME recommends the term "significant", as it relates to fauna and flora species and communities, is defined in the Regulations.

The Discussion Paper also does not provide clarity regarding how complexity factor costs would be calculated in situations where a threatened species exists within a priority ecological community (for example), whether this would be counted as one (1) or two (2) "significant fauna and flora species or communities".

CME recommends the model be clarified regarding how complexity factors are to be calculated for coexisting significant fauna and flora species and communities.

Implementation – Compliance fees (Table 4)

The Discussion Paper and Draft Regulations do not provide sufficient clarity regarding the methodology for determining the Compliance Priority Rating of a Ministerial Statement. From discussions with DWER, it is understood that this is determined based on the current audit frequency, while the Draft Regulations describe the rating as being based on "risk to the environment of implementing the proposal, the complexity of the proposal and the level of ongoing compliance by the proponent". Importantly, how each of these elements are

determined and revised over time is not clarified in either the Discussion Paper or Draft Regulations, nor are the opportunities for proponent participation in this decision-making process.

CME recommends the methodology for determining the Compliance Priority Rating of a Ministerial Statement be published, and that the methodology incorporates opportunities for proponents to review and request to change their assigned priority level.

Accountability and transparency

With the introduction of cost recovery, proponents are paying a fee for a service. Consequently, DWER and related decision-making authorities and agencies must be accountable for the time spent in relation to all cost-recovered work items. This accountability is fundamental to the transparency design principle; however, the Discussion Paper does not explain how this accountability will be demonstrated. This transparency is also essential to ensure there continues to be an incentive for government to drive efficiency in its processes rather than simply cost recover for any existing (inefficient) processes without repercussions.

CME strongly recommends the method by which DWER will demonstrate their accountability for time spent on cost-recovered work items be published. This can be achieved using existing systems, such as Environment Online. For example, DWER utilises Environment Online case management functionality to track and report time spent, and at the end of assessment DWER provides the proponent with this record accompanied by the assessment fee.

Such tracking will enable DWER to review the appropriateness of costs recovered, provide public confidence there is no 'cost padding' or 'gold plating' and facilitate an independent assessment by the Auditor General of WA on regulator efficiency. If services are not provided efficiently, there should be a mechanism designed to reduce the cost recovery charges to reflect this inefficiency, ensuring prices are based on the minimum cost necessary to deliver. Such an arrangement would be best practice and instil cost consciousness.[8]

CME notes the government intends to establish a Special Purpose Account under the *Financial Management Act 2006* for fees obtained from this cost recovery proposal. Industry's experience with such accounts is that generally there is no detailed information available about the revenue or expenditure with only single line items in annual reports provided. In CME's view, this would be an unacceptable approach for this Special Purpose Account and **CME recommends DWER publish a detailed annual report providing full transparency on the time spent and revenue obtained for each cost-recovered work item, and expenditure of funds for internal and external resources, IT systems maintenance and improvement, and other non-staff costs incorporated in the unit of effort calculated cost basis (e.g. motor vehicles, office accommodation, meals, and accommodation).** This annual report should delineate direct, indirect, and capital use costs and describe how overhead costs have been distributed fairly among DWER services. **CME strongly recommends the annual report publication and its minimum content be enshrined in the Regulations.** The production of an annual report should clearly outline performance against statutory timeframes and other identified efficiency metrics, including cross-agency activities where relevant, consistent with the WA Government's established objectives under *Streamline WA*.

The Discussion Paper states that the methodology used for determining the fee structure for the proposed model is the same methodology used to determine Key Performance Indicator (KPI) reporting by the department. Current KPI reporting captures "cost per standardised unit of assessment output", "cost per standardised unit of environmental management services output", and "average cost per environmental audit completed". Figure 1 illustrates the actual cost of EPA Services reported for FY15 to FY20. Upon review of previous departmental annual reports and performance metrics, it is unclear how the departmental KPIs correlate with the cost-recovered work items or how departmental KPIs will be adapted to transparently report on performance under the cost recovery model.

CME recommends DWER clarify how departmental performance on cost-recovered work items will be transparently reported and how this correlates with the Department's current KPI reporting.

[8] https://www.pc.gov.au/inquiries/completed/cost-recovery/report/costrecovery2.pdf

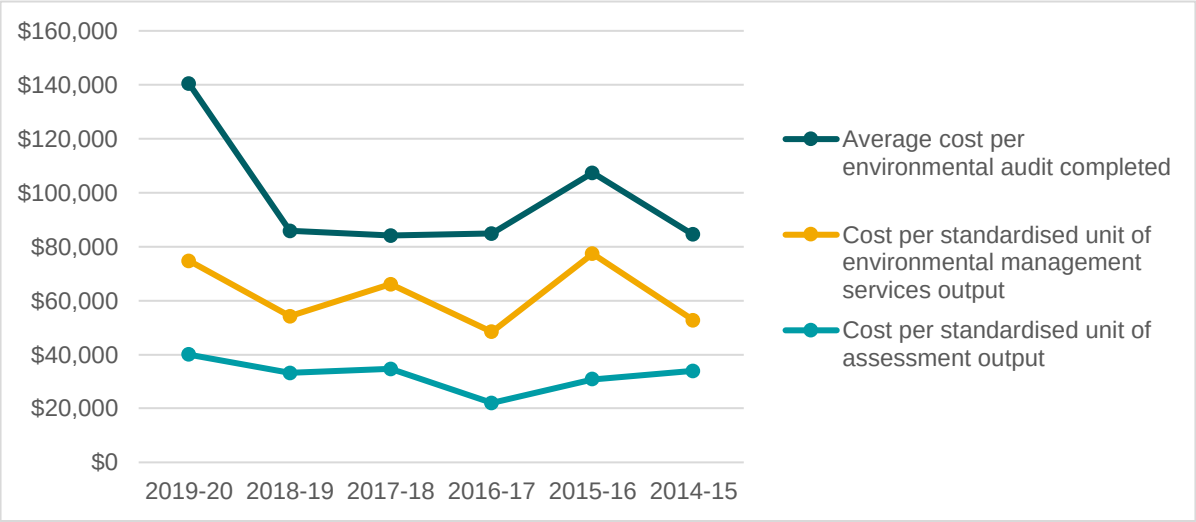

Figure 1: Actual cost of EPA Services FY15 to FY20.

Conclusion

CME again thanks DWER for the opportunity to comment on the Discussion Paper and for the briefing of CME members, and looks forward to continuing to work with DWER through this review process through to implementation. While CME remains supportive of cost recovery in principle, we submit that additional analysis and refinement is required to build confidence in the efficiency and effective proposed model for cost recovery under Part IV EP Act

Should you have questions regarding this submission, please contact Bronwyn Bell, Manager – Resource Development & Sustainability, on 0448 773 579 or via email at b.bell@cmewa.com.

Authorised by	Position	Date	Signed
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