

**EXPLANATORY STATEMENT**

**Select Legislative Instrument No. 130 2014**

(Issued by the Authority of the Minister for the Environment)

Subject- *Environment Protection and Biodiversity Conservation Act 1999*  
*Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Regulation 2014*

The *Environment Protection and Biodiversity Conservation Act 1999* 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* (Cost Recovery Amendment Act) commenced on 30 June 2014. The EPBC Act now enables cost recovery for environmental impact assessments under the EPBC Act in accordance with *Australian Government Cost Recovery Guidelines* (Cost Recovery Guidelines). The Cost Recovery Guidelines establish that those who create the need for regulation should incur the costs rather than the costs being borne by the wider community.

Subsection 520(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (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 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. Section 170CA allows the Minister to determine the fees that may be charged for assessment by an inquiry or strategic assessment process.

Cost recovery for environmental impact assessments under the EPBC Act complements the Australian Government's commitment to streamlining environmental approvals under the One-Stop Shop reform by ensuring Commonwealth assessment activities are as efficient and effective as possible, and that the beneficiary pays for the services received. Under the One-Stop Shop reform, there will be no cost recovery by the Commonwealth for the work that is undertaken by the states and territories.

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

The Regulation is based on the *Cost Recovery Impact Statement - Cost Recovery for Environmental Assessments Under the Environment Protection and Biodiversity Conservation Act Impact Statement July 2014 – June 2015* (CRIS) which contains the final fee structure for cost recovery. The Regulation provides that each action referred to the Minister under the EPBC Act is subject to:

- A set *referral fee* of \$7,352 at the time of submitting an EPBC referral;

- *Base fees* due at each stage in the assessment process, if the action proceeds to assessment; and
- *Complexity fees* due at each stage in the assessment process, if applicable.

There are also various *contingency fees* that apply in certain circumstances. For example, if an applicant applies for reconsideration of a controlled action decision or the Department requests further information from the applicant.

Section 170CA allows the Minister to determine the fees that may be charged for assessment by an inquiry or strategic assessment process.

Details of the Regulation are set out in the Attachment.

The EPBC Act specifies no 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 commences on 1 October 2014.

Authority: Subsection 520(1) of the *Environment Protection and Biodiversity Conservation Act 1999*

## **Statement of Compatibility with Human Rights**

This Statement of Compatibility has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Human Rights Act).

### *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Regulation 2014*

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 Act.

### Overview of the Regulation

This Regulation amends the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations) to provide for the prescription of relevant fees for the environmental assessment of proposed development actions referred to the Commonwealth on or after 14 May 2014 under Chapter 4, Part 7 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in accordance with the *Australian Government Cost Recovery Guidelines* (Cost Recovery Guidelines). The Cost Recovery Guidelines establish that those who create the need for regulation should incur the costs rather than the costs being borne by the wider community.

The Regulation also provides that it is an offence for a person taking an action to not advise the Secretary of a change in fee exemption status as required by subregulations 5.23B(1) and (2) within 10 business days after the person first becomes aware of the change in exemption status. Subregulation 5.23B(4) provides that an offence against subregulation 5.23B(3) is an offence of strict liability. The requirement to notify the Secretary only arises when the person becomes aware of the change of the person's status.

### 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 44<sup>th</sup> 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. It does engage the following human rights.

### **Right to the presumption of innocence**

Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) protects the right of every individual charged with a criminal offence to be presumed innocent until proved guilty according to law. The right to the presumption of innocence is also a fundamental principle of the common law. The United Nations Human Rights Committee has stated that the presumption of innocence 'imposed on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt'.

A strict liability offence can be considered to engage article 14(2) of the ICCPR because it removes the requirement for the prosecution to prove fault. The Regulation applies strict liability to the physical elements of the offence, that is, a failure to notify the Secretary of change in exemption status within 10 business days of becoming aware of the change in exemption status. This creates risk that a person may be found guilty of an offence under subregulation 5.23B(3) in circumstances where the person was negligent or reckless as to the

fact that the person was no longer qualified for exemption status. However, the imposition of strict liability still allows a defendant to raise a defence of honest and reasonable mistake. This ensures that a person cannot be held liable if he or she had an honest or reasonable belief that they were complying with the relevant obligation.

The application of strict liability to an offence under subregulation 5.23B(3) is a proportionate limitation on the right to the presumption of innocence for the following reasons:

- (a) requiring proof of ‘fault’ (that is, *intention*) would undermine the integrity and purpose of the Regulation, which is to provide for cost recovery for environmental assessment in accordance with the *Australian Government Cost Recovery Guidelines* (the Guidelines). The Guidelines establish that those who create the need for regulation should incur the costs rather than the costs being borne by the wider community;
- (b) it is necessary to protect the general revenue. A person who has committed an offence against subregulation 5.23B(3) would avoid the imposition of fees even though they do not in fact meet the criteria for an exemption, and those costs would be covered from general revenue;
- (c) the offence is not punishable by imprisonment;
- (d) the offence is punishable by a fine of up to 50 penalty units which is within the acceptable range set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*;
- (e) imposing strict liability would reduce the costs of enforcement;
- (f) imposing strict liability is likely to enhance the effectiveness of the enforcement regime and deter persons from committing an offence against subregulation 5.23B(3); and
- (g) imposing strict liability places persons on notice of the need to guard against the possibility of contravention.

Subregulation 5.23B(3) was framed with regard to the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* and the principles outlined in the *Senate Scrutiny of Bills Report 6/2002* and the Government response tabled in June 2004.

### **Right to an effective remedy**

The right to an effective remedy is contained in article 2(3) of the ICCPR which provides in part that a person shall have the right to have a claim to remedy determined by competent judicial, administrative or legislative authorities or by any other competent authority.

The fees that apply under this Regulation are those fees that are worked out by a person to whom a function or power is delegated under section 515 (Delegation) of the EPBC Act. Subsection 514Y(2) of the EPBC Act provides for a person to apply to the Secretary for the Secretary to reconsider the way the method was used to work out a fee prescribed by the Regulation under the powers of subsection 520(4C) of the EPBC Act. The provisions in Part 19A of the EPBC Act will operate as an internal merits review mechanism for those whose rights and interests are affected in relation to the aspects of the imposition of fees which involve some exercise of discretion.

### *Decisions made under the regulations*

Where a fee is determined by the Minister, reconsideration is not available. Nor is reconsideration available where there is no discretion used in working out the fee. For example, fees payable by a person for assessment of an action may include a fixed base fee and a variable complexity fee. The applicable complexity fee that is payable will be determined by the Minister's delegate, depending on the complexity of an action. In this situation, a person who is dissatisfied with the way in which the method prescribed by the Regulation was used to determine a fee may apply to the Secretary to reconsider the method of that calculation. Conversely, the automatic imposition of base fees when an event occurs (such as the referral of an application) does not involve any application of a method to work out a fee, as the liability to pay the fee arises solely from the Regulation. As such, section 514Y of the EPBC Act does not apply in this scenario.

The method for calculating a fee limits administrative discretion. For many of the complexity components the determination of the level of complexity made on the basis of objective criteria. For example, a project must be determined to be of higher level of complexity where there is a particular number and type of different listed species impacted by an action, or where an action involves a specified number of project components. These are objective facts rather than matters left to the decision makers' discretion. Other complexity components require an assessment of the adequacy of information provided with an application.

### *Review mechanisms*

Section 514YA of the EPBC Act provides that upon receiving an application for reconsideration of a fee, the Secretary must reconsider the way the method was used to work out the fee and either confirm the fee or work out a new fee by using the method again. The Secretary will work out a new fee where the method prescribed by the Regulation has been incorrectly applied to the particular action.

The person undertaking the reconsideration must be the Secretary or a delegate of the Secretary who is an employee of the Department that was not involved in working out the disputed fee and be in a position senior to that of the person who initially worked out the fee (see subsection 514YA(2) of the EPBC Act). This provision is intended to ensure that decision-making processes are transparent and to provide access to a fair and objective procedure for the internal reconsideration of decisions in relation to discretionary fees.

Once a reconsideration decision has been made, the Secretary or delegate must give the applicant a written notice which states the outcome of the reconsideration and provides reasons for that outcome (see subsection 514YA(3) of the EPBC Act). The reconsideration must be undertaken within 30 business days of receipt of the application.

### 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 and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**ATTACHMENT**

**Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Regulation 2014**

**Overview of the Regulation**

The *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Act 2014* (Cost Recovery Amendment Act) commenced on 30 June 2014. The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) now enables cost recovery for environmental impact assessments under the EPBC Act in accordance with *Australian Government Cost Recovery Guidelines* (Cost Recovery Guidelines). The Cost Recovery Guidelines establish that those who create the need for regulation should incur the costs rather than the costs being borne by the wider community.

**One-Stop Shop for environmental approvals reform**

Cost recovery for environmental impact assessments under the EPBC Act complements the Australian Government's commitment to streamlining environmental approvals under the One-Stop Shop reform by ensuring Commonwealth assessment activities are as efficient and effective as possible, and that the beneficiary pays for the services received. Under the One-Stop Shop reform, there will be no cost recovery by the Commonwealth for the work that is undertaken by the states and territories.

**Authority for Regulation**

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 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. Section 170CA allows the Minister to determine the fees that may be charged for assessment by an inquiry or strategic assessment process.

**Cost recovery for environmental assessments under the EPBC Act**

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

Cost recovery commences on 1 October 2014.

**Consultation**

Following public consultation in relation to the *EPBC Act Cost Recovery Consultation Paper* (2011), the Australian Government decided to introduce cost recovery arrangements for selected regulatory activities under the EPBC Act. This was reflected in the 2012-13 Budget.

Specifically, the Australian Government decided to cost recover the following activities:

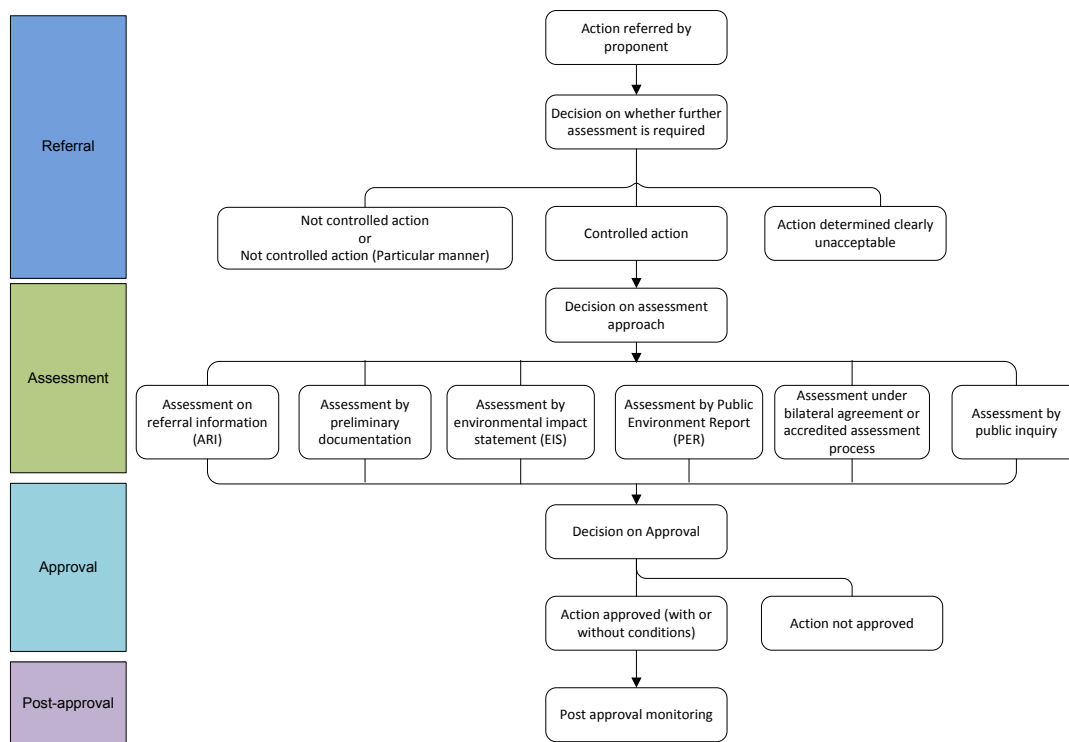
- Environmental impact assessments (full cost recovery arrangements), strategic assessments (full or partial cost recovery arrangements on a case-by-case basis), and
- Wildlife trade permits (partial cost recovery arrangements).

In 2012 the Department released a draft Cost Recovery Impact Statement for consultation with stakeholders on the proposed cost recovery model. The draft Cost Recovery Impact Statement included cost recovery for wildlife trade activities in the EPBC Act. Cost recovery for some wildlife trade activities under the EPBC Act, such as wildlife trade permits, was amended on 1 July 2013. Cost recovery will continue for these activities. The *Cost Recovery Impact Statement - Cost Recovery for Environmental Assessments Under the Environment Protection and Biodiversity Conservation Act Impact Statement July 2014 – June 2015* (CRIS) therefore only includes cost recovery for environmental assessment activities.

