

EXPLANATORY STATEMENT

Issued by authority of the Minister for the Environment and Energy

Subject- *Environment Protection and Biodiversity Conservation Act 1999*

 Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Regulation 2016

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides for the referral, environmental impact assessment and approval of actions which are likely to have a significant impact on matters of national environmental significance.

The *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Act 2014* commenced on 30 June 2014 to enable cost recovery for environmental impact assessments under the EPBC Act in accordance with *Australian Government Cost Recovery Guidelines* (Cost Recovery Guidelines).

Subsection 520(1) of the EPBC Act provides that the Governor-General may make regulations prescribing all matters: (a) required or permitted by the EPBC Act to be prescribed; or (b) necessary or convenient to be prescribed for carrying out or giving effect to the EPBC Act.

Subsection 520(4A) of the EPBC Act further provides that relevant fees may be prescribed by the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations) for services the Minister or Secretary provides in performing functions or exercising powers under the EPBC Act or EPBC Regulations.

Subsection 520(4C) of the EPBC Act also allows the EPBC Regulations to specify processes for payment and circumstances for refunds, exemptions and waivers for the payment of fees.

The *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Regulation 2014* prescribed the payment of fees for environmental impact assessments of actions referred to the Commonwealth on or after 14 May 2014.

In 2016 the Department undertook a review of the cost recovery arrangements to ensure they were efficient, effective and compliant with the Cost Recovery Guidelines and the Australian Government Charging Framework July 2015. These guidelines provide that where an individual or organisation creates the demand for a government activity, they should generally be charged for it and that a cost recovered activity should align fees to the cost of the government activity.

The purpose of the *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Regulation 2016* (the Regulation), reflected in the 2016-2017 Cost Recovery Impact Statement (CRIS), is to implement the recommendations of the review including:

- Reductions in base fees for each assessment approach, reductions in set fees for referrals and post approval activities and reductions in set fees for contingent activities, to reflect the reduced costs of providing these services more efficiently;

- Fees for additional contingent activities: variations to proposals, transfers of approvals to new approval holders and extensions to approval expiry dates;
- Updates to the complexity fees and methods of determining complexity, to better reflect the effort required to assess projects with different characteristics;
- Updates to the proportions of base and complexity fees to be paid at each fee stage, to better reflect the effort required to undertake each stage;
- Updates to the definition of some assessment stages, to improve clarity and better align with the assessment process;
- Updates to the definitions for contingent fees for additional information requests, to improve clarity and ensure proponents are not charged when information is requested from a third party (for example a state or territory government);
- Improvements to administrative processes to enable:
 - incorrect fee schedules to be amended;
 - referral fees to be refunded in limited circumstances;
 - the recalculation of complexity fees to occur at the most appropriate stage of the process; and
- Transitional arrangements for projects currently under assessment to move onto the new fee structures.

A Statement of Compatibility with Human Rights is set out in Attachment A. Details of the Regulation are set out in Attachment B.

The Office of Best Practice Regulation (OBPR) was consulted in relation to the making of the Regulation. The OBPR advised that a Regulation Impact Statement was not required as the changes do not have more than a minor regulatory impact on business, community organisations or individuals and are machinery of government in nature.

Given the minor and machinery nature of the changes, and the fact that they do not substantially alter existing arrangements, consultation with industry or stakeholders was not undertaken. The revised cost recovery arrangements were also part of the 2016-17 Budget process. There is not expected to be stakeholder or industry concern as most of the fees are reducing.

The EPBC Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commenced on 1 October 2016.

Authority: Subsections 520(1), 520(4A) and
520(4C) of the *Environment
Protection and Biodiversity
Conservation Act 1999*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

**Environment Protection and Biodiversity Conservation Amendment
(Cost Recovery) Regulation 2016**

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

This Regulation amends the *Environment Protection and Biodiversity Conservation Regulations 2000* (Principal Regulations) to update and clarify the relevant fees for the environmental assessment of proposed development actions under Chapter 4 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The updates are required to ensure that that cost recovery is efficient, effective and complies with the Cost Recovery Guidelines and the Australian Government Charging Framework. These guidelines provide that where an individual or organisation creates the demand for a government activity, they should generally be charged for it and that a cost recovered activity should align fees to the cost of the government activity.

