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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO COST RECOVERY

MRS H.J. OWENS, Presiding Commissioner
PROFESSOR J. SLOAN, Commissioner
DR R. STEWARDSON, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON TUESDAY, 28 NOVEMBER 2000, AT 9.37 AM

Continued from 27/11/00

MRS OWENS: Welcome to the resumption of public hearings of the Productivity's inquiry into cost recovery by Commonwealth regulatory administrative and information agencies. I'm Helen Owens, presiding commissioner on this inquiry, and with me is my fellow commissioner Judith Sloan and our associate commissioner Robin Stewardson on my left. Public hearings have been held in Melbourne and Sydney. We resumed in Canberra yesterday and will be in Canberra tomorrow and next week, and then we'll be holding video hearings in Adelaide and Perth. The scope of the inquiry is specified in the terms of reference. Copies of this and other inquiry documents are available on the table in the bar.

The commission has three main tasks in this inquiry, to review existing cost recovery arrangements by regulatory administrative information agencies, to develop guidelines for the future application of cost recovery by the Commonwealth and to review cost recovery arrangements under the Trade Practices Act 1974 as part of the legislative review required by the Competition Principles Agreement between the Commonwealth and the states and territories. Public submissions are vital if the commission is to be successful in these tasks. The public hearings provide the opportunity for participants to make oral presentations and discuss their submissions with the commissioners. This is an important part of the public inquiry process as the commission is also able to seek clarification and pursue particular issues in greater depth.

We try to keep the hearings informal despite the microphones and we take a transcript for the public record. Transcripts are normally available on the commission's Web site within a couple of days of the hearing and will be sent to each participant in relation to their own session's proceedings. Now I'm turning to Regulatory Solutions Pty Ltd, our first participant, and would ask you to identify yourself for the transcription service and then speak to your submission.

MR KENTWELL: Thank you, commissioner. My name is Doug Kentwell. I'm the managing director of Regulatory Solutions Pty Ltd. That's a Canberra based company that specialises in assisting industry with machinery of government issues from routine to delicate. The reason that I have thought it worthwhile to contribute to this inquiry is because I spent quite a lot of time, approximately 31 years, in the federal bureaucracy, in the health and welfare sector. In the last five years I've been managing director of my own company and in so doing I've seen this particular matter from both sides.

When I was in the federal bureaucracy I was involved in financial administration including the - I undertook the initial feasibility study on fees and charges for the Therapeutic Goods Administration. I was involved in the implementation of the Therapeutic Goods Act 1989 and the practical implementation of the initial 50 per cent cost recovery there, and in contrast for the last five years as a private consultant to the therapeutics industry. I've also been involved in the other side of the picture in assisting the industry with issues that they have with the TGA in relation to fees and charges. So from that perspective I thought that I may have something valuable to contribute, thank you.

MRS OWENS: Yes, thank you very much. I think you might. I think having worked on both sides, particularly in that setting up period with cost recovery, I think that is going to provide us with some valuable insights and I think your current experience is to the extent that you can talk about the issues you're confronting on behalf of your clients. I think that also will be particularly useful for us as well. So thank you very much, and I think I said to you before we started this session today that we've had quite a lot of input from other participants on the TGA, talking from different perspectives in relation to different aspects of the TGA's work: pharmaceuticals, medical devices. Complementary medicines people have had some concerns. So we'd be interested to get your input on that particular issue.

Maybe we should just go back in time to the time when you were working on the cost recovery policy first, because I think that would be a good place to start, getting a bit of history, because as I understand it there was initially quite a lot of thought given to issues such as the public-private mix of services and there was, I think, an understanding that some of the work that the TGA undertook did have a public good dimension and the initial policy was to go to 50 per cent cost recovery and then there was a gradual increase that went to 75 per cent and then to 100 per cent. Have you got any comments that you'd like to make about that evolutionary process and whether there was sufficient rationale in place to justify that change in policy over time?

MR KENTWELL: I thought we'd start with the easy ones first. When the proposal was put to go to 50 per cent cost recovery there were a number of functions identified as so-called public interest functions. Some of those over time - I remember the Australian prescriber was transferred out - were removed from the organisation. Now, I can't at the moment recall some of the others. But I was, I must admit, surprised when the government announced that it would move to 75 per cent, then in time 100 per cent full cost recovery because from my understanding of the situation at the time there would have still been a component of the function that would include a public interest function.

Now, given that that was the case and that they were going to 100 per cent, and depending on the mix of fees and charges, I just found it surprising that they could justify that.