Activities to be cost recovered

The EPBC Act provides for the referral, assessment and approval of projects which are likely to have a significant impact on matters of national environmental significance.

The figure below provides an outline of the environmental impact assessment processes under the EPBC Act, including the various assessment methods available.



There are a number of environmental assessment options available under the EPBC Act. The Minister decides which method is the most appropriate, depending on the complexity of the proposed action, the scale and magnitude of potential and actual environmental impacts, the level of community interest, and public submissions received in relation to the referral of the action. The types of assessment are:

- assessment on referral information;

- assessment on preliminary documentation;
- assessment by Public Environment Report;
- assessment by Environmental Impact Statement;
- assessment by public inquiry; or
- assessment under a bilateral agreement or accredited assessment process.

Cost recovery applies to referral, assessment and some post approval activities under the EPBC Act. Post approval activities include the assessment of post approval action management plans and the processing of requests for the variation of approval conditions.

In addition, Part 10 of the EPBC Act allows the Minister to conduct strategic assessments and to grant approvals for a ‘class of actions’ taken in accordance with a policy, plan or program endorsed by the Minister through a strategic assessment. Cost recovery applies to some strategic assessments, by Ministerial determination, on a case-by-case basis. Cost recovery of strategic assessments is provided for in the EPBC Act.

The Regulation is based on the CRIS, which contains the final fee structure for cost recovery. Each action referred to the Minister under the EPBC Act is subject to:

- *A set referral fee* of \$7,352 at the time of submitting an EPBC referral;
- *Base fees* due at each stage in the assessment process, if the project proceeds to assessment; and
- *Complexity fees* due at each stage in the assessment process, if applicable.

#### Cost recovery fees at each stage of the assessment process

The Regulation specifies stages for each assessment type and includes definitions for when each assessment stage begins. For example, assessment by Public Environment Report includes four stages of assessment and definitions for each stage are specified at regulation 5.16A.

The table below provides an example of a fee structure for an example assessment process. Tables that are specific to each assessment process are included in the Regulation.



**Table 1 – Example fee structure for an example assessment process**

<b><u>Assessment approach (e.g. EIS, PER etc)</u></b>	<b><u>Base fees (A)</u></b>	<b><u>Percentage of Part A Complexity fees (B)</u></b> <i>(Complexity Fee Matrix rows A to L and P)</i>	<b><u>Percentage of Part B Complexity fees (C)</u></b> <i>(Complexity Fee Matrix rows M, N and O)</i>	<b><u>Total</u></b>
<b>Stage 1</b>	\$(set base fee)	E.g. 16% (if occurs)	N/A	(A) + (B)+ (C)
<b>Stage 2</b>	\$(set base fee)	E.g. 49% (if occurs)	N/A	(A) + (B) + (C)
<b>Stage 3</b>	\$(set base fee)	E.g. 16% (if occurs)	E.g. 81%	(A) + (B) + (C)
<b>Stage 4</b>	\$(set base fee)	E.g. 19%	E.g. 19%	(A) + (B) + (C)
<b>TOTAL</b>	\$(total set base fee)	100%	100%	

Base Fees

A base fee is applicable for each stage of the assessment. The Regulation prescribes the base fee that is payable for each stage of each assessment by type. For example, in relation to assessment by Public Environment Report, the amount of base fee payable for each stage is set out at regulation 5.16B as follows:

<b>Base fee for assessment by a public environment report</b>		
<b>Item</b>	<b>Stage</b>	<b>Amount payable</b>
1	stage 1	\$4, 031.00
2	stage 2	\$12, 760.00
3	stage 3	\$4, 265.00
4	stage 4	\$9, 146.00

Complexity fees

A number of factors drive the complexity of environmental assessments, as set out in the *Complexity Fee Matrix* in the CRIS. The Regulation sets out those factors as ‘components’ and the complexity fee which is the total of the fees for all components that the Minister determines apply.

There are five types of complexity fee components:

- application component;
- controlling provision component;

- exceptional case component;
- legislative impact component; and
- project component.

Complexity fees are separated into *Part A complexity fees* (which are the sum of the fees for the applicable controlling provision, exceptional case, legislative impact and project components) and *Part B complexity fees* (which are the sum of the fees for each application component).

The Regulation provides for a percentage of each Part A and B of the complexity fees that are payable at each stage of the assessment.

#### Contingency fees

There are also various *contingency fees* that apply in certain circumstances. For example, if an applicant applies for reconsideration of a controlled action decision or the Department requests further information from the applicant.

#### Cost recovery fees for post approval activities

The Regulation also provides for fees for the approval of action management plans and the variation of approved action management plans.

#### Regulations for the administration of cost recovery

The Regulation also provides the structure for the proper and efficient administration of cost recovery, including prescribing arrangements for fee recovery in the event of a transfer of an approval, refunds, exemptions and waivers for the payment of fees.

#### Review of the CRIS and the Regulation

All fees and methods for calculating fees set out in the Regulation are consistent with the fees and methods set out in the CRIS.

A copy of the CRIS, including the *Complexity Fee Matrix*, which describes the details of the complexity fees which may apply to an assessment, is published on the Department of the Environment's website: <http://www.environment.gov.au/epbc/cost-recovery>.

The CRIS will be updated on a regular basis to reflect changes in the cost recovery model. The CRIS will also be revised to account for the impacts of the Government's One-Stop Shop reforms to streamline state and Commonwealth environment assessment and approval processes, once those streamlining measures are in place. Following review of the CRIS, the Regulation may also be subsequently reviewed.

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

This Regulation commences on 1 October 2014 following registration on the Federal Register of Legislative Instruments.

### **Details of the Regulation**

#### **Regulation 1 – Name of Regulation**

This regulation provides that the title of the proposed regulation is the *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Regulation 2014* (Regulation).

#### **Regulation 2 – Commencement**

This regulation provides that the Regulation commences on 1 October 2014.

Following commencement, fees for assessment apply to stages of an assessment that occur on or after the commencement date of 1 October 2014. The Regulation does not apply to actions referred to the Minister before 14 May 2014.

For example, if an action was referred after 14 May 2014 and is in the assessment phase on the commencement date of 1 October 2014, only the fees relating to services for an assessment stage that commences on or after 1 October 2014 are payable. If a project is referred on or after the 1 October 2014 commencement date, then all fees, including the referral fee apply. If an action was referred prior to 14 May 2014, then no fees are payable at any stage of assessment.

#### **Regulation 3 – Authority**

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

#### **Regulation 4 – Schedules**

This regulation 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**

### **Environment Protection and Biodiversity Conservation Regulations 2000 (Principal Regulations)**

#### **Items 1 and 2 – Regulation 4.02**

Item 1 inserts subregulation 4.02(1) into Part 4 of the Principal Regulations and is a consequential amendment required because Item 2 inserts subregulation 4.02(2).

Subregulation 4.02(2) requires that, in addition to the information required to be provided under subregulation 4.02(1), the referral of an action to the Minister under section 68 of the EPBC Act must be accompanied by payment of the prescribed referral fee of \$7,352.

Paragraph 4.02(2)(a) provides for some exceptions to the payment of the referral fee, such as if the Minister requests an action is referred under section 70 of the EPBC Act, or an action has been referred by a State or Territory or a State, Territory or Commonwealth agency under section 69 or section 71 of the EPBC Act. In these cases, a State or Territory, or a Government agency, refers an action that is being proposed by a third party. The referral fee is not required in these cases because the person proposing to take the action may not receive a benefit from the service, meaning it may not satisfy the fee for service requirements. Other fees may apply for assessment of projects made following referrals under sections 69, 70 and 71 as described in subparagraphs 4.02(2)(a)(i) to (ii).

Paragraph 4.02(b) provides that a referral need not be accompanied by a fee if it is accompanied by an application for a waiver or a notification of qualification for an exemption.

Subregulation 4.02(3) clarifies that a referral fee of \$7,352 is payable if an application for a waiver is unsuccessful. The referral fee is also payable if a person has provided an invalid notification of exemption because the person has not qualified for an exemption under regulation 5.23.

#### **Item 3 – Paragraphs 5.10(d) and (e)**

Item 3 repeals paragraphs 5.10(d) and (e), and substitutes paragraphs 5.10(d) – (i) of the Principal Regulations in relation to the information that must be included in a notice under subsection 156F(1) of the EPBC Act relating to a change of person proposing to take an action.

Paragraph 5.10(e) requires that the notice include a declaration of whether the original person proposing to take the action was exempt from, or received a waiver, from the payment of cost recovery fees.

Paragraph 5.10(f) requires that the notice contain the name and contact details of the person now proposing to take the action.

Paragraphs 5.10(g) and (h) also require that, if the person now proposing to take the action has an ABN or an ACN, that it must be included in the notice.

Paragraph 5.10(i) requires that the notice include a declaration of whether the person now proposing to take the action would be exempt from, or intends to apply for a waiver of, cost recovery fees.

#### **Item 4 – At the end of Part 5**

This item inserts Division 5.6 (Fees) into the Principal Regulations to provide for the calculation of the fees that may be charged for the assessment of actions that will have or which are likely to have a significant impact on a matter protected under Part 3 of the EPBC Act. Division 5.6 sets out the method for determining fees and the amounts of those fees. It also sets out the circumstances for the reconsideration of fees, refunds, waivers and exemptions from fees. The fees and the methods for determining the fees are consistent with the CRIS.

The Regulation allows the Department to charge a **complexity fee** for environmental impact assessments under the following assessment processes:

- (a) Assessment on referral information under Part 8, Division 3A of the EPBC Act;
- (b) Assessment on preliminary documentation under Part 8, Division 4 of the EPBC Act;
- (c) Assessment by Public Environment Report under Part 8, Division 5 of the EPBC Act;
- (d) Assessment by Environmental Impact Statement under Part 8, Division 6 of the EPBC Act; and
- (e) Accredited assessments under paragraph 87(1)(a) of the EPBC Act, or assessment under an assessment bilateral agreement (together referred to as ‘accredited assessments’).

Complexity fees do not apply to referrals, assessment of post-approval action management plans or contingency activities. While assessments can vary significantly in the amount of work involved, these other activities involve a standard amount of resources.

A number of factors drive the complexity of environmental impact assessments. These include factors such as the number of matters protected under Part 3 of the EPBC Act impacted by the action and therefore the number of EPBC Act provisions triggered by the action, the adequacy of information provided in the referral and the clarity of the project scope.

Division 5.6 sets out those factors as ‘components’. The Minister may determine that a component is of moderate, high, or (in some cases) very high complexity, which correlates to the fee for that component. The complexity fee is the total of the fee for each of the applicable components that the Minister has determined.

For each component, low complexity applies as described below:

- For the application component, low complexity applies when there has been adequate information provided by the applicant in the referral in respect of each of the application component information requirements. Where low complexity applies no fee is payable.
- For the controlling provision component, low complexity applies when the controlling provision is not triggered under the EPBC Act and therefore no fee is payable for low complexity.
- For the legislative impact component, low complexity is defined in subregulation 5.12F(2), and if applicable, the fee of \$3,892 is payable.
- For the project component, low complexity applies when there is only one project component or activity to be assessed. As the work for assessing this one activity is covered in the base costs for the particular assessment method, no fee is payable for low complexity.

There is no complexity determination for the exceptional case component or the project component.

## Subdivision A – Definitions and key concepts

### Regulation 5.12A – Definitions

Regulation 5.12A defines certain words and expressions used within the Regulation. The key definitions are explained below.

### Determining complexity fees (regulation 5.12B – regulation 5.12G)

Regulation 5.12B sets out the various components which may apply in relation to the assessment of the impacts of an action, and regulations 5.12C – 5.12G set out the criteria for the Minister determining the complexity of those components. These regulations are consistent with the *Complexity Fee Matrix* that is included in the CRIS and which sets out the fees for each level of complexity for each component that may apply in relation to the assessment of the impacts of an action.

### Application component

Subregulation 5.12B(2) sets out that the Minister may determine that an application component is of low, moderate or high complexity. This component reflects the complexity of assessing the application on the information provided, and therefore relates to the assessment of information of a proposal as provided in a referral under section 72 of the EPBC Act. The content of the information is specified in regulation 4.03 and Schedule 2 to the EPBC Regulations. These components are set out in rows M, N and O of the *Complexity Fee Matrix*.

A complexity fee could include a number of application components, related to information required to be included in a referral covered by:

- (a) information provided about the scope of the action, alternative locations, specified timeframes of activities and both proposed alternatives and alternatives which are feasible but not proposed (paragraphs 4.01(a) and (j) of Schedule 2) (subparagraph 5.12(2)(b)(i));
- (b) information provided about the affected area or the nature and extent of likely impacts (for example through survey data), including the adequacy of maps provided (items 5.02, 5.04 and 5.05 of Schedule 2) (subparagraph 5.12(2)(b)(ii)); and/or
- (c) the description of avoidance or mitigation measures, and information about the commitment of the applicant to carrying out those measures (item 6 of Schedule 2) (subparagraph 5.12(2)(b)(iii)).