The amendments include reductions in fees to reflect the reduced costs of providing these services more efficiently, new fees for additional contingent activities, changes to definitions to improve clarity and updates to the complexity fees and methods of determining complexity to better reflect the effort required to assess projects with different characteristics.

Human Rights Implications

The human rights implications of this Regulation must be considered in the context of the EPBC Act. In its report, the Parliamentary Joint Committee on Human Rights (Seventh Report of the 44th Parliament, June 2014) stated that the Committee considers that the amendments made to the EPBC Act by the *Environment Protection and Biodiversity Conservation (Cost Recovery) Amendment Act 2014* did not appear to give rise to human rights concerns.

This Regulation does not limit any absolute rights and complies with the Cost Recovery Guidelines and the Australian Government Charging Framework.

Conclusion

This Regulation is compatible with human rights because it allows for the imposition of a fee for service for activities under the EPBC Act and does not detrimentally impact the protection of human rights.

JOSH FRYDENBERG

Minister for the Environment and Energy

ATTACHMENT B

Details of the *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Regulation 2016*

Section 1 – Name

This section provides that the title of the Regulation is the *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Regulation 2016* (the Regulation).

Section 2 – Commencement

This section provides that the Regulation commenced on 1 October 2016.

The new fees apply to all cost recovered activities, including upcoming stages of existing assessments, that are payable from this date. The Regulation does not apply to actions referred to the Minister before 14 May 2014 (prior to cost recovery commencing).

Section 3 – Authority

This section provides that the Regulation is made under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule has effect according to its terms.

Schedule 1 – Amendments

Referral fee

Item 1 – Subregulations 4.02(2) and (3)

Item 1 amends subregulations 4.02(2) and (3) to reduce the referral fee from \$7,352.00 to \$6,577.00.

Definitions

Item 2 – Regulation 5.12A (definition of category)

Item 2 repeals the definition of category in relation to a listed migratory species. The definition is no longer be required as the Regulation also seeks to repeal the species category system which assists in the determination of complexity for the migratory species controlling provision component (see item 17).

Item 3 – Regulation 5.12A (definition of complexity fee)

Item 3 repeals the definition of complexity fee and substitute a new definition with minor amendments to clarify that some complexity fee components can be made up of several components, and that they will all be applicable (except for the exceptional case component). The amendment also substitutes the name ‘project component’ for the new name ‘project composition component’ (see items 9 and 10).

Items 4, 8 and 11 - Regulation 5.12A (definition of extinct in the wild), (definition of point value), (definition of seabird and shorebird)

Items 4, 8 and 11 repeals the definitions for “extinct in the wild”, “point value”, “seabird”, and “shorebird”. These definitions are no longer be required as the Regulation repeals the species category system for migratory species and the point value system for threatened species and ecological communities which assisted in the determination of complexity for the relevant controlling provision components (see Item 17).

Items 5, 6, 7 and 12 - Regulation 5.12A complexity definitions

Items 5, 6, 7 and 12 include amendments to the references to the subregulations which determine complexity for each component given items 17 and 21 result in a change to the paragraph numbering for the controlling provision components for 5.12D and 5.12F. Item 12 also provides that a very high complexity determination can be made for an application component (see item 15).

Items 9 and 10– Regulation 5.12A (definition of project component)

Items 9 and 10 changes the reference to the paragraph for the purpose of the definition of project component (from 5.12B(6) to 5.12G(1)(b)) and inserts a new definition ‘project composition component’ (see items 14 and 23). This change will avoid confusion between the use of the term ‘project component’ for the purpose of the complexity fee component in regulation 5.12B as well as in relation to each activity for the purpose of regulation 5.12G.