MRS OWENS: In terms of the public good component that was there at the time you say that there is still a public good component now and it's pretty much the same public good as it was in place in 1989.

MR KENTWELL: One of the problems with what's in the public interest with the Therapeutic Goods Administration I think is a little bit fluid. For example, one could say that post-marketing surveillance, the safety aspect, is a public interest function. But from an administrative perspective the Therapeutic Goods Administration could say, "Well, as part of the evaluation process and the decision-making process we require companies to notify us of any safety related changes etcetera within a certain

period FO time, or any other changes that occur once the product is on the market." So it could be interpreted that it should be part of that fee, user pays, evaluation process. However, as I said initially, that is debatable. People could say that's an intrinsic component of the public interest function to protect the health of the Australian community, so it's a difficult area.

DR STEWARDSON: Can I just clarify something. It was use of the term "public good" and you're using the word "public interest". You're not equating public interest to necessarily to the technical term "public good". Is that correct?

MR KENTWELL: No, I would assume they're the same. Well, in my using that term "public good" or "public interest" it's merely the government's obligation to the community at large that goes outside a specific operational part of the organisation's activities.

DR STEWARDSON: You're familiar with the strict economic definition of the public good, that one person's use doesn't conflict with another person's use of it and you can't exclude people from using it?

MR KENTWELL: No.

DR STEWARDSON: No, okay. I just wanted to clarify whether you were equating that public good in that sense with public interest or not.

MR KENTWELL: No.

DR STEWARDSON: That's fine.

MRS OWENS: I have a terrible habit of using the terms interchangeably, but I think the TGA does too. So I think there's a bit of sloppiness in the terminology. We'll address it when we actually write our report, but in the meanwhile public good, public interest - I think what we are talking about in the context of the TGA is the aspects of its work which is going to have broader community benefit rather than the benefit going to either the individual company or the individual consumer. So basically we will just clarify that. That's what we're probably talking about in this context.

MR KENTWELL: Yes.

DR STEWARDSON: Can I ask just one more question about that. When you say it's a public interest function, you're accepting, are you, that government on behalf of the people has the right and perhaps the duty to decide what those public interest things are, whether this is the paternalistic thing that's decided for us by the government and until such time as we throw them out we accept that?

MR KENTWELL: Well, I think that's inevitably how it works in practice. The government takes on certain policy positions for the common good, so to speak, and they're identified as such and treated as such.

MRS OWENS: You mentioned post-market surveillance where there's a degree of fluidity and I think that there is a recognition amongst some of the people we spoke to that post-market surveillance is really something that is done as a broader - you know, to protect the community. But then there is an aspect where you could say that it's in the consumer's interests, the individual consumer's interests, to have some post-market surveillance as well, couldn't you?

MR KENTWELL: Yes.

MRS OWENS: So it's really a bit of a grey area.

MR KENTWELL: Yes.

MRS OWENS: I think one of the very first things you talk about in your submission is the issue of a tension between the regulatory conduct of the industry and relying on industry for actually funding the regulator.

MR KENTWELL: Yes.

MRS OWENS: And I think I'd like to just explore that a bit more. Is that tension there because you feel that the industry then will want to have some sort of say on how the money is spent or some say in the regulation itself, that there may be some degree of regulatory capture by the industry?

MR KENTWELL: I think the best way to outline this is to perhaps look at a bit of history. Up until the late 80s there had been 13 separate independent inquiries into therapeutic goods administration. It wasn't until the Bowen Report that the government accepted in its entirety virtually that fundamental change was introduced regardless of the views put by the Therapeutic Goods Administration at the time. Usually with most inquiries by government, recommendations arise. They're put to the relevant agencies. The agency have their input and the minister does the balancing act in deciding which ones the government will adopt and which ones they won't. So it is obviously agency pressure.

Now, the government accepted all of Bowen's recommendations in their entirety. There was a culture within the therapeutic goods area of being a policeman, you know, that multinational drug companies tried every trick in the book to promote their products, to try and get products on the market, and it was an adversary sort of atmosphere.

MRS OWENS: Is it still there?

MR KENTWELL: I'll get to that in a minute.

MRS OWENS: Okay, sorry for interrupting.

MR KENTWELL: That's okay. One of the major changes that occurred over about a five or six-year period of that time was for that adversary culture to be broken down and there was a number of mechanisms for that. There was a change in the mix of officers of the TGA. There was the introduction of fees and charges. Apart from the element of offsetting consolidated revenue expenditure for that function, which DOF looked at very enthusiastically at the time, there was also the issue - although it wasn't prominent at the time - that by having a mechanism by which industry in part paid for the function would create a link, a form of accountability link, so that there be a cooperative synergy between the two parties.