The complexity of different application components is assessed separately by the Minister under regulation 5.12C. Regulation 5.12C provides that the Minister must consider the adequacy of information provided when making a determination about the level of complexity of an application component.

The Minister may determine that an application component is of low, moderate or high complexity. No complexity fee is charged in relation to an application component that is determined to be of low complexity. The adequacy of the information (provided in the referral and covered by subparagraph 5.12B(2)(b)) about these matters affects the determination of complexity of the application component by the Minister. The clearer and more comprehensive the information provided by a person proposing to take an action, the lower the complexity of application components. The complexity fees for each component are set out in the table in

subregulation 5.12K(3). No fee is charged where the referral information is adequate, and hence the relevant application component is determined to be of low complexity.

The Regulation provides for the complexity fees for an application component to be estimated at the time of the assessment approach decision. This estimate is included in the fee schedule provided to the person proposing to take the action at the time of the assessment approach decision and is the maximum amount that could be charged for that application component.

The complexity of an application component is finalised later in the assessment process after stage 2 is completed and before stage 3 commences. At this time the Minister will provide the person proposing to take the action another fee schedule that sets out the actual amount payable for the application component of the complexity fee.

If, before stage 3 occurs, a person proposing to take an action has provided more adequate information, the Minister's determination will be that a lower level of complexity applies to the assessment of that application component and therefore the actual complexity fee payable for the application component will be lower than the estimated fee.

This approach recognises that a person proposing to take an action may refer an action before they have obtained adequate information about the scope of the action, the nature and extent of likely impacts and the relevant mitigation measures. Persons proposing to take an action are likely to provide more detailed and higher quality information as the referred action progresses through the assessment process. If this information is provided prior to Stage 2 of the assessment concluding, this additional information can be readily integrated into the Department's work during the initial stages of assessment. However, if information is provided after the commencement of Stage 3 of the assessment, more significant Departmental resources will be required to consider information about the scope of the action, the nature and extent of likely impacts and the relevant mitigation measures.

For example, if a person proposes to take an action, and the referral information shows that site surveys are not complete for at least one of the project components at the time of the assessment approach decision, the Minister will provide to the applicant a schedule of fees that includes an estimate that the complexity fee for the application component is \$82,316 (the relevant fee set out in Item 2 of subregulation 5.12K(3) for an application component of high complexity).

If at stage 2 of the assessment, the person proposing to take the action provides partially completed site surveys for all project components, then before stage 3 commences, the Minister will determine that the application component is of moderate complexity. The Minister will provide another fee schedule indicating that the actual complexity fee payable for the application component is \$14,248 (the relevant fee set out in Item 1 of subregulation 5.12K(3) for an application component of moderate complexity).

Alternatively, if at stage 2 the person proposing to take the action provides complete and adequate site surveys, the Minister will make a determination that the application component is of low complexity and provide another fee schedule indicating that no complexity fee is payable for that application component.

Subregulation 5.12J(3) requires the Minister to give the person proposing to take the action another fee schedule that sets out the actual amount payable for the application component of the complexity fee, before Stage 3 of the assessment occurs.

### Controlling provision component

Subregulation 5.12B(3) sets out when a controlling provision component applies in the assessment of complexity. A controlling provision component applies in relation to the assessment of the impacts of action if a matter protected by a provision of Part 3 (referred to as ‘matters of national environmental significance’) of the EPBC Act prohibits the taking of the action without approval under Part 9 of the EPBC Act. These components are set out in rows A to I of the *Complexity Fee Matrix*.

Regulation 5.12D sets out the factors that the Minister must consider when making a determination that a controlling provision component is of moderate, high or very high complexity. Where an action is subject to a number of controlling provisions, it will have a number of controlling provision components. A determination of complexity is made for each of these components. If the Minister determines that the controlling provision component is of low complexity (i.e. the controlling provision under the EPBC Act is not triggered), then no fee applies.

To make a determination that a controlling provision component is of moderate or high complexity the Minister will need to consider, in relation to any relevant controlling provisions (i.e. sections of Part 3 of the EPBC Act which would prohibit the taking of the action without the Minister’s approval):

- (a) the matters listed in subsection 87(3) of the EPBC Act. These are the same factors the Minister considers when making an assessment approach decision, and include the information given to the Minister in the referral and any other information available to the Minister;
- (b) for actions which require assessment of impacts on the values of a World Heritage property (sections 12 or 15A), the characteristics of the World Heritage property. The complexity of assessing impacts on World Heritage values will depend on the characteristics of the particular property;
- (c) for actions which require assessment of impacts on the National Heritage values of National Heritage places (sections 15B or 15C), the characteristics of the National Heritage place. The complexity of assessing impacts on those values will depend on the characteristics of the particular place;
- (d) for actions which require assessment of impacts on wetlands of international importance (Ramsar wetlands, section 16 and section 17B), the Commonwealth marine environment (sections 23 and 24A), the Great Barrier Reef Marine Park (sections 24B and 24C), Commonwealth land (section 26. 27 and 27A), or the impacts of Commonwealth actions (section 28);
  - (i) the scale, scope, duration and severity of the impacts of the action, and
  - (ii) the timeframe of the action.

The complexity of assessing the impacts of an action in relation to any of these matters increases depending on the scale of the action, the duration of the action and the degree of severity of the impacts of action on matters protected by Part 3 of the EPBC Act. If the action takes place over a long timeframe, this may increase the uncertainty about impacts and therefore the complexity of the assessment;

- (e) for actions that require assessment of impacts on listed threatened species and ecological communities, the **point value**. Point value is defined by regulation 5.12A, and means the



total of the ‘points’ assigned to each threatened species or community that the action will have or likely to have an impact on. The point values are:

- (i) 2 points for each listed threatened species or listed ecological community included in the critically endangered category;
- (ii) 1 point for each listed threatened species included in either the extinct in the wild, endangered or vulnerable category; and
- (iii) 1 point for each listed threatened ecological community included in the endangered category.

These values reflect the increased complexity of assessing species or communities which are critically endangered. The complexity of the component is determined by reference to the total point value assigned to the impacts of the action. A moderate complexity component has a point value of 5 or less, a high complexity component has a point value of between 6 and 14 and a very high complexity component has a point value of 15 or more.

- (f) for actions that require assessment of impacts on migratory species (sections 20 or 20A), the number of categories of species on which the action is likely to or will impact. ‘Category’ is defined by regulation 5.12A, and means:
  - (i) a fish, other than a marine mammal or marine reptile; or
  - (ii) an insect; or
  - (iii) a marine mammal; or
  - (iv) a reptile, including a marine reptile; or
  - (v) a seabird; or
  - (vi) a shorebird; or
  - (vii) any other kind of bird that is a listed migratory species.

Regulation 5.12A also provides a definition for seabird and shorebird.

If an action affects one category, it has a moderate complexity component for listed migratory species. If an action affects two categories, it has a high complexity component. If an action affects three or more categories, it has a very high complexity component.

For example, an action affecting three species of fish, and no other migratory species, has a moderate complexity component in relation to migratory species. If the action affected seven shorebirds and two marine mammals, it has a high complexity component. If the action affected three species of fish, seven species of shorebirds and one reptile, it has a very high complexity component;

- (g) for nuclear actions (sections 21 and 22A), whether the relevant technology to be used in taking the action is proven, and the scale, scope and severity of the impacts of the action. Assessing an unproven technology requires more work by the Department to investigate the likely risks and impacts of the action; and

- (h) for water resources in relation to coal seam gas or large coal mining development (sections 24D or 24E), the scale, scope and severity of the impacts of the action.

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 5.12D(6) provides that if a listed threatened species is also a listed migratory species, the Minister may make a determination under this regulation in relation to the listed threatened species only. This provision avoids double charging for the assessment of a single species. This means that if the species is a listed threatened species and a listed migratory species, it is not included in the categories of listed migratory species for the assessment of the complexity component under subregulations 5.12D(2)(f) and 5.12D(3)(f). The assessment will still, however, take into account any considerations that are relevant to the species status as a listed migratory species as the work undertaken by the Department in assessing impacts on the species is reflected within the fee which applies to the determination of the species as a listed threatened species.

#### Exceptional case component – Regulation 5.12E

If an action is an ‘exceptional case’ an additional Complexity fee of \$577,651, as outlined at regulation 5.12E and set out in Row P of the *Complexity Fee Matrix*, may be payable for assessment of the action. The fee payable for the exceptional case component does not change in relation to the different assessment approach and is a component that is not determined to be of low, moderate, high or very high complexity. The amount payable for an exceptional case component is \$577,651 (see subregulation 5.12K(5)).

The ‘exceptional case’ fee will apply rarely, to actions where the Minister has determined an exceptional case component applies, being:

- (a) an action of a kind that has not been previously taken and where the impacts of the action are uncertain, or
- (b) an action whose impacts on the environment are very high because there are threats of serious or irreversible environmental damage.

This exceptional case component is applied in circumstances where the complexity and scale of an action is likely to require that the Department procure additional resources, such as the procurement of specialist or expert advice in high complexity or very high complexity scenarios to ensure a fair and rigorous assessment.

The making of a determination is a method for the working out of a fee (regulation 5.12H). As such, it may be reconsidered by the Secretary (under section 514Y of the EPBC Act).

#### Legislative impact component – Regulation 5.12F

Regulation 5.12F sets out that the Minister may determine that a legislative impact component is of low, moderate, high or very high complexity. This component reflects the complexity of coordinating an EPBC Act environmental impact assessment with other Commonwealth or State or Territory statutory processes. This component is set out in row L of the *Complexity Fee Matrix*. The complexity of different legislative impact components is assessed separately by the Minister under regulation 5.12F.

Subregulation 5.12F(2) requires that to make a determination that a legislative impact component is of *low complexity*, the Minister must be satisfied that the assessment of the action

involves coordination with one other legislative process that is accredited under either an assessment bilateral agreement or subsection 87(4) of the EPBC Act, or that is referred to in, or prescribed for the purposes of section 160 of the Act. A legislative process under section 160 of the EPBC Act includes the adoption or implementation of a major development plan (as defined in the *Airports Act 1996*), a permit under the *Environment Protection (Sea Dumping) Act 1981*, or a Basel permit under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*. Coordination with one of these legislative processes is of low complexity because the interactions between these processes and the assessment process under the EPBC Act are well established and well understood.

Subregulation 5.12F(3) requires that to make a determination that a legislative impact component is of *moderate complexity*, the Minister must be satisfied that either:

- (a) the assessment of the impacts of the action requires coordination with two legislative processes of the kind mentioned in subregulation 5.12F(2); or
- (b) the assessment of the impacts of the action requires co-ordination with another state or Commonwealth legislative process that is not mentioned in subregulation 5.12F(2).

This reflects the increased complexity of coordinating with either two other legislative processes, or in circumstances where the interaction between the legislative process and the EPBC Act assessment process has not been established.

Subregulation 5.12F(4) requires that to make a determination that a legislative impact component is of *high complexity*, the Minister must be satisfied that the assessment of the impacts of an action involves coordination with two other legislative processes, where one of those processes is of the kind described in subregulation 5.12F(2), and the other process is not of that kind.

Subregulation 5.12F(5) requires that to make a determination that a legislative impact component is of *very high complexity*, the Minister must be satisfied that the assessment of the impacts of an action involves coordination with two or more other legislative processes, where those processes are either of the kind described in subregulation 5.12F(2) or not of that kind.

Subregulation 5.12F(6) requires that when determining that a legislative impact component is of very high complexity, the Minister must consider the matters referred to in paragraphs 87(3)(a) to (e) of the EPBC Act.

#### Project component – Regulation 5.12G

Regulation 5.12G allows the Minister to 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.

This 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 Regulation provides an example which describes how 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 will need to be assessed.

For the project component, low complexity applies when there is only one project component or activity to be assessed. As the work for assessing this one activity is covered in the base costs for the particular assessment method, no fee is payable for low complexity.

Subregulations 5.12C(3), 5.12D(7), 5.12E(2), 5.12F(7), and 5.12G(2) each clarify that a determination on the level of complexity for the relevant component is not a legislative instrument. These subregulations are merely declaratory of the law and do not amount to an exemption from the *Legislative Instruments Act 2003*.

*Regulation 5.12H – Making of a determination is a method*

Regulation 5.12H clarifies that making a determination under regulations 5.12C-5.12G is a method for working out a fee. Section 520 of the EPBC Act allows the regulations to prescribe fees for services provided under the EPBC Act. In particular, paragraph 520(4C)(c) allows the EPBC Regulations to prescribe a method for working out a fee.

Section 514Y of the EPBC Act allows a person to seek reconsideration where a delegate uses a method to work out a fee, and the person is dissatisfied with that way the delegate uses that method. By clarifying that making a determination is a method for working out a fee, regulation 5.12H makes it clear that a person is able to seek reconsideration of a delegate's determination about which components, and which level of complexity for each component, to apply.