Item 13 and 14 – Subregulations 5.12B(1), (2), (3), (5) and (6).

Items 13 and 14 repeals subregulations 5.12B(1), (2), (3), (5) and (6) and substitutes subregulations which include minor amendments to the descriptions of the complexity fee components to ensure that they are clear, consistent with the intent and align with practice.

Amended subregulation 5.12B(1) clarifies that there will always be three application components, one or more controlling provisions components, one legislative impact component and one project composition component considered in determining the complexity fee for an action. In some cases an exceptional case component will also apply.

Application components of a complexity fee

Amended subregulation 5.12B(2) clarifies that there is an application component for each of the three types of information required to be included in a referral (by regulation 4.03). The components will include information about the action, the nature and extent of the likely impacts and the measures to avoid or reduce the impacts (set out in rows M, N and O of the

Complexity Fee Matrix). The clarity and quality of the information about these matters affects the determination of complexity. The clearer and more comprehensive the information provided by a person proposing to take an action, the lower the complexity. Each of the three application components will have a different complexity rating and, therefore, different fees. The sum of these fees is the application component fee.

Controlling provision component/s of a complexity fee

Amended subregulation 5.12B(3) clarifies that there is a controlling provision component for each Subdivision of Part 3, Division 1 of the EPBC Act that includes a controlling provision (Rows A – I of the *Complexity Fee Matrix*). There is also a controlling provision component for Subdivision A, AA and B of Division 2 of Part 3 (Row J of the *Complexity Fee Matrix*). There will always be at least one controlling provision component that will apply to an action (as it is a controlled action) and there may be several. If the Minister determines that a particular controlling provision component is not applicable (i.e. the particular Subdivision would not apply as it would not include a controlling provision for the action), then no fee applies. Each controlling provision component which applies to an action will have a different complexity rating and, therefore, different fees. The sum of these fees is the controlling provision component fee.

Note: There is no low complexity determination for a controlling provision component.

Project composition component of a complexity fee

Amended subregulation 5.12B(6) clarifies that the project composition component applies in relation to the number of activities to be carried out in taking the action (known as project components), as determined by the Minister under subregulation 5.12G(1).

The project composition component reflects the additional costs and complexity associated with assessing a project that is made up of a number of activities which have different impacts. For example, the assessment of a rail line is likely to require less time to assess than the assessment of a rail line that is connected to a new mine and a new port facility, as each of these activities has different kinds of impacts which would need to be assessed.

There is only one project composition component, set out in row K of the *Complexity Fee Matrix*. There is no complexity determination for the project component. The complexity fee for the project composition component is set out in regulation 5.13D and equivalents.

Determination for each application component of a complexity fee

Items 15 and 16 – Subregulation 5.12C(1) and (2)

Item 15 omits “*or high complexity*” and substitutes “*, high complexity or very high complexity*” in subregulation 5.12C(1) so that the Minister will be able to make a determination of very high complexity for each application component. This amendment is to better reflect the complexity of assessing the application on the information provided.

Item 16 repeals subregulation 5.12C(2) and substitutes a new subregulation 5.12C(2) which retains the requirement that the Minister must consider the adequacy of the information provided when making a complexity determination.

Determination for each controlling provision component of a complexity fee

Item 17 – Subregulations 5.12D(2) to (4)

Item 17 repeals subregulations 5.12D(2) to (4) and substitutes subregulation 5.12D(2) which contains a simplified list of factors that the Minister must consider when making a complexity determination for each controlling provision component relevant to the action. These factors include the number of species or ecological communities requiring assessment, and whether or not the action's impacts on protected matters and management options are well understood. "Well understood" is taken to mean that the information necessary to understand the impacts to the matter and the available measures to manage and/or offset the impacts are readily available to the Department and/or provided in the referral documentation (this definition is consistent with the *Complexity Fee Matrix*).