Over time what you get with successive administrations and a successive mix of different people in an organisation is that that culture peaks and wanes, so that you will get a situation where the policeman-type culture will become more prominent at times and then perhaps dissipate somewhat, so that given that background this does create tensions between the industry groups and the agency key regulators, and it is difficult now that we've got a 100 per cent cost recovery for an agency which is very fearful of being seen to be too close to the industry, when it's in fact funded by that industry. They have a mechanism which has changed apparently in its complexion by which the industry peaks meet regularly with senior management of the TGA to look at the operational efficiency of the agency, fees and charges etcetera. However, my understanding is that the effectiveness of that particular mechanism has varied considerably over time.

MRS OWENS: We've certainly had quite a few complaints or concerns expressed to us about that. I think industry still feels that are decisions taken to which they have had very little input and obviously there's a lot of concern about the charging arrangements and the efficiency of the organisation. They basically see that there's no incentives in the arrangements to promote efficiency within the TGA and they particularly have expressed concerns, let's say, about the laboratory. But also I think there's a feeling that the TGA does a lot of things that it doesn't necessarily mean to do and there's a lot of potential to contract out some of its activities like conformance assessment, if you're talking about devices. What's your general impression about the incentive effects on the TGA?

MR KENTWELL: I think that in the absence of a proper mechanism by which this can be monitored I think that the incentive for achieving efficiencies in administration - first of all, I'll just qualify that - differ with a different managerial regime but I think that generally speaking without an effective mechanism are very poor.

PROF SLOANE: There seem to be two issues with this 100 per cent. I mean, I thought your submission was very thoughtful, although I was dying for you to give examples, if you know what I mean. I mean, there are two issues about the 100 per cent. First of all there seems to be a fair degree of agreement amongst the sort of user community - if I can call you that - that they shouldn't be paying for things that are kind of outside the direct regulatory remit of the organisation. So these agencies do kind of a variety of things: they advise the minister, they liaise with international agencies and various things which actually end up probably costing quite

a bit of money. So I think there's some quite understandable resistance to cost recovery for things that really should be paid by another means.

But there's a kind of more in principle issue which I kind of thought you were also getting at. I mean, I presume you agree with that point that there has to be a very direct relationship to the cost of the regulatory function that they're paying for with no other leakages or no other injections that they want to throw in.

MR KENTWELL: There is - if I can just comment on that - the issue of the difference between fees and charges. When the cost recovery was originally designed it was partly modelled on similar regimes in Sweden, UK and the US, and industry in those countries accepted it, and given that most of the companies are multinationals the odds were that this would be an acceptable industry in Australia - this is when the policy was developed. However, the mix between fees and charges in those countries - take for example Sweden - was different. The problem with fees at the time - as we identified at the time - was that they have to relate directly to the resource cost of providing the service, whereas it charges a tax and it's governed by separate statute. Because you didn't know - depending on the products coming down the R and D development stream - what would be coming to fruition to walk in the front door, you didn't know what your fee was going to be - your total fee revenue would be - over any given period of time.

So the proposal put was it should be 60 per cent charges, because they're static, so you can form a critical mass of your organisation which will be supported by a definite income stream through charges, and only 40 per cent through evaluation fees. However, that was changed at the time before implementation to the reverse, roughly, because there was concern, particularly by the medical device industry, that if charges were so high, they had such a diversity of devices, an enormous quantity of devices, this would be too onerous a cost on the device industry. So the TGA was initially struggling under the fact that most of their revenue was through fees based on applications walking in the front door.

I understand in recent years that's been redressed, they've moved back to increasing the charges, so that in that, the charges because they're static they do have a security blanket, so to speak of an income stream that can cover all of those.

PROF SLOANE: It would be nice to run a business like that, wouldn't it?

MR KENTWELL: Yes, it would be.

PROF SLOANE: But, I mean, the second issue though is the philosophical principle of whether a 100 per cent cost recovery, even if it's direct cost, is appropriate because you are kind of underlying the potential for this to undermine or be seen to undermine the independence of the regulators, and also the fact that these regulators are set up to promote the public interest, and if they're set up to promote the public interest they're not set up to confer benefits on industry.

MR KENTWELL: I agree. My personal view is that I was surprised, as I said earlier, when they actually achieved 100 per cent because I thought in terms of the public interest components and because of - although I'm not a lawyer, my understanding of the law in relation to taxes, that they could actually recoup 100 per cent.