Subdivision B – Fees

The heading of subdivision B is 'Fees'.

*Regulation 5.12J – Schedule of fees*

The heading of regulation 5.12J is 'Schedule of fees'.

Subregulation 5.12J(1) requires that where an action has been determined to be a controlled action under section 75 of the EPBC Act, the Minister must provide a schedule of fees to the person proposing to take the action at the same time that notice is given under section 91 of the EPBC Act about the method of assessment to be used for assessing the impacts of the action.

Subregulation 5.12J(1) prescribes that the fee schedule must set out:

- (a) the base fee – this is a set amount as prescribed by the Regulation, which is based on the method of assessment to be used for assessing the impacts of the action as set out in regulations 5.12K, 5.13B, 5.14B, 5.15B, 5.16B and 5.17B;
- (b) the complexity fee – this is the total of the fees for the level of complexity which the Minister determines are applicable in relation to each component (as described above in relation to regulations 5.12B – 5.12G);
- (c) a breakdown of the complexity fee which itemises the fees charged in relation to each component of the complexity fee;
- (d) the level of complexity which the Minister determined applied for each component of the complexity fee; and
- (e) the fees payable for each stage of the assessment.

Subdivisions C-G described below prescribe that the base fees and the complexity fees are payable in a number of stages, before each stage begins.

Subregulation 5.12J(1) requires that the fee schedule sets out the final applicable fees for the controlling provision, exceptional case, legislative impact, and project components of the complexity fees (set out in regulations 5.12D to 5.12G).

Subregulation 5.12J(2) requires that the initial fee schedule sets out an estimation of the application component of the complexity fee (set out in regulation 5.12C). This is because the actual amount of the application component of the complexity fee is not determined until after the end of stage 2 in the assessment process. At this time, the person taking the action has had sufficient opportunity to provide information about the scope of the action, the nature and extent of likely impacts and the relevant mitigation measures. The initial fee schedule instead provides an estimate of the fee for the application component and this amount is the maximum fee that is able to be charged.

Subregulation 5.12J(3) requires that the Minister provides an updated fee schedule that sets out the actual fees payable for the application component of the complexity fee after the end of stage 2 and before stage 3 of the assessment commences. As noted above, if the person taking the action has improved the adequacy of the relevant assessment information at this stage, the lower complexity fee for this component is the actual amount payable.

#### Regulation 5.12K – Amount of fees

The heading of regulation 5.12K is ‘Amount of fees’. This regulation sets out how the amount of a base fee is worked out and how complexity fees are worked out for each component of an action. As noted above, all fees and methods for working out fees set out in the Regulation are consistent with the fees and methods set out in the CRIS.

#### Base fee

Subregulation 5.12K(1) specifies that a base fee is payable for the assessment of the impacts of an action and that determining the amount of the fee depends upon the method of assessment.

The amount of the base fee is set out in the subdivision covering the relevant assessment approach at regulations 5.13B, 5.14B, 5.15B, 5.16B and 5.17B. The base fee is payable in stages, depending upon the particular assessment approach. The person proposing to take the action is advised of the base fee for each stage of the assessment and the total amount of the base fees payable for the assessment at the time they are advised of the assessment approach decision. The person proposing to take the action is not able to seek reconsideration of a base fee under section 5.14Y of the EPBC Act as there is no method prescribed in the regulations to work out the base fee.

#### Determination – low complexity

Subregulation 5.12K(2) prescribes that if a determination is made that a legislative impact component is of low complexity, the amount payable as the complexity fee for that component is \$3,892. More detail about the legislative impact component and the criteria for making determinations about the level of complexity for this component is set out in relation to regulation 5.12F above.

#### Determination – moderate, high or very high complexity

Subregulation 5.12K(3) sets out the ‘moderate complexity’, ‘high complexity’ and ‘very high complexity’ complexity fees that are payable in relation to each of the components listed in the ‘Component’ column of the table in the regulation. For any given referred action the total complexity fees payable is the sum of each of the fees payable in relation to the applicable components.

For example, if the Minister determined that the moderate complexity fee applied in relation to controlling provisions 12 or 15A of the EPBC Act (World Heritage) and a high complexity fee applied in relation to controlling provisions 18 and 18A of the EPBC Act (listed threatened

species or ecological communities), and no other components of the complexity fee were applied, the total complexity fee payable is calculated by adding \$5,463 plus \$21,852 for a total fee of \$27,315. The CRIS sets out a number of detailed examples working out fees for different kinds of projects.

The fees for controlling provision components in relation to section 24B or 24C (impacts on the Great Barrier Reef Marine Park) are lower, reflecting the fact that the Great Barrier Reef Marine Park is a World Heritage property, so that assessments relating to section 24B or 24C also routinely include assessments in relation to sections 12 or 15A.

#### *Project component fee*

Subregulation 5.12K(4) prescribes that if a project component applies in relation to the assessment of the impacts of an action, the relevant complexity fee payable for this component is set out in the subdivision dealing with the assessment approach being used. Further information is detailed below.

#### *Exceptional case component fee*

Subregulation 5.12K(5) prescribes that if it is applicable to the assessment, the 'exceptional case' component fee payable is \$577,651. Regulation 5.12E provides more information about the exceptional case component fee.

#### *Subdivision C – Bilateral agreement or accredited assessment process*

The heading of subdivision C is 'Bilateral agreement or accredited assessment process'. This subdivision sets out the base fee, and the stages in which the base fee is payable in relation to assessment undertaken by bilateral agreement or an accredited assessment process. The Commonwealth Environment Minister is able to accredit assessments undertaken by States, Territories and the Commonwealth for the purposes of the EPBC Act.

The fees for these assessment approaches are the same because in practice they operate in the same way. The fees account for the additional work undertaken by the Commonwealth Environment Department in undertaking accredited assessments. Fees do not relate to work done by the State or Territory agencies. The fees for these assessment approaches will be reviewed following implementation of the One-Stop Shop reform.

#### *Regulation 5.13 - Application*

Regulation 5.13 provides that subdivision C applies if the relevant action is to be assessed in accordance with an accredited assessment process under an assessment bilateral agreement, or if the Commonwealth Environment Minister has decided that the relevant action is to be assessed under an accredited assessment process under section 87 of the EPBC Act.

#### *Regulation 5.13A – Definitions*

Regulation 5.13A defines certain words and expressions used within subdivision C including the four stages at which fees are payable.

The stages of assessment under an accredited assessment process under a bilateral agreement or under section 87 are not stipulated within the EPBC Act. The process followed depends on the accredited assessment process (that is usually set out in Commonwealth or state or territory legislation). In the case of a process accredited under an assessment bilateral agreement, the process is described in the agreement itself and further detail may be provided in the administrative arrangements developed for the agreement.

Under the Regulation, stage 1 of the assessment occurs when the terms of reference for the assessment documentation are given to the Commonwealth Environment Minister for review. Paragraph (b) of the definition of stage 1 clarifies that where the Commonwealth Environment Minister does not review the terms of reference, stage 1 does not apply. Subregulation 5.13A(2) clarifies that if a particular stage does not apply in relation to a particular action, the portion of the base and complexity fees which would have been payable for that stage are not payable. This ensures that the fees charged reflect the actual services which are provided by the Australian Government.

Stage 2 of the assessment occurs when the Commonwealth Environment Minister is provided with the proponent's draft report for review. As with stage 1, this practice is common in accredited assessments, but does not always occur. Paragraph (b) of the definition of stage 2 clarifies that if the Commonwealth Environment Minister does not review the draft report, stage 2 does not occur so that the relevant fees are not payable.

Stage 3 of the assessment occurs when the Commonwealth Minister is given a proponent's finalised report for review. As with stages 1 and 2, paragraph (b) of the definition for stage 3 clarifies that if the Minister does not review the finalised draft report, stage 3 does not occur so that the relevant fees are not payable.

Stage 4 of the assessment occurs when the assessment report prepared by the relevant State, Territory or Commonwealth officials is provided to the Commonwealth Environment Minister. Stage 4 always occurs in an accredited assessment, as the provision of an assessment report is a requirement for the Commonwealth Environment Minister to decide whether or not to approve the taking of an action assessed by an accredited assessment or under an assessment bilateral agreement under paragraph 130(1B)(a) of the EPBC Act.

As described above, subregulation 5.13A(2) clarifies that if a particular stage does not apply in relation to a particular action, the portion of the base and complexity fees which would have been payable for that stage are not payable. This ensures that the fees charged reflect the actual services which are provided by the Australian Government.

Table 2 below provides a summary of the base fees and complexity fees payable at each stage of the assessment by an accredited assessment process (set out in relation to Regulation 5.13B, 5.13C, 5.13D and 5.13E).

**Table 2 - Summary of fees payable for each stage of assessment by an accredited assessment process under subsection 87(4) of the EPBC Act or bilateral agreement**

<u>Accredited assessment under section 87(4) or bilateral agreement</u>	<u>Base fees (A)</u>	<u>Percentage of Part A Complexity fees (B)</u> <small>(Matrix rows A to L and P)</small>	<u>Percentage of Part B Complexity fees (C)</u> <small>(Matrix rows M, N and O)</small>	<u>Total</u>
<b>Stage 1</b>	\$4,031	16% (if occurs)	N/A	(A) + (B)+ (C)
<b>Stage 2</b>	\$12,760	49% (if occurs)	N/A	(A) + (B) + (C)
<b>Stage 3</b>	\$4,268	16% (if occurs)	81%	(A) + (B) + (C)
<b>Stage 4</b>	\$4,983	19%	19%	(A) + (B) + (C)
<b>TOTAL</b>	\$26,042	100%	100%	

Regulation 5.13B – Base fee payable in stages

Regulation 5.13B prescribes the amount payable as the base fee for each stage of the assessment of the action by an accredited process under an assessment bilateral agreement or under section 87 of the EPBC Act. The amount of the fee for each stage is payable before the relevant stage begins. As detailed above, if a particular stage does not occur the fee prescribed in the table at subregulation 5.13B(2) for that stage would not be payable.

Regulation 5.13C – Complexity fee payable in stages

Subregulation 5.13C(1) prescribes that the complexity fee payable for the assessment of the action is split into two parts – the Part A complexity fee and the Part B complexity fee. The Part A complexity fee is the sum of:

- (a) the applicable fee for each applicable controlling provision component;
- (b) the applicable fee for the legislative impact component;
- (c) the applicable fee for the relevant number of project components; and
- (d) the applicable fee for the exceptional case component.

The Part B complexity fee is the sum of the fee for each application component.

The complexity fee is split into parts A and B because the final fee for the application component (Part B of the complexity fee) is not determined until the end of stage 2 and is not payable until stage 3.

Subregulations 5.13C(2) and 5.13C(4) respectively prescribe that the Part A complexity fee and the Part B complexity fee for the assessment of an action by an accredited assessment process



under an assessment bilateral agreement or under section 87 of the Act, are each payable in stages, before each stage begins.

Subregulations 5.13C(3) and 5.13C(5) respectively prescribe the percentage of the Part A complexity fee and the Part B complexity fee that is payable for each of the stages at which the fee is payable.

If a particular stage does not occur then the percentage of the complexity fee is not payable (see regulation 5.13A(2)). For example, if stages 1, 2 and 3 did not occur for an accredited assessment process then a base fee of \$4,983 would be payable (being the base fee prescribed for stage 4 at subregulation 5.13B(2)) and 19% of the Part A complexity fee (being the percentage of the Part A complexity fee prescribed to be payable for stage 4 under subregulation 5.13C(3)) plus 19% of the Part B complexity fee (being the percentage of the Part B complexity fee prescribed to be payable for stage 4 under subregulation 5.13C(5)).

An invoice for the relevant fee is issued prior to each stage commencing. The stage cannot commence until the fee is paid (section 521A of the EPBC Act). A person cannot apply for reconsideration of a base fee under section 514Y of the EPBC Act. A person can apply for reconsideration of the method used to work out a complexity fee under section 514Y of the EPBC Act.

#### Regulation 5.13D – Amount of components of complexity fee

Subregulation 5.13D(1) clarifies that the amount of the fee payable for the legislative impact component, the application component and the controlling provision component of the complexity fee, depends upon the level of complexity determined for that component. Further information about these components is set out above.

Paragraphs 5.13D(2)(a)-(c) prescribe each of the fee amounts payable for 1, 2 and 3 project components of the complexity fee (Row K of the *Complexity Fee Matrix*). Regulation 5.12G provides for the Minister to determine the number of project components; that is the number of separate activities that would be carried out in taking each action. See the explanation of regulation 5.12G above for further information. Paragraph 5.13D(2)(d) prescribes the method to be used to calculate the fee amount payable for more than 3 project components of a complexity fee. These fees are calculated by multiplying the base fee for assessment by an accredited process (\$26,043) by the number of project components minus one, i.e.  $\$26,043 \times (\text{number of project components} - 1) = \text{total amount of the project component complexity fee for assessment by an accredited process}$ .