Factors which have not been reinserted into the new subregulations, such as scale, scope, severity and duration of the action, are considered as part of the Minister's determination on how well understood the impacts of the action are on each matter protected by a controlling provision. Factors such as "point value" for threatened species and migratory species "categories" are removed as they are no longer applicable (see items 2 and 8).

Determination of an exceptional case component for a complexity fee

Item 18 - Regulation 5.12E (heading)

Item 18 repeals the heading for the exceptional case component and substitute a new heading which substitutes the words "of an" for the words "for an" to reflect that this component may not apply.

Item 19 – Regulation 5.12E

Item 19 amends regulation 5.12E to omit "*that an exceptional case component applies in relation to the assessment of an action if*" and substitutes it for "*, in relation to an action, that*" as the component is first defined in 5.12B(4) and it applies when the Minister determines actions are of a certain kind.

The exceptional case component is set out in Row P of the *Complexity Fee Matrix*. The fee payable for the exceptional case component does not change in relation to the different assessment approach. There is no complexity determination for the exceptional case component.

Determination for the legislative impact component of a complexity fee

Item 20– Regulation 5.12F (heading)

Item 20 repeals the heading for the legislative impact component for a new heading which substitutes the word "each" for the word "the" as there will only ever be one component

(unlike, for example, the application component which has three). The legislative impact component reflects the complexity of coordinating an EPBC Act environmental impact assessment with other Commonwealth or State or Territory statutory processes and is set out in row L of the *Complexity Fee Matrix*.

Item 21 – Regulation 5.12F(2) to (5)

Item 21 repeals subregulations 5.12F(2) to (5) in substitution for new subregulation 5.12F(2) which condenses the criteria that the Minister must consider in making a complexity determination for the legislative impact component. The condensed criteria include how many (if any) other kinds of legislative processes would be involved in the assessment of the action. For example, an accredited process, a process referred to in, or prescribed for the purposes of section 160 or any other Commonwealth, state or territory legal processes which relate to the action.

Determination for the project composition component of a complexity fee

Item 22 – Regulation 5.12G (heading)

Item 22 repeals the heading for regulation 5.12G and substitutes a new heading to pick up the new title of this component “project composition component” (see item 10). This change is to avoid confusion between the use of the term ‘project component’ for the purpose of the complexity fee component in regulation 5.12B as well as in relation to each activity for the purpose of regulation 5.12G.

Item 23 – Subregulation 5.12G(1)

Item 23 repeals subregulation 5.12G(1) in substitution for new subregulation 5.12G(1) to ensure that the original intent of the subregulation is captured and aligns with practice. Subregulation 5.12G(1) clarifies that, for the project composition component, the Minister may determine the number of activities that are proposed to be carried out in taking an action. Each activity is counted as a project component for the assessment of the impacts of an action. There is no complexity determination for the project component. The complexity fee for the project composition component is set out in regulation 5.13D and equivalents.

Making of a determination is a method

Item 24 – Regulation 5.12H

Item 24 repeals regulation 5.12H in substitution for new regulation which inserts a new 5.12H(2) which provides that regulations 5.12C-5.12G do not limit the matters the Minister may consider in making a determination under those regulations.

Schedule of Fees

Items 25 and 26– Paragraphs 5.12J(1)(c) and (d) and subregulations 5.12J(2) and (3)

Items 25 and 26 repeal the paragraphs and subregulations for new paragraphs and subregulations to clarify which complexity fee components can be multiples and that all of the components are applicable (except for the “exceptional case component”).

Item 27 – At the end of regulation 5.12J

Item 27 inserts new subregulation 5.12J(4) which allows the Minister to reissue a fee schedule where there is an error in the original fee schedule.

Amount of Fees

Item 28 – Subregulation 5.12K(2) to (5)

Item 28 repeals subregulations 5.12K(2) to (5) for new subregulations 5.12K(2) to (7) to clarify the complexity fees payable for each component.

Subregulation 5.12K(2) sets out the complexity fees for the application components including no fee for low complexity, reduced fees for moderate and high complexity and a new very high complexity fee.