PROF SLOANE: I mean, part of the trouble is that if you look at your principles at the end and then if I look at the terms of reference of the TGA industry consultative committee, on paper the TGA industry consultative committee doesn't look too bad. It's set up with the stakeholders - I don't know, it looks as though Uncle Tom and all are probably on it now. I suppose there is that issue. It meets a minimum of twice a year. That's a bit of a downer, I would have thought, if it was going to be a real process. Twice a year doesn't sound very often. But they're there to look at the TGA corporate plan, they're there to look at the TGA performance against key performance indicators, they're there to examine and comment on the TGA budget, including new initiatives and other budget measures and proposed industry fees and charges.

So I look at your list and I think, "Well, tick, tick, tick," but then the actual feedback we're getting from the TGA user community is that they're not happy with the way this process is working. It's kind of a dilemma for us because you read it on a piece of paper and you think, "That sounds very good," it follows your kind of golden rules.

MR KENTWELL: Yes, but I think what's on paper and what happens in practice are two entirely different things. Also I think one of the problems with conventional forms of consultations with stakeholders has to rely on the fact that the peak industry groups are efficient and actually represent their members.

DR STEWARDSON: But what I think we're asking you is, do you have any positive suggestions of how you would organise - whatever you want to call it - an industry consultative group, in such a way that industry would feel that it did have a genuine information about an input into the decisions about efficiency of operation and charging of fees of one of these regulatory agencies - TGA or whatever - without at the same time actually controlling that agency which as you've pointed out is something that shouldn't happen because the agency has got to be independent and fearless in its determinations.

MR KENTWELL: Look, I think the solution is quite simple.

DR STEWARDSON: Good. Let's have it.

MR KENTWELL: As I indicated in my paper, I think that the first point is ideally it should be based in statute and legislation, perhaps develop a model for it so it applies universally, similar to the standard appeals mechanisms, to the AAT which are modelled through all the legislation - or common to each act, I should say. It needs to recognise key stakeholder membership. It needs to have an emphasis on standard operating procedures. I'll give you some examples as to why I'm saying this and I'm

going to just cover issues here. But I'll just give you some examples of some problems that I've encountered with clients.

I had an issue where the TGA had a particular fee to do a particular job and when the client applied, the TGA said, "You've got to pay another 3 and a half thousand dollars," and the client came to me and said, "What's this for?" It was for an additional medicinal substance that was not on the register of therapeutic goods. So I went to the regulations as I'm wont to do and it wasn't there. So then I went to the TGA's own published fees, both on the Web and from their publications unit and there it was. It had been added by, presumably, someone in their business management unit but had not been passed into regulation.

The industry had been paying this fee. They had no legal basis to ask for it because they had not put the regulations through to govern what they were doing. So I had some pressure put on me - I made some inquiries with the right people and they said, "Yes, look, we agree. Apparently they have acted too soon," or whatever. "They are charging this." So in the end they stopped charging it and I understand from the PMOO which is now the Australian self-medication industry peak, the TGA had advised them that if companies who had been charged this fee wrote to the TGA they would refund it.

PROF SLOANE: How would they know?

MR KENTWELL: Another example is where - if you know the TGA, they have fees for performance. They pay 75 per cent, if the TGA completes the evaluation, up to the date of the formal decision by the delegate. The company pays it on 25 per cent. In this particular case the company withdrew the application - quite often companies do for various reasons, commercial reasons - prior to the decision being made. The TGA decided to proceed to make the decision anyway. The only motivation that I could deduce from that was that they were proceeding to make the decision after the application was withdrawn merely to have it made within the time frame to get the extra 25 per cent in fee. Of course the problem there though is once you withdraw an application it doesn't exist, so they can't make a decision on it, so in this case they couldn't do it.

MRS OWENS: But they could get the fee?

MR KENTWELL: No, they can't do it. At an industry meeting a couple of weeks back I was advised by a representative of the AMA that the TGA now wished to move to change the legislation so as to be able to pick up that 25 per cent fee if a company withdraws its application. My only response to that was, "I think that's going to be a difficult juggling act in terms of drafting because the fee has to relate to resource input and if you withdraw the application at some time along the process whereby the process ceases, then how can you claim the 25 per cent because you'd have to calculate the cost of the resource input for the remainder of the process."

DR STEWARDSON: But those two examples are quite interesting. They're both

cases where you because of your knowledge have been clever and caught the TGA out in making a mess of their proper procedures. Unless you're saying that that's common practice in the TGA then those are exceptional cases. What I think we're really looking for is how to balance industry input effectively with ongoing proper operations of the TGA when they haven't just stuffed up as in those two particular examples.