The quantum of the fee for each additional project component for assessment by accredited assessment is expressed as \$26,043. This is the figure used to calculate the amount of the project component of a complexity fee and is consistent with the CRIS. There is a minor discrepancy between the sum of the base fees payable for each individual stage (i.e. \$26,042) and the total fee for each additional project component based on non-rounded numbers (i.e. \$26,043) due to the rounding of individual numbers to the nearest dollar. For both assessment by preliminary documentation and assessment by bilateral agreement/accredited assessment base costs, the individual stages of the base costs added together does not equal the total base costs.

#### Regulation 5.13E – Method for working out a complexity fee

Regulation 5.13E clarifies that the sum of the fees for Part A and Part B of the complexity fee is a method for working out a fee for the purposes of paragraph 520(4C)(c) of the EPBC Act.

As noted above, this clarifies that a person can apply to the Secretary for reconsideration of the method used to work out the fee under subsection 514Y(2) of the Act.

Subdivision D – Assessment on referral information

The heading of subdivision D is ‘Assessment on referral information’. This subdivision sets out the stages and fees in relation to assessment on referral information.

Regulation 5.14 – Application

Regulation 5.14 provides that subdivision D applies if the Minister has decided that the relevant impacts of the action are to be assessed by assessment on referral information under Division 3A of Part 8 of the EPBC Act (assessment on referral information).

Regulation 5.14A – Definitions

The heading of regulation 5.14A is ‘Definitions’. The regulation 5.14A defines certain words and expressions used within subdivision D, including the three stages at which fees are payable.

Stage 1 of the assessment begins when the Secretary starts to prepare a draft recommendation report.

Stage 2 of the assessment begins when the Secretary starts to finalise the draft recommendation report after the end of the public comment period.

Stage 3 of the assessment begins when the Secretary gives the Minister the finalised recommendation report.

Table 3 below provides a summary of the base fees and complexity fees payable for assessment on referral information.

***Table 3 - Summary of fees payable for assessment on referral information***

<u>Assessment on referral information</u>	<u>Base fees (A)</u>	<u>Percentage of Part A complexity fees (B)</u> <i>(Matrix rows A to L and P)</i>	<u>Total</u>
<b>Stage 1</b>	\$4,784	51%	(A) + (B)
<b>Stage 2</b>	\$2,878	31%	(A) + (B)
<b>Stage 3</b>	\$1,755	18%	(A) + (B)
<b>TOTAL</b>	\$9,417	100%	

Regulation 5.14B – Base fee payable in stages

Regulation 5.14B prescribes the amount of the base fee payable for each stage of the assessment. The amount of the base fee for each stage is payable before that stage begins.

Regulation 5.14C – Complexity fee payable in stages

Regulation 5.14C prescribes the percentage of the complexity fee that is payable, in advance, for each of the three stages at which the fee is payable. Unlike the other methods of assessment, there are no Part B complexity fees for assessment on referral information, as all necessary information must be included in the referral for this assessment method to be chosen. As a result, projects with an application component fee are not assessed using assessment on referral information.

An invoice for a fee is issued prior to the stage commencing. The stage cannot commence until the fee is paid (section 521A of the EPBC Act). A person cannot apply for reconsideration of a base fee under section 514Y of the EPBC Act. A person can apply for reconsideration of the method used to work out a complexity fee under section 514Y of the EPBC Act.

Regulation 5.14D – Amount of components of complexity fee

Subregulation 5.14D(1) clarifies that the amount of the fee payable for an application component, controlling provision or legislative impact component of the complexity fee depends upon the level of complexity determined for that component.

Paragraphs 5.14D(2)(a)-(c) prescribe each of the fee amounts payable for 1, 2 and 3 project components of the complexity fee (Row K of the *Complexity Fee Matrix*).

As explained above, subregulation 5.12G provides for the Minister to determine the number of project components; that is the number of separate activities that would be carried out in taking each action. Paragraph 5.14D(2)(d) prescribes the method to be used to calculate the fee amount payable for more than 3 project components of a complexity fee. These fees are calculated by multiplying the base fee for assessment by referral information (\$9,417) by the number of project components minus one, i.e.  $\$9,417 \times (\text{number of project components} - 1) =$  total amount of the project component complexity fee for assessment on referral information.

Regulation 5.14E – Method for working out complexity fee

Regulation 5.14E clarifies that the sum of the fees for the components of the complexity fee is a method for working out a complexity fee for the purposes of paragraph 520(4C)(c) of the EPBC Act. As noted above, this clarifies that a person can apply to the Secretary for reconsideration of the method used to work out the complexity fee under subsection 514Y(2) of the Act.

Subdivision E – Assessment on preliminary documentation

The heading of subdivision E is ‘Assessment on preliminary documentation’. This subdivision sets out the stages and the base fees, and proportion of the complexity fee payable, for each stage of an assessment on preliminary documentation.

Regulation 5.15 – Application

Regulation 5.15 provides that subdivision E applies if the Minister has decided that the relevant impacts of the action is to be assessed by assessment on preliminary documentation under Division 4 of Part 8 of the EPBC Act.

Regulation 5.15A – Definitions

The heading of regulation 5.15A is ‘Definitions’. Subregulation 5.15A(1) defines certain words and expressions used within subdivision E, including the four stages at which fees are payable.

There are two ways that assessments can be done on preliminary documentation. The first is under section 95 of the EPBC Act, where it is decided at the time of making the assessment approach decision that no further information is required. The second is under section 95A of the EPBC Act, where the applicant is asked to provide further information than that provided in the referral.

Stage 1 of the assessment begins when the Minister makes a request for additional information under subsection 95A(2) of the EPBC Act.

Paragraph (b) of the definition of stage 1 clarifies that if section 95A of the EPBC Act does not apply (because the Minister is satisfied under subsection 95(1) that he or she has sufficient information to assess the impacts of the action), stage 1 does not occur. In these circumstances subregulation 5.15A(2) clarifies that the stage 1 base fee and 16% of the complexity fee is not payable (see below for further details).

Stage 2 of the assessment begins when a written direction to publish information is given under subsections 95(2) or 95A(3) of the EPBC Act.

Stage 3 of the assessment begins when the designated proponent gives the Minister the documents and comments as required by paragraph 95B(1)(b) of the EPBC Act or a written statement as required by subsection 95B(3) of the EPBC Act, as applicable.

Stage 4 of the assessment is linked to preparation of the recommendation report under section 95C of the EPBC Act. The stage begins when preparation of a recommendation report is commenced under subsection 95C(1) of the EPBC Act.

Subregulation 5.15A(2) clarifies that if the Minister has not requested further information under section 95A of the EPBC Act, then no base fee or Part A complexity fee is payable for that stage of assessment, that is, the stage 1 base fee and 16% of the complexity fee is not charged.

Table 4 below provides a summary of the base fees and complexity fees payable at each stage of the assessment on preliminary documentation.

***Table 4 - Summary of fees payable for each stage of assessment on preliminary documentation***

<b><u>Preliminary documentation</u></b>	<b><u>Base fees (A)</u></b>	<b><u>Percentage of Part A Complexity fees (B)</u></b> <small>(Matrix rows A to L and P)</small>	<b><u>Percentage of Part B Complexity fees (C)</u></b> <small>(Matrix rows M, N and O)</small>	<b><u>Total</u></b>
<b>Stage 1</b>	\$1,374	16%	N/A	(A) + (B) + (C)
<b>Stage 2</b>	\$1,374	16%	N/A	(A) + (B) + (C)
<b>Stage 3</b>	\$1,374	16%	48%	(A) + (B) + (C)
<b>Stage 4</b>	\$4,538	52%	52%	(A) + (B) + (C)
<b>TOTAL</b>	\$8,660	100%	100%	

*Regulation 5.15B – Base fee payable in stages*

Subregulation 5.15B(1) prescribes the base fee amounts that are payable in four stages before each stage of the assessment begins.

Subregulation 5.15B(2) sets out the amount of the base fee that is payable before each stage commences.

*Regulation 5.15C – Complexity fee payable in stages*

Subregulation 5.15C(1) prescribes that the total complexity fee payable is split into two parts – the Part A complexity fee and the Part B complexity fee. The Part A complexity fee is the sum of:

- (a) the applicable fee for each applicable controlling provision component;
- (b) the applicable fee for the legislative impact component;
- (c) the applicable fee for the relevant number of project components; and
- (d) the applicable fee for the exceptional case component.

The Part B complexity fee is the sum of the fee for each application component.

The complexity fee is split into parts A and B because the final fee for the application component (Part B of the complexity fee) is not determined until the end of stage 2 and is not payable until stage 3.

Subregulation 5.15C(2) prescribes that the Part A complexity fee payable for each component that is applicable to the assessment of the action is payable in four stages, before each stage begins.

Subregulation 5.15C(4) prescribes that the Part B complexity fee payable is payable in two stages, before each stage begins.

Subregulations 5.15C(3) and (5) prescribe the percentage of the Part A complexity fee and the Part B complexity fee that is payable for each stage at which the fee is payable.

An invoice for the relevant fee is issued prior to each stage commencing. The relevant stage cannot commence until the fee is paid (section 521A of the EPBC Act). A person cannot apply for reconsideration of a base fee under section 514Y of the EPBC Act. A person can only apply for reconsideration of the method used to work out a complexity fee under section 514Y of the EPBC Act.

*Regulation 5.15D – Amount of components of complexity fee*

Regulation 5.15D clarifies that the amount of the fee payable for an application component, controlling provision component or legislative impact component depends upon the level of complexity determined for that component.

Paragraphs 5.15D(2)(a)-(c) prescribe each of the fee amounts payable for 1, 2 and 3 project components of the complexity fee (Row K of the *Complexity Fee Matrix*). See the explanation above in relation to regulation 5.12G which allows the Minister to determine the number of project components for further information.

Paragraph 5.15D(2)(d) prescribes the method to be used to calculate the fee amount payable for more than 3 project components of a complexity fee. These fees are calculated by multiplying the base fee (\$8,661) by the number of project components minus one, i.e.  $\$8,661 \times (\text{number of project components} - 1) = \text{total project component complexity fee}$ .

The quantum of the fee for each additional project component for assessment by preliminary documentation is expressed as \$8,661. This is the figure used to calculate the amount of the project component of a complexity fee and is consistent with the CRIS. There is a minor discrepancy between the sum of the base fees payable for each individual stage (i.e. \$8,660) and the total fee for each additional project component based on non-rounded numbers (i.e. \$8,661) due to the rounding of individual numbers to the nearest dollar. For both assessment by preliminary documentation and assessment by bilateral agreement/accredited assessment base costs, the individual stages of the base costs added together does not equal the total base costs.

#### Regulation 5.15E – Method for working out complexity fee

Regulation 5.15E clarifies that the sum of the fees for Part A and Part B of the complexity fee is a method for working out a fee for the purposes of paragraph 520(4C)(c) of the EPBC Act. As noted above, this clarifies that a person can apply to the Secretary to reconsider the way the fee was worked out under subsection 514Y(2) of the EPBC Act.

#### Subdivision F – Public environment reports

The heading of subdivision F is ‘Public environment reports’. This subdivision sets out the stages of an assessment by public environment report and the amount of the base fee, and percentage of the complexity fee that must be paid before each stage of the assessment begins.

#### Regulation 5.16 – Application

Regulation 5.16 provides that subdivision F applies if the Minister has decided that the relevant impacts of the action are to be assessed by Public Environment Report under Division 5 of Part 8 of the EPBC Act.

#### Regulation 5.16A – Definitions

The heading of regulation 5.16A is ‘Definitions’. Regulation 5.16A defines certain words and expressions used within subdivision F, including the four stages at which fees are payable for the assessment of an action.

Stage 1 of the assessment only occurs if the Minister prepares tailored guidelines under section 97 of the EPBC Act. If stage 1 occurs, it begins when the tailored guidelines are prepared under section 97 of the EPBC Act.

The Minister is able to apply standard guidelines under paragraph 96A(2)(a) of the EPBC Act and where standard guidelines are used, the stage 1 fee for assessment will not be applicable. In these circumstances the base fees and complexity fees associated with stage 1 will not be payable.

Stage 2 of the assessment begins when the draft report is given to the Minister as required by paragraph 98(1)(ab) of the EPBC Act.

Stage 3 of the assessment begins when the designated proponent has given the finalised report and any comments received to the Minister as required under subsection 99(3) of the EPBC Act.

Stage 4 of the assessment begins when preparation of the recommendation report is commenced under subsection 100(1) of the EPBC Act.

Subregulation 5.16A(2) clarifies that if stage 1 does not occur (because the Minister has used standard guidelines), then no base fee or Part A complexity fee is payable for that stage of assessment, that is, the stage 1 base fee and 14% of the complexity fee is not charged.