Subregulation 5.12K(3) sets out the complexity fees for the controlling provision components including reduced fees for moderate, high and very high complexities.

Note: There is no low complexity determination. Where the particular controlling provision component does not include a controlling provision for the action it is not applicable and no fee would apply.

Subregulation 5.12K(4) clarifies the complexity fee for the Great Barrier Reef Marine Park controlling provision component when the action also triggers the World Heritage and/or the National Heritage controlling provision components. In this circumstance, the complexity fee for the Great Barrier Reef Marine Park controlling provision component would be halved, as set out in Row H of the *Complexity Fee Matrix*. Note: Subregulation 5.12D(5) provides that where a property is both a World Heritage property and a National Heritage place, the Minister may only determine fees in relation to its status as a World Heritage property. This avoids double charging for the assessment of a single property.

Subregulation 5.12K(5) provides for a slightly increased flat fee of \$592,086.00 for the exceptional case component (currently is \$577, 651.00).

Subregulation 5.12K(6) sets out the complexity fees for the legislative impact component including no fee for a low complexity determination (currently is a fee of \$3,892) and slightly increased fees for moderate, high and very high complexities. When there are no other legislative processes which would be required to be coordinated with the assessment of the action, the legislative impact component may be determined to be low complexity and there is no additional cost.

Subregulation 5.12K(7) sets out that the complexity fee for the project composition component is set out in the relevant Subdivision for the assessment approach for an action (regulation 5.13D and equivalents).

Base fees

Items 29, 34, 40, 47 and 54 – Base fees for subregulations 5.13B(2), 5.14B(2), 5.15B(2), 5.16B(2) and 5.17B(2) (table)

Items 29, 34, 40, 47 and 54 repeal the base fee tables in subregulations 5.13B(2), 5.14B(2), 5.15B(2), 5.16B(2) and 5.17B(2) to insert new base fee tables for each assessment process to reduce the base fees payable and to change the amounts payable at each stage.

The base fee are payable in stages of varying amounts. The new tables change the percentages of the fee payable at each stage, including when the largest of those amounts is payable, to more accurately reflect the work done during each stage of the assessment. The total base fee payable is reduced for each assessment process.

Part A complexity fees payable in stages

Items 30, 41, 48 and 55 – Paragraphs 5.13C(1)(a), 5.15C(1)(a), 5.16C(1)(a) and 5.17C(1)(a)

Items 30, 41, 48 and 55 repeal the paragraphs 5.13C(1)(a), 5.15C(1)(a), 5.16C(1)(a) and 5.17C(1)(a) and substitutes a new subregulations to clarify which complexity fee components can be multiples and that all of the components except for the “exceptional case component” will be applicable for the complexity fee.

Item 36 – Regulation 5.14E

Item 36 repeals regulation 5.14E and substitutes a new regulation to clarify which complexity fee components can be multiples and that all of the components will be applicable for the complexity fee referred to in regulation 5.14C (except for the “exceptional case component”).

Items 31, 42, 49 and 56 – Subregulations 5.13C(3), 5.15C(3), 5.16C(3) and 5.17C(3)

Items 31, 42, 49 and 56 repeals the Part A complexity fee tables in subregulations 5.13C(3), 5.15C(3), 5.16C(3), and 5.17C(3) and inserts new Part A complexity fee tables for each assessment process to change the split of the percentages payable at each stage.

The Part A complexity fees are payable in stages of varying percentages. The new tables change the percentage of the fee payable at each stage, including when the largest percentage is payable, to more accurately reflect the work done during each stage of the assessment.

Note: There is no change to subregulation 5.14C(2), the percentage of the complexity fee payable for each stage in relation to assessment on referral information.