Table 5 below provides a summary of the base fees and complexity fees payable at each stage of an assessment by public environment report.

***Table 5 - Summary of fees payable for each stage of an assessment by public environment report***

<b><u>Public Environment Report</u></b>	<b><u>Base fees (A)</u></b>	<b><u>Percentage of Part A Complexity fees (B)</u></b>  <b><u>(Matrix rows A to L and P)</u></b>	<b><u>Percentage of Part B Complexity fees (C)</u></b>  <b><u>(Matrix rows M, N and O)</u></b>	<b><u>Total</u></b>
<b>Stage 1</b>	\$4,031	14%	N/A	(A) + (B) + (C)
<b>Stage 2</b>	\$12,760	42%	N/A	(A) + (B) + (C)
<b>Stage 3</b>	\$4,265	14%	70%	(A) + (B) + (C)
<b>Stage 4</b>	\$9,146	30%	30%	(A) + (B) + (C)
<b>TOTAL</b>	\$30,202	100%	100%	

*Regulation 5.16B – Base fee payable in stages*

Regulation 5.16B prescribes the base fee amounts that are payable in four stages before each stage of the assessment begins.

*Regulation 5.16C – Complexity fee payable in stages*

Regulation 5.16C prescribes that the complexity fee is split into two parts – the Part A complexity fee and the Part B complexity fee. The Part A complexity fee is the sum of:

- (a) the applicable fee for each applicable controlling provision component;
- (b) the applicable fee for the legislative impact component;
- (c) the applicable fee for the relevant number of project components; and
- (d) the applicable fee for the exceptional case component.

The Part B complexity fee is the sum of the fee for each application component.

The complexity fee is split into parts A and B because the final fee for the application component (Part B of the complexity fee) is not determined until the end of stage 2 and is not payable until stage 3.

Subregulations 5.16C(2) and (4) prescribe that the Part A complexity fee and the Part B complexity fee is payable in stages, before each applicable stage begins.

Subregulations 5.16C(3) and (5) prescribe the percentage of the Part A fee and the Part B fee that is payable for each of the stages at which the fee is payable.

An invoice for a fee is issued prior to the stage commencing. The relevant stage cannot commence until the fee is paid (section 521A of the EPBC Act). A person cannot apply for reconsideration of a base fee under section 514Y of the EPBC Act. A person can apply for reconsideration of the method used to work out a complexity fee under section 514Y of the EPBC Act.

#### Regulation 5.16D – Amount of components of complexity fee

Subregulation 5.16D(1) clarifies that the amount of the fee payable for an application component, controlling provision component or a legislative impact component of the complexity fee depends upon the level of complexity determined for that component.

Paragraphs 5.16D(2)(a)-(c) prescribe each of the fee amounts payable for 1, 2 and 3 project components of the complexity fee (Row K of the *Complexity Fee Matrix*). See the explanation above in relation to subregulation 5.12G which allows the Minister to determine the number of project components for further information.

Paragraph 5.16D(2)(d) prescribes the method to be used to calculate the fee amount payable for more than 3 project components of a complexity fee. These fees are calculated by multiplying the base fee (\$30,202) by the number of project components minus 1, i.e.  $\$30,202 \times (\text{number of project components} - 1) = \text{total amount of the project component of the complexity fee for assessment by public environment report}$ .

#### Regulation 5.16E – Method for working out complexity fee

Regulation 5.16E clarifies that the sum of the fees for Part A and Part B of the complexity fee is a method for working out a fee for the purposes of paragraph 520(4C)(c) of the EPBC Act. As noted above, a person can apply under subsection 514Y(2) of the EPBC Act to the Secretary for reconsideration of the method used to work out a complexity fee.

#### Subdivision G – Environmental impact statements

The heading of subdivision G is ‘Environmental impact statements’. This subdivision sets out the stages for assessment by environmental impact statements as well as the amount of the base fee, and percentage of the complexity fees that is payable before each stage begins.

#### Regulation 5.17 – Application

Regulation 5.17 provides that subdivision G applies if the Minister has decided that the relevant impacts of the action are to be assessed by an Environmental Impact Statement under Division 6 of Part 8 of the EPBC Act.

#### Regulation 5.17A – Definitions

The heading of regulation 5.17A is ‘Definitions’. Regulation 5.17A defines certain words and expressions used within subdivision F, including the four stages at which fees are payable.



Stage 1 of the assessment only occurs if the Minister prepares tailored guidelines under section 102 of the EPBC Act. If stage 1 occurs, it begins when the tailored guidelines are prepared under section 102 of the EPBC Act.

The Minister is able to apply standard guidelines under paragraph 101A(2)(a) of the EPBC Act and if the standard guidelines are applied, the stage 1 fee for assessment is not applicable. Subregulation 5.17A(2) clarifies that in these circumstances, the fees for stage 1 (\$4,031 base fee and 14% of the Part A complexity fees) are not payable.

Stage 2 of the assessment begins when the draft report is given to the Minister as required by paragraph 103(1)(ab) of the EPBC Act.

Stage 3 of the assessment begins when the designated proponent has given the finalised report and any comments received to the Minister as required under subsection 104(3) of the EPBC Act.

Stage 4 of the assessment begins when preparation of the recommendation report is commenced under subsection 105(1) of the EPBC Act.

Subregulation 5.17A(2) clarifies that if the environmental impact statement guidelines given to the designated proponent are standard guidelines made under section 101B of the EPBC Act, then no base fee or Part A complexity fee is payable for that stage.

Table 6 below provides a summary of the base fees and complexity fees payable at each stage of an assessment by environmental impact statement.

***Table 6 - Summary of fees payable for each stage of an assessment by environmental impact statement***

<b><u>Environmental Impact Statement</u></b>	<b><u>Base fees (A)</u></b>	<b><u>Percentage of Part A Complexity fees (B)</u></b> <small>(Matrix rows A to L and P)</small>	<b><u>Percentage of Part B Complexity fees (C)</u></b> <small>(Matrix rows M, N and O)</small>	<b><u>Total</u></b>
<b>Stage 1</b>	\$4,031	14%	N/A	(A) + (B)+(C)
<b>Stage 2</b>	\$12,760	42%	N/A	(A) + (B)+(C)
<b>Stage 3</b>	\$4,265	14%	70%	(A) + (B)+(C)
<b>Stage 4</b>	\$9,146	30%	30%	(A) + (B)+(C)
<b>TOTAL</b>	\$30,202	100%	100%	

**Regulation 5.17B – Base fees payable in stages**

Subregulation 5.17B(1) prescribes that the base fee for the assessment of an action is payable in four stages, with the fee for each stage payable before that stage begins.

Subregulation 5.17B(2) prescribes the amount of the base fee payable for each of the four stages of the assessment of the action.

*Regulation 5.17C – Complexity fee payable in stages*

Subregulation 5.17C(1) prescribes that the complexity fee is split into two parts – the Part A complexity fee and the Part B complexity fee.

The Part A complexity fee is the sum of:

- (a) the applicable fee for each applicable controlling provision component;
- (b) the applicable fee for the legislative impact component;
- (c) the applicable fee for the relevant number of project components; and
- (d) the applicable fee for the exceptional case component.

The Part B complexity fee is the sum of the fee for each application component.

The complexity fee is split into parts A and B because the final fee for the application component (Part B of the complexity fee) is not determined until the end of stage 2 and is not payable until stage 3.

Subregulations 5.17C(2) and (4) prescribe that the Part A complexity fee and the Part B complexity fee is payable in stages, before each stage begins.

Subregulations 5.17C(3) and (5) prescribe the percentage of the Part A complexity fee and the Part B complexity fee that is payable for each of the four stages at which the fee is payable.

An invoice for a fee is issued prior to the stage commencing. The relevant stage cannot commence until the fee is paid (section 521A of the EPBC Act). A person cannot apply for reconsideration of a base fee under section 514Y of the EPBC Act. A person can apply for reconsideration of the method used to work out a complexity fee under section 514Y of the EPBC Act.

*Regulation 5.17D – Amount of components of complexity fee*

Subregulation 5.17D(1) clarifies that the amount of the fee payable for an application component, controlling provision component or legislative impact component of the complexity fee depends on the level of complexity determined for that component.

Paragraphs 5.17D(2)(a)-(c) prescribe each of the fee amounts payable for 1, 2 or 3 project components of the complexity fee (Row K of the *Complexity Fee Matrix*). Regulation 5.12G allows the Minister to determine the number of project components; that is the number of separate activities that would be carried out in taking each action. See above for further information. Paragraph 5.17D(2)(d) prescribes the method to be used to calculate the fee amount payable for more than 3 project components of a complexity fee. These fees are calculated by multiplying the base fee for assessment by environmental impact statement (\$30,202) by the number of project components minus one, i.e.  $\$30,202 \times (\text{number of project components} - 1) = \text{total amount of the project component of the complexity fee for assessment by environmental impact statement}$ .

*Regulation 5.17E – Method for working out complexity fee*

Regulation 5.17E clarifies that the sum of the fees for Part A and Part B of the complexity fee is a method for working out a fee for the purposes of paragraph 520(4C)(c) of the EPBC Act. As noted above, a person can apply under subsection 514Y(2) of the EPBC Act, to the Secretary for reconsideration of the method used to work out the complexity fee.

*Subdivision H – Action management plans*

The heading of subdivision H is ‘Action management plans’. This subdivision sets out the fees payable for the approval and variation of action management plans.

Action management plans are plans for managing the impacts of the action on a matter protected by a provision of Part 3 of the EPBC Act, such as a plan for conserving habitat of a species. The preparation and approval of action management plans by the Minister is a common requirement of conditions of approval under the EPBC Act. Action management plans allow for adaptive management of an action in the post-approval stage, ensuring the approval holder develops and implements measures to effectively manage impacts upon matters protected by Part 3 of the EPBC Act.

A person proposing to take an action may elect to submit an action management plan at any time before an approval is granted (section 132B of the EPBC Act). The Minister may then attach a condition to an approval requiring an action management plan to be submitted for approval. The approval holder may then submit an action management plan for approval. An application for an approval must be accompanied by a prescribed fee (paragraph 134(3)(e)(i) of the EPBC Act).

If the approval holder agrees to conditions about an action management plan being added to an approval under subsection 143(1A), the holder is taken to have made an election under section 132B before the approval is granted. A fee of \$3,320 must be paid for the assessment of the request to vary the condition (see regulation 5.19B). This is separate to any fee for the assessment of the action management plan under regulation 5.18. If the approval holder requests, under subsection 143(1B) of the EPBC Act, a variation to a condition to require an action management plan, a fee of \$3,320 must be paid for the assessment of the request to vary the condition (see regulation 5.19B). This is separate to any fee for the assessment of the action management plan under regulation 5.18.

If an action management plan was submitted prior to approval of the taking of an action, it would be assessed as part of the action and the cost of the activities associated with approving these plans would be recovered this way.

*Regulation 5.18 – Fee for approval of an action management plan*

Subregulation 5.18(1) provides that if a person proposing to take an action elects under section 132B of the EPBC Act, or is taken to have elected under subsection 143(1A) of the EPBC Act, to have an action management plan submitted for approval, the person must pay a fee as specified in regulation 5.18.

Subregulation 5.18(2) prescribes that the fee for assessing an action management plan is \$3,233. Subregulation 5.18(3) prescribes that the fee is payable before the assessment of the action management plan begins. A person could not seek reconsideration of this fee because there is no method prescribed for working it out.

*Regulation 5.18A – Inviting public comment before approving action management plan*

Section 134A of the EPBC Act provides that the Minister may invite public comment before approving an action management plan. Regulation 5.18A prescribes the requirements for inviting public comment on an action management plan before approving it, including that the action management plan and an invitation to comment must be published on the internet.

Invitations to comment must also include the approval decision to which the plan relates and any conditions that are attached to the approval.

*Regulation 5.18B – Variation of action management plan*

Subregulation 5.18B(1) provides that if the approval holder has applied to the Minister for a variation of an action management plan under section 143A of the EPBC Act, the approval holder must provide specified information and pay a fee.

Subregulation 5.18B(2) prescribes the information that the application must include. This information will assist with the assessment of the proposed variation. This required information includes:

- (a) administrative information to assist with identifying and contacting the approval holder and identifying the relevant approval;
- (b) information that explains how the proposed variation affects the action management plan;
- (c) a description which identifies how the proposed action will impact on matters protected under Part 3 of the EPBC Act if the action management plan is implemented with the proposed variation; and
- (d) the reasons the person considers that the variation is required.

Subregulation 5.18B(3) sets out the fees payable for an application to vary an action management plan. The fees for this distinguish between variations that are of an administrative nature and variations that are not of an administrative nature. A variation of an administrative nature is one that is incidental to the conduct or management of the action management plan and would, for example, include a variation to change to addresses or contact details. A change that has the potential to affect the impacts of the action on a protected matter would not be of an administrative nature. For example, a change to a mitigation methodology would not be of an administrative nature.