Part B complexity fees payable in stages

Items 32, 43, 50 and 57 – Subregulations 5.13C(4) and (5), 5.15C(4) and (5), 5.16C(4) and (5), and 5.17C(4) and (5)

Items 32, 43, 50 and 57 repeals subregulations 5.13C(4) and (5), 5.15C(4) and (5), 5.16C(4) and (5), and 5.17C(4) and (5) and substitutes new subregulations for the Part B complexity fee for each assessment process to change the percentages of the fee payable at each stage.

With the exception of assessment on referral information, the Part B complexity fee is payable in the latter two stages (stages 3 and 4). The repealed subregulations had varying percentages

payable at these two stages depending on the assessment process. The new subregulations change the percentage of the fee payable at each stage so that 50% of the fee is payable at the beginning of stage 3 and 50% is payable at the beginning of stage 4. This more accurately reflects the work done during each stage of the assessment.

Note: There is no change to subregulation 5.14C(2), the percentage of the complexity fee payable for each stage in relation to assessment on referral information.

Amount of the project composition component

Items 33, 35, 44, 51 and 58 – Regulations 5.13D 5.14D, 5.15D, 5.16D and 5.17D

Items 33, 35, 44, 51 and 58 repeals regulations 5.13D 5.14D, 5.15D, 5.16D and 5.17D and inserts new subregulations which set out the project composition component of the complexity fee. These fees are calculated by multiplying the base fee for the relevant assessment process by the number of project components minus one, i.e. \$base fee x (number of project components – 1) = total amount of the complexity fee for the project composition component. The new subregulations will result in a reduced fee for the project composition component as the base fees for each assessment approach have been reduced (as per items 29, 34, 40, 47 and 54).

Definitions of stages

Item 37 – Subregulation 5.15A(1) (paragraph (a) of the definition of stage 1)

Item 37 amends the definition of stage 1 in subregulation 5.15A(1)(a) to provide that, when section 95A applies, the stage starts when the request for specified information starts to be prepared under section 95A(2). This amendment is to ensure that the original intent of the definition is captured and aligns with practice. There are no changes to the definition for circumstances where section 95A does not apply.

Item 38 – Subregulation 5.15A(1) (definition of stage 2)

Item 38 amends the definition of stage 2 in subregulation 5.15A(1) to provide that, when section 95A applies, the stage starts when the Minister receives the specified information requested under section 95A(2) and that when section 95A of the EPBC Act does not apply, stage 2 does not occur. This amendment is to ensure that the original intent of the definition is captured and aligns with practice.

Item 39 – Subregulation 5.15A(2)

Item 39 includes a consequential amendment to subregulation 5.15A(2) to insert “or stage 2” due to Item 38.

Item 45 – Subregulation 5.16A(1) (definition of stage 1)

Item 45 amends the definition of stage 1 in subregulation 5.16A(1) to clarify that stage 1 begins when the tailored public environment report guidelines start being prepared under section 97 of

the EPBC Act, rather than when they have been prepared. This amendment is to ensure that the original intent of the definition is captured and aligns with practice.

Item 46 – Subregulation 5.16A(2)

Item 46 includes a consequential amendment to subregulation 5.16A(2) to substitute “(a)” for “(b)” due to Item 45.

Item 52 – Subregulation 5.17A(1) (definition of stage 1)

Item 52 amends the definition of stage 1 in subregulation 5.17A(1) to clarify that stage 1 begins when the tailored environmental impact guidelines start being prepared under section 102 of the EPBC Act, rather than when they have already been prepared. This amendment is to ensure that the original intent of the definition is captured and aligns with practice.

Item 53 – Subregulation 5.17A(2)

Item 53 includes a consequential amendment to subregulation 5.17A(2) to substitute “(a)” for “(b)” due to Item 52 (above).

Item 59 – Subregulation 5.18(2)

Item 59 reduces the fee for assessing an action management plan which has been submitted for approval from \$3,233.00 to \$2,690.00.

Item 60 – Paragraph 5.18B(3)(a)

Item 60 reduces the fee for applying for an administrative variation of an action management plan from \$943.00 to \$710.00.

Item 61 – Paragraph 5.18(3)(b)

Item 61 reduces the fee for applying for a non-administrative variation of an action management plan from \$3,233.00 to \$2,690.00.

Item 62 – At the end of subregulation 5.18B(3)

Item 62 inserts a note referring to sections of the EPBC Act which provide that the Minister does not need to consider an application to vary an action management plan if it is not accompanied by the fee.

Item 63 – Subregulation 5.18B(4)

Item 63 repeals subregulation 5.18B(4) as it is not needed given section 143A(2)(b) provides that the fee must accompany the application.

Item 64 – Subregulation 5.19(1)

Item 64 reduces the fee payable in response to a request for further information from the Minister from \$2,544.00 to \$1,701.00.

Item 65 – At the end of subregulation 5.19(1)

Item 65 inserts a note referring to the section 521A of the EPBC Act which provides that the Minister does not need to consider the information if it is not accompanied by the fee.

Item 66 – Subregulation 5.19(2)

Item 66 reduces the fee payable in response to a request for further information from the Minister under section 132 or 134(3D) (for actions to be assessed by public environment report or environmental impact statement) from \$13,087.00 to \$7,476.00.

Item 67 – At the end of subregulation 5.19(2)

Item 67 inserts a note referring to the section 521A of the EPBC Act which provides that the Minister does not need to consider the information if it is not accompanied by the fee.

Item 68 – Subregulation 5.19(3)

Item 68 repeals the subregulation and inserts new subregulation 5.19(3) to clarify that no fee is payable when the Minister requests further information about state assessment processes as provided for in subsections 76(4) or 89(2), or where the Minister requests information under section 132 from persons other than the proponent or the person proposing to take the action such as the State or Territory Minister under section 132(d) or any other third party under section 132(e). The amendments is to improve clarity and ensure proponents are not charged in circumstances where it is not appropriate.

Item 69 – Regulation 5.19A

Item 69 reduces the fee for applying to the Minister for a reconsideration of a decision under section 75(1) from \$7,423.00 to \$6,577.00.

Item 70 – At the end of regulation 5.19A

Item 70 inserts a note referring to the section 521A of the EPBC Act which provides that the Minister does not need to consider the request if it is not accompanied by the fee.

Item 71 – Subregulation 5.19B(1)

Item 71 omits (1) from subregulation 5.19B due to the repeal of 5.19B(2) at item 74 below.

Item 72 – Subregulation 5.19B(1)

Item 72 reduces the fee for applying to the Minister for a variation of a condition attached to an approval under section 143(1B) from \$3,320.00 to \$2,690.00.

Item 73 – At the end of subregulation 5.19B(1)

Item 73 inserts a note referring to the section 521A of the EPBC Act which provides that the Minister does not need to consider the request if it is not accompanied by the fee.

Item 74 – Subregulation 5.19B(2)

Item 74 repeals subregulation 5.19B(2) as it is not required given section 521A of the EPBC Act provides that the Minister does not need to consider the request if it is not accompanied by the fee.

New contingency fees

Item 75 – At the end of Subdivision 1 of Division 5.6 of Part 5, add:

Regulation 5.19C – Request for Minister’s consent to transfer of approval;

Regulation 5.19D – Application to extend period of effect of approval; and

Regulation 5.19E – Request to vary proposal to take an action

Item 75 inserts new regulations 5.19C, 5.19D and 5.19E, three new ‘contingent fees’ for activities that are not currently cost recovered under the EPBC Act. This term is used in the CRIS to identify fees that apply to additional statutory steps under the EPBC Act where, for example, the information quality provided by a proponent is not adequate to assess the project, or where the proponent request changes to the proposed action. The activities that these fees cover are being undertaken at the request of the person who has referred the action, and therefore it is appropriate to charge the direct cost of this service.

Regulation 5.19C inserts a new fee of \$1,967.00 for applying for a transfer of an approval under section 145B. This fee would not be refunded if a decision was made not to transfer the approval.