Paragraph 5.18B(3)(a) prescribes the fee that is payable for the variation if the applicant considers that the variation is of an administrative nature – \$943. Paragraph 5.18(3)(b) prescribes the fee that is payable if the variation is not of an administrative nature – \$3,233. The fee is payable before the assessment begins (subregulation 5.18B(4)).

Subregulation 5.18B(5) provides that if the Minister considers that a proposed variation of an action management plan is not of an administrative nature, then the Minister must notify the approval holder and the approval holder must pay the difference between the fee paid and the fee for non-administrative changes.

Subregulation 5.18B(6) provides that if the Minister notifies that a proposed variation of an action management plan is not of an administrative nature, this is taken to be a method for working out a fee for a variation of an action management plan. A person may apply under subsection 514Y(2) of the EPBC Act, to the Secretary for reconsideration of the method used to determine if a variation of an action management plan is of an administrative nature or not.

Subdivision I – Other fees

The heading of subdivision I is ‘Other fees’. This subdivision prescribes the fees that are payable for:

- (a) consideration of additional information requested by the Minister in accordance with the EPBC Act;
- (b) a request under section 78A of the EPBC Act from a person taking the action or designated proponent for a reconsideration of a controlled action decision; and
- (c) a request from an approval holder under section 143(1B) of the EPBC Act to vary a condition of approval.

Regulation 5.19 – Request to provide specified information

Under the EPBC Act, the Minister is able to request additional information at a number of stages throughout the assessment process, where he or she is satisfied that he or she does not have sufficient information to make an informed decision. For example, the Minister is able to request additional information under section 76 of the EPBC Act if he or she believes on reasonable grounds that the referral of a proposal to take an action does not include sufficient information for the Minister to decide whether the action is a controlled action, or which controlling provisions should apply.

Subregulation 5.19(1) prescribes that (except for requests under section 132 and 134(3D) relating to assessments by public environment report or by environmental impact statement) the fee that is payable if the Minister makes a request for specified information to be provided under sections 76 (further information for making a controlled action decision), 89 (further information for making a decision on an assessment approach), 132 (further information for making an approval decision) and subsection 134(3D) (further information for making a decision to approve an action management plan) of the EPBC Act, is \$2,544.

Subregulation 5.19(2) prescribes the fee that is payable if the Minister has requested additional information under section 132 or subsection 134(3D) of the EPBC Act, in relation to assessments by public environment report or environmental impact statement. The fee prescribed is \$13,087.

This request for additional information fee for an assessment by public environment report or environmental impact statement would only occur where the Minister makes a request for information at the approval decision stage under Part 9 of the EPBC Act. If this information is provided during Stages 1-3 of the assessment, this additional information can be readily integrated into the Department’s work during these initial stages of assessment. However, if additional information is provided while the Department is preparing an approval decision (Stage 4 of the assessment), more significant Departmental resources would be required to consider this additional information.

Subregulation 5.19(3) prescribes that the fees payable under regulation 5.19 are payable before the Minister considers the information provided in response to the request.

Regulation 5.19A – Request for reconsideration of a decision under subsection 75(1) of the Act

Sections 78A of the EPBC Act provides for a person to request the Minister to reconsider a decision that an action is, or is not, a controlled action, or which provisions are controlling provisions, in certain specified circumstances.

Regulation 5.19A prescribes that the fee payable for a request made under subsection 75(1) of the EPBC Act by the person proposing to take an action (or the designated proponent of the action) for a reconsideration of a decision is \$7,423. The fee must be provided at the same time as the request.

Where the reconsideration request is made by a third party rather than the person proposing to take the action, the fee that would otherwise be payable under regulation 5.19A is not applicable.

If the reconsideration results in a change to the original controlled action decision, then an updated fee schedule will be provided, if applicable, to the person proposing to take the action. The person would be able to request a reconsideration of any complexity fees that had changed as a result of the reconsideration.

*Regulation 5.19B – Request to vary a condition attached to an approval*

Regulation 5.19B prescribes that the fee payable for the consideration of a request by an approval holder under subsection 143(1B) to vary a condition attached to an approval of an action is \$3,320. The fee must be provided at the same time as the request for variation. The Minister is also able to vary conditions of approval in certain circumstances without receiving a request from the approval holder. If the approval holder has not requested a variation of a condition, then no fee is payable.

Subregulation 5.19B(2) provides that the fee for assessment of the variation is payable before the assessment of the variation begins (this is consistent with section 521A of the EPBC Act).

Subdivision J – Reconsideration of fees

The heading of subdivision J is ‘Reconsideration of fees’. This subdivision sets out when and how a person could apply for reconsideration of fees, and the effect of the reconsideration.

The right to apply for reconsideration of the method used to work out a fee is provided in the EPBC Act. Subsection 514AY(2) of the EPBC Act allows a person to apply to the Secretary to reconsider the way in which a delegate has used a method to work out a fee prescribed by the regulations. A person may apply only once for reconsideration of a fee (see subsection 514Y(5) of the EPBC Act).

Reconsideration is not available where the Minister has personally used the method to work out the fee. Reconsideration is only available where a delegate of the Minister has used a method to work out the fee (see subsection 514Y(1) of the EPBC Act).

The Regulation specifies that the way a delegate determines which components of the complexity matrix apply and the complexity level for those components are methods used to work out a fee (see regulation 5.12H), and are therefore subject to reconsideration under section 514Y of the EPBC Act. For instance, the determination that the exceptional case component applies could be subject to reconsideration. The other methods for working out a fee (and hence could be subject to reconsideration) are:

- the addition of various components of the Part A and Part B complexity fees (regulations 5.13E, 5.14E, 5.15E, 5.16E and 5.17E);
- the calculation of a partial refund (regulation 5.22B); and
- the notification as to whether the variation of an action management plan is of an administrative nature or not (regulation 5.18B(6)).

The base fees for each assessment method, and the set fees for requesting approval of an action management plan, requests for additional information, requests for reconsideration of a controlled action decision, and requests for varying a condition of approval are not worked out using a method and therefore cannot be the subject of a reconsideration request. This is because these components are subject to a flat fee that is not subject to variation.

A person will need to make a reconsideration application within 30 business days after the applicant is informed of the fee (see subsection 514Y(4) of the EPBC Act). As such the 30 day period within which a reconsideration application will need to be made will start from the date that the applicant is informed of their obligation to pay a fee, not the day in which the fees are paid or become payable. For most assessment fees, this will occur when the person is given the fee schedule at the time of the assessment approach decision. However, the Part B complexity fees (the application component) will not be confirmed until the completion of stage 2 of the relevant assessment process. The time period for applying for reconsideration of these fees will commence when the person is advised of the actual amount of the Part B complexity fees.

Regulation 5.22B sets out a method for working out the amount of a partial refund. The amount that is worked out can be the subject of a request for reconsideration. The 30 business day period for requesting a reconsideration would commence once the person had been notified of the amount of the partial refund.

Section 514YA of the EPBC Act sets out the process to be followed when an application for the reconsideration of a fee is received. The Secretary or the delegate of the Secretary must reconsider the way the method was used to work out the disputed fee and either confirm the fee or determine a new fee by using the method again (see subsection 514YA(1) of the EPBC Act).

The person undertaking the reconsideration must be the Secretary or a delegate of the Secretary who is an employee of the Department that was not involved in working out the disputed fee, and is in a position senior to that of the person who initially worked out the fee (see subsection 514YA(2) of the EPBC Act). This is intended to ensure that decision-making processes are transparent, and to provide access to a fair and objective procedure for the internal reconsideration of decisions in relation to discretionary fees.

Once a decision has been made, the Secretary or the delegate of the Secretary must give the applicant a written notice which states the outcome of the reconsideration and which provides reasons for that outcome (see subsection 514YA(3) of the EPBC Act). The reconsideration must be undertaken within 30 business days of receipt of the application (see section 514YB of the EPBC Act).

#### *Regulation 5.20 – Application for reconsideration of fee*

Subregulation 5.20(1) prescribes the requirements for an application under subsection 514Y(2) of the EPBC Act for reconsideration of the method used to work out a complexity fee or partial refund under paragraphs 520(4C)(c) and (d) of the EPBC Act.

A person needs to make a reconsideration application in the form prescribed by regulation 5.20. The application needs to be in writing and set out the applicant's name and contact details, the applicant's ABN and ACN, the relevant referral number, the kind of fee to be reconsidered, the amount of the fee, the method used to calculate the fee and the reasons for the application (see subsection 514Y(3) of the EPBC Act). In addition, the applicant is required to acknowledge that, as a result of the reconsideration, a new fee may be worked out and that the new fee may be for a higher amount than the original fee.

Section 145B of the EPBC Act allows an approval holder to apply to the Minister to transfer an approval to another person. Regulation 5.24 requires that in certain circumstances the person to whom the approval is transferred may be required to pay fees that were waived or not paid because of an exemption. See below for more detail on regulation 5.24. Subregulation 5.20(2) clarifies that in these circumstances, the second person cannot request a reconsideration of fees if the original approval holder has already requested a reconsideration of the fees.

Section 156F of the EPBC Act allows a person proposing to take a referred action to notify the Minister that he or she no longer intends to take the action and that a second person intends to take the action instead. Regulation 5.24B requires that in certain circumstances, the second person will be required to pay all or part of the fees for the assessment. See below for more detail on regulation 5.24B. Subregulation 5.20(3) clarifies that in these circumstances, the second person cannot request reconsideration for fees if the first person had already requested reconsideration of those fees.

In the case where a person has applied for a reconsideration of complexity fees, the applicant may have paid the relevant complexity fees in advance of a particular stage of an assessment. Following the Secretary's reconsideration of the method used to calculate the complexity fee, the complexity fees may be reduced and in these circumstances, the applicant is entitled to a refund for the excess amount of complexity fees paid. This is provided for in subregulation 5.22(4).

#### *Regulation 5.20A – Reconsideration results in higher fee*

If the result of the reconsideration is that the new fee is higher than the original fee, regulation 5.20A requires that the person must pay the higher fee, or if they had already paid the original fee, the difference between the higher fee and the original fee.

Subregulation 5.20A(2) clarifies that the higher fee, or difference between the higher fee and the original fee, is a debt due to the Commonwealth.

In the case of a reconsideration of the method used to calculate a partial refund of the complexity fee, the outcome of the reconsideration process may be that the amount of the partial refund is increased.

#### *Subdivision K – Waiver of fees*

The heading of the subdivision K is 'Waiver of fees'. Section 520 of the EPBC Act allows the regulations to provide for waiver of fees. This subdivision deals with the circumstances in which the Minister may decide to waive all or part of a fee.

#### *Regulation 5.21 – Waiver of all or part of a fee*

Regulation 5.21 allows the Minister the discretion to waive all or part of a fee that would otherwise be payable under Division 5.6 of the Regulation, in particular circumstances.

Paragraph 5.21(1)(a) allows the Minister to waive all or part of a fee in relation to the action where the Minister considers that the primary objective of the action is to protect the environment, or protect and conserve heritage in a way that is consistent with the objects of the EPBC Act. For example, the Minister may exercise his or her discretion to waive the fees for a referred action to undertake a breeding program for a particular listed threatened species.

Paragraph 5.21(1)(b)(i) allows the Minister to use his or her discretion to waive all or part of a fee where he or she considers that it is in the public interest to do so. For example, the Minister may use his or her discretion to waive the fees for a project that would have a substantial public



benefit, if the fees that would otherwise be payable would make the cost of taking that action prohibitive.

Paragraph 5.21(1)(b)(ii) allows the Minister to use his or her discretion to waive all or part of a fee if there are other exceptional circumstances for justifying the waiver.

Subregulation 5.21(2) clarifies that the Minister's power to waive a fee may be exercised at his or her own initiative, or on the application of a person proposing to take an action.

*Regulation 5.21A – Application for waiver of fee*

Regulation 5.21A prescribes that a person proposing to take an action may apply for all or part of a fee to be waived.

Subregulation 5.21A(2) requires that an application for a waiver be made before, or at the same time as, the relevant action is referred under section 68 of the EPBC Act. Where section 69, 70 or 71 applies to the referral, an application for a waiver may be made within 10 business days of the effective date of referral. If an approval holder requests a transfer of an approval under section 145B of the EPBC Act, the proposed transferee may apply for a waiver at the same time as the Minister's consent is sought for the transfer. If a first person notifies of a change of person proposing to take an action under section 156F, the second person may apply for a waiver at the same time the notification is given to the Minister.

Subregulation 5.21A(3) prescribes the requirements for an application for waiver of a fee. An application is required to include information about the applicant, the grounds on which the waiver is sought and the reasons why the applicant considers it should be made.

Subregulation 5.21A(4) prescribes that the Minister must consider the application within 20 business days of the application being made.

Subregulation 5.21A(5) requires that the Minister advise the person proposing to take the action about whether or not all or part of the fee has been waived and the reasons for that decision, as soon as practicable after making the decision.