Regulation 5.19D inserts a new fee of \$2,690.00 for applying to extend the period for which an approval has effect under subsection 145C(1). This fee would not be refunded if a decision was made not to extend the period.

Regulation 5.19E inserts a new fee of \$1,353.00 for applying to vary a proposal to take an action under subsection 156A(1). This fee would not be refunded if a decision was made not to vary the action.

As provided by section 521A of the EPBC Act, each regulation includes a note which states that the Minister does not need to consider the application or request until the relevant fee has been paid.

Item 76 – Regulation 5.22A

Item 76 includes a consequential amendment to regulation 5.22A to insert (1) before the start of the regulation due to the insertion of new subregulation 5.22A(2) at item 77 below.

Item 77 – At the end of regulation 5.22A (before the note)

Item 77 inserts a new subregulation 5.22A(2) which clarifies that a referral fee may be refunded if the referral is withdrawn prior to the invitation for public comment being published, the Minister is satisfied that no substantial work has been done on the referral fee and a refund would be appropriate in the circumstances.

Transitional provisions

Item 78 – In the appropriate position in Part 20

Item 78 inserts new regulation 20.11 in Part 20, Application and transitional provisions.

Fees paid after commencement time

Subregulations 20.11(1) to (4) inserts new transitional provisions to provide that the Regulation applies to any fee paid after the commencement time. This includes any fees or fee stages which were included in a fee schedule issued under 5.12J and remain outstanding on the commencement date, regardless of whether some of the fees in the fee schedule have been paid prior to this time.

Following the commencement date, a revised fee schedule will be calculated and issued to proponents with an existing fee schedule with amounts which remain outstanding. The revised fee schedule will set out the new fees payable for the remaining, outstanding fee stages. There will be no changes to the determinations of the complexity fee components, only the fees that relate to these components.

The revised fee schedule will also set out those fees or fee stages already paid. There will be no refunds for any fees or fee stages which have already been paid, even if the application of the Regulations would have resulted in a reduced fee.

Fee Waiver

Subregulation 20.11(5) to (7) inserts new transitional provisions which provide for a fee (or partial fee) waiver for transitional projects. In deciding whether to waive a fee the Minister must have regard to whether the total cost of the fees after the commencement time is higher than it would have been had the amendments in the Regulation not been made.

The intent of this waiver is that, in relation to any outstanding fees at the commencement time, proponents will not be charged more than what was set out in their original fee schedule invoice. This could be the case for a small number of projects where the change to the split of payments of the base fee and complexity fee components, could result in a proponent being required to pay a higher total amount than their original fee schedule.

For example, in the previous Regulations the Part A complexity fee for an environmental impact assessment is payable in 4 stages: 14%, 42%, 14% and 30% respectively. If a proponent has paid stages 1 and 2 at the time the Regulations come into force, the Regulations will require that the payment of stages 3 and 4 is now 20% and 49% respectively. Therefore, the total amount of the Part A complexity fee payable by the proponent would be “125%”.

Subregulation 20.11(5) and (7) will allow the Minister to issue a partial waiver for the 25% to ensure that the proponent will not have to pay more than 100% for the Part A complexity fee.

Proponents are not able to apply for this type of waiver, it can only be issued at the Minister's discretion. Section 520(4C)(e)(iv) of the EPBC Act provides authority for the waiver.

Determinations

Subregulation 20.11(8) inserts a savings provision to provide that there will be no change to determinations made under regulations 5.12C, 5.12D, 5.12E, 5.12F and 5.12G prior to the commencement date.

Delegations

Subregulation 20.11(9) inserts a savings provision to ensure that any relevant delegations in place prior to the commencement date will continue to be in force (even if the function or power has been repealed and replaced (unchanged) by the Regulation).

Definition

Subregulation 20.11(10) inserts a definition for 'commencement time', being the commencement date of the Regulations and a definition for 'fee', to clarify that this could include part of a fee such as a "fee stage".