Subregulation 5.21A(6) clarifies that if the Minister decides not to waive all or part of a fee after considering an application, this does not prevent the Minister later waiving all or part of the fee on the Minister's own initiative, at any time.

Where a referral is accompanied by an application for a fee waiver, the Department will not commence work on the referral until the fee waiver application has been processed and approved, or until the required fees have been paid (see section 521A of the EPBC Act).

*Subdivision L – Refunds of fees*

The heading of subdivision L is 'Refunds of fees'. Section 520 of the EPBC Act allows the regulations to provide for the refund of fees. This subdivision sets out the circumstances in which all or part of fees will be refunded.

*Regulation 5.22 – Refunds of a fee*

Regulation 5.22 prescribes the circumstances in which a fee (or part of a fee) may be refunded.

Subregulation 5.22(2) provides that where a person pays a fee that he or she is not required to pay, the Department must refund that fee.

Subregulation 5.22(3) provides that where a person overpays a fee, the Department must refund the amount of the excess.

Subregulation 5.22(4) provides that where a person pays a fee that is later reduced after a reconsideration decision is made under Part 19A of the EPBC Act, the Department must refund the amount by which the fee is reduced.

*Regulation 5.22A – Refunds of a referral fee*

Regulation 5.22A prescribes that where a person has paid a referral fee, if the Minister refuses to accept a referral under section 74A of the EPBC Act, because the action that is the subject of the purported referral is a component of a larger action, the Department, on behalf of the Commonwealth, must refund the referral fee of \$7,352 (see subregulation 4.02(2) which prescribes the amount of the referral fee).

*Regulation 5.22B – Working out the amount of a partial refund*

Regulation 5.22B prescribes the method that would apply to determine the amount of partial refund payable when the Minister has determined that special circumstances apply.

This regulation potentially applies where a stage of the assessment for a particular action is underway and the circumstances of that action change, such that the stage of assessment does not need to be completed.

Subregulation 5.22B(1) requires the Minister to apply the method in subregulation 5.22B(2) for working out the amount of the refund, if the Department has partially completed a stage of assessment for a particular action and any of the following occur:

- (a) the Minister considers that there are exceptional circumstances for refunding part of the fee for the relevant stage of assessment;
- (b) the Minister decides to lapse the action under section 155 of the EPBC Act and considers that there should be a refund for part of the fee for the relevant stage of assessment;
- (c) the person withdraws the referral of the action under section 170C of the EPBC Act and the Minister considers that there should be a refund for part of the fee for the relevant stage of assessment.

Subregulation 5.22B(2) sets out the method for working out the amount of the refund. First, the Minister must consider the steps of the relevant stage that have already been completed and the remaining steps for that stage of assessment. Second, the Minister must estimate an appropriate portion of the fee payable for the particular stage of the assessment that the Minister considers should apply to the steps that have been completed and the remaining steps. The refund would be the portion of the fee for the remaining steps.

Calculating the amount of a partial refund is a method for working out a fee and can therefore be reconsidered in accordance with section 514Y of the Act.

*Subdivision M – Exemptions from fees*

The heading of subdivision M is 'Exemptions from fees'. Section 520 of the EPBC Act allows the regulations to provide for exemptions from fees. This subdivision sets criteria for qualifying for an exemption and the effect of ceasing to qualify for an exemption.

Regulation 5.23 – Qualification for an exemption

Regulation 5.23 prescribes the criteria which a person must meet to qualify for an exemption from one or more of the fees that would otherwise be payable under Division 5.6 of the Regulation. The criteria are that the person proposing to take the action be either an individual or a small business entity. The person must notify the Secretary of that fact.

The definition in regulation 5.12A provides that the term small business entity has the same meaning given by the *Income Tax Assessment Act 1997*.

Subregulation 5.23(2) allows the person proposing to take the action to notify the Secretary of the fact that the person meets the criteria of exemption at any time. In the case of the referral fee, the person must notify the Secretary of their exemption at the same time as they refer the proposal. This subregulation also clarifies that the person will only be exempt from fees that would be payable after the person notifies the Secretary that the person meets the criteria for exemption. This is also further clarified in subregulation 5.23(4).

The effect of subregulation 5.23(2) is that a person proposing to take the action who does not meet the criteria for exemption at the time of referral, may subsequently apply for an exemption for the remaining fees if they become eligible for an exemption due to a change in circumstances during the assessment process. For example, if a company is not a small business entity when it makes the referral but becomes a small business entity before stage 3 of a referral and provides notice of this fact to the Secretary before stage 3 commences, the company would not need to pay the fees for stages 3 and 4 of the assessment.

Subregulation 5.23(3) sets out the requirements for a notification to the Secretary that a person proposing to take the action meets the criteria for exemption. The notice must include:

- (a) administrative information about the person and if available the relevant referral;
- (b) if the person is a small business entity, a declaration that the entity is a small business entity as defined by the *Income Tax Assessment Act 1997*;
- (c) a declaration that the person or entity is not taking the action on behalf of, or for the benefit of another person or entity. This prevents the individuals and small businesses from referring actions on behalf of third parties to avoid paying fees; and
- (d) if the person is a small business entity the day or income year in which the person became a small business entity.

Subregulation 5.23(4) clarifies that a person taking the action cannot retrospectively seek an exemption, even if the person would have met the criteria for the exemption, had the person notified the Secretary of that fact before the fee was payable.

If a person who has obtained a fee exemption, however, is subsequently found not to qualify for the exemption, the full fee that would otherwise have been payable by the person, is recoverable as a debt due to the Commonwealth.

Regulation 5.23A – Secretary may request evidence

Regulation 5.23A provides that the Secretary may, for the purposes of verifying that a person qualifies for exemption, request evidence to support the person's notification that the person is a small business entity as defined by the *Income Tax Assessment Act 1997*.

*Regulation 5.23B – Person exempt from paying fee to notify Secretary if circumstances change*

Subregulation 5.23B(1) requires that a person taking the action who has provided notice to the Secretary that the person meets the criteria for an exemption, must advise the Secretary if the declaration in the notice that the person is not taking the action on behalf of another person or entity ceases to be true. This must be done before the next fee is payable.

Subregulation 5.23B(2) requires that a person taking the action who ceases to be a small business entity must advise the Secretary of that fact. The person must provide this advice before the next fee (after the person becomes aware that it is not a small business entity) is payable.

Subregulation 5.23B(3) provides that it is an offence for a person taking the action to not advise the Secretary of a change in exemption status as required by subregulations 5.23B(1) and (2) within 10 business days after the person first becomes aware of the change in exemption status.

Subregulation 5.23B(3) is framed with regard to the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* and the principles outlined in the *Senate Scrutiny of Bills Report 6/2002* and the Government response tabled in June 2004.

Subregulation 5.23B(4) provides that an offence against subregulation 5.23B(3) is an offence of strict liability. The requirement to notify the Secretary only arises when the person becomes aware of the change in status. Subregulation 5.23B(3) is framed with regard to the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* and the principles outlined in the *Senate Scrutiny of Bills Report 6/2002* and the Government response tabled in June 2004.

The application of strict liability to an offence under 5.23B(3) is proportionate to the policy goals of the Regulation. A person who has failed to advise the Secretary of a change in status would avoid the imposition of fees. The cost of the assessment of their action would instead be covered from general revenue, undermining the policy of the *Australian Government Cost Recovery Guidelines* that those who create the need for Regulation should bear the costs rather than the community at large. The strict liability offence ensures that a person who is not in fact eligible for an exemption does not benefit from work done by the Department without paying the costs of that work because they have ignored or not turned their mind to information which indicates that the person's exemption status has changed.

The offence is punishable by a fine of up to 50 penalty units which is within the acceptable range set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* and is not subject to a penalty of imprisonment.

*Regulation 5.23C – Effect of ceasing to qualify for an exemption*

Regulation 5.23C clarifies the effect of ceasing to qualify for an exemption. The effect is that the person taking the action would not be required to pay fees for any stages that had commenced while the person qualified for an exemption. The person would be required to pay fees for any stages that commence after the person ceases to qualify for an exemption.

*Subdivision N – Miscellaneous rules relating to fees*

The heading of subdivision N is 'Miscellaneous rules relating to fees'.

*Regulation 5.24 – Fees and transfer of approvals*

Section 145B of the EPBC Act allows an approval holder to apply to the Minister to transfer that approval to a second person. The Minister must consent to this transfer for the transfer to have effect. Regulation 5.24 provides for the second person to pay fees that had not been paid, either because the original approval holder met the criteria for an exemption or because the fees for the assessment were waived. The second person would be able to apply for a waiver or demonstrate that they are entitled to an exemption.

This regulation reflects the principle that the person who gets the benefit of an approval should pay the costs of the services provided in relation to that approval. They should not avoid paying these costs by having a person who is entitled to an exemption or waiver go through the assessment process.

Where the original approval holder (the transferor) paid the fees for the assessment of the action, there may also be fees that become payable after the approval is transferred. For example, the new approval holder (the transferee) may need to pay fees for the assessment of action management plans.

Subregulation 5.24(1) provides that regulation 5.24 applies where a person seeks to transfer the approval under section 145B of the Act and:

- (a) the transferor paid the referral and other assessment fees;
- (b) the transferor was exempt from paying the referral or other assessment fees; or
- (c) all or part of the fees that would have been payable by the transferor were waived.

Paragraph 5.24(2)(a) requires the Secretary to provide the transferee with a copy of the fee schedule relating to the assessment of the impacts of the action.

Paragraph 5.24(2)(b) requires that if the transferor had paid all fees that had become payable in relation to the relevant action, the transferee must pay any new fees that become payable after the transfer. As noted above, this may include fees for the assessment or variation of action management plans, or for requests to vary approval conditions.

Paragraph 5.24(2)(c) requires that where the transferor was either exempt from paying fees, or had fees waived, the transferee pay the fees that would have been payable if the transferor had not been exempt or the fees had not been waived.

The note for subregulation 5.24(2) identifies that the transferee may also apply for a waiver or qualify for an exemption. The transferee is not entitled to request a reconsideration of the fees if the transferor had already requested a reconsideration of those fees. See above about regulation 5.20 for further information.

*Regulation 5.24A – Fees and lapsed proposals*

Regulation 5.24A clarifies that where the Minister lapses an action under section 155 of the EPBC Act, the person proposing to take that action is not entitled to a refund for the referral of the action, or any completed stage of the action. Partial refunds are not available in relation to referrals because of the short time in which a referral is undertaken and the comparatively low fees for this part of the assessment.

The person may be entitled to a partial refund for the stage of the assessment that is being carried out at the time the lapsing takes effect. See above about regulation 5.22B, for further information about how a partial refund is calculated.

*Regulation 5.24B – Fees and a change of person proposing to take an action*

Section 156F of the EPBC Act allows a person proposing to take a referred action to notify the Minister that he or she no longer intends to take the action and that a second person intends to take the action instead. Regulation 5.24B requires that in certain circumstances the second person will be required to pay all or part of the fees for the assessment.

Subregulation 5.24B(1) provides that regulation 5.24B applies where a person proposing to take a referred action (the transferor) notifies the Minister under section 156F that the person no longer intends to take the action and that another person proposes to take the action (the transferee); and

- (a) the transferor paid the referral and other assessment fees;
- (b) the transferor was exempt from paying the referral or other assessment fees; or
- (c) all or part of the fees that would have been payable by the transferor were waived.

Paragraph 5.24B(2)(a) requires the Secretary to provide the transferee with a copy of the fee schedule relating to the assessment of the impacts of the action.

Paragraph 5.24B(2)(b) requires that if the transferor had paid all fees that had become payable in relation to the relevant action, the transferee must pay any new fees that become payable after the notice.

Paragraph 5.24(2)(c) requires that where the transferor was either exempt from paying fees, or had fees waived, the transferee pays the fees that would have been payable if the transferor had not been exempt or the fees had not been waived.

The note for subregulation 5.24B(2) identifies that the transferee may also apply for a waiver or qualify for an exemption. The transferee is not entitled to request a reconsideration of the fees if the transferor had already requested a reconsideration of those fees. See above about regulation 5.20 for further information.

*Regulation 5.24C – Fees and government agencies*

Regulation 5.24C clarifies that regulation 4.02 and Division 5.6 (Fees) applies to Commonwealth agencies, state and territory agencies, and local governments.

**Item 5 – Schedule 10 (before item 1 of the table)**

Item 5 includes the offence for failing to notify the Secretary that a person is no longer exempt from paying a fee (regulation 5.23B) into the list of offences to which infringement notices relate.

The offence at regulation 5.23B is explained above. The requirement to notify the Secretary that a person is no longer exempt from paying a fee only arises when the person becomes aware of the change in status. It is appropriate for this offence to be a strict liability offence because it would be difficult for the Commonwealth, having shown that the person was aware of the change of status, to prove that the failure to advise the Secretary was intentional.

**Item 6 – Dictionary**

This item inserts certain definitions into the Dictionary for the regulations.