MR KENTWELL: In response to that all I will say is that these are examples, specific examples, I have picked out. I do an enormous amount of work. I cross a whole range of issues in relation to the TGA, not just cost recovery, and they have a misunderstanding of the proper legal role of guidelines for a start. They're not aware of their obligation to promulgate guidelines, prospectively to the world at large, in order to ensure proper compliance. That's why I'm getting back to standard operating procedures. That's why there is a need for SOPs that are tried, proven, that they can follow.

DR STEWARDSON: So you're saying that we should have some legislation that says that for all these regulators, that some sort of body that is composed at least partly of the people being regulated. Correct so far?

MR KENTWELL: Yes.

DR STEWARDSON: And that this would lay down standard operating procedures for what? For determining fees and charges and this is a thing not just for one regulator. You're talking about something that would be standard for all regulators. Is that right?

MR KENTWELL: Yes. I think it's possible for it to be standard but the SOPs would relate more to the conduct of the agency in managing the fees and charges. The determination of the levels and those areas which will attract fees and charges can be more fluid in terms of the interaction at the committee level.

DR STEWARDSON: How does the legislation make the regulatory body pay attention to this advisory body?

MR KENTWELL: I think that if you put up a legislative scheme to this end you could encompass a number of principles that would force the committee to address jointly, collectively address, the key issues that need to be addressed in terms of where charges and fees should be - what activities should attract them, and so perhaps even a formula as to how they're set. From my experience in the bureaucracy - and I was involved, I was acting director, legal legislation in Vets, I was director legal legislation in health. I have prepared so many drafting instructions etcetera that I wouldn't like to think about it. This is feasible. This is easily done with a bit of work.

PROF SLOANE: I think it's quite an issue actually. I suspect we're uncovering a lot of illegal cost recovery activities - unwitting. I mean, it's all sorts of things. It's not that they necessarily don't have regulations powers but certainly over cost

recovery I think is quite common.

MR KENTWELL: I just want to make a comment on that and that is that I am convinced that the activities that may be outside the legislative authority are done, not wilfully - - -

PROF SLOANE: No.

MR KENTWELL: - - - they're done in total ignorance of how they should have been going about the function. I attribute no blame whatsoever to the public servants involved. It's just that they haven't been educated to know how to go about it.

DR STEWARDSON: Can we ask you how your proposed model would deal with two very kind criticisms that we're hearing. One is that the organisation concerned is being inefficient. It has set up a totally unnecessarily large and elaborate laboratory - it's best to take one hypothetical example - or it requires all sorts of unnecessarily detailed answers to questions in its paperwork or it requires too many repetitive bits of information where one could say, "For this chunk of stuff see something you have already got, and all we should give you is the changed bits" - things like that - questions of efficiency as well as questions of level of fee. How would your model address that sort of thing?

MR KENTWELL: The most appropriate mechanism to address that, and I know through experience you will get tensions over key issues, where the bureaucrats will dig their heels in on issues that the industry thinks are vitally important. You need an independent arbiter to be able to resolve issues that cannot be resolved within that committee structure. That independent arbiter, given that it is a regulatory function, should ideally be government based. The paramount principle here is that it is a regulatory function protecting public health and that has to always be preserved.

DR STEWARDSON: So we would have one regulatory arbiter for all regulatory bodies, would we? We wouldn't just have one for the TGA and one for NRA and one for whatever.

MR KENTWELL: I don't think it's necessary. I think that on the basis of the way that the Administrative Appeals Tribunal works now, I think it would be quite feasible to just have one, yes, who could address the issues and adjudicate.

DR STEWARDSON: Can I ask you for your reaction to a slightly different model where you had a body such as you have been talking about, perhaps set up by statute, and with some things set out as to the information that it was entitled to have which is more or less what you have been saying, but which has the right, and indeed the duty, to report not just to the regulatory body or the head of that regulatory body but to whoever controls the regulatory body, so in the case of the TGA, this body would report to the minister who would of course be then free to accept any critical comments it made or reject them, so that would mean this body wouldn't be itself controlling the regulator, but it would be giving it information and its formal report

direct to the person or body that was controlling the regulator and did have the power to tell the regulator to change its ways. Would that work?

MR KENTWELL: I think it would. I think that would probably be preferable to an ombudsman-type role where you can report to parliament. The responsible minister is elected so what you're doing is you're bringing in the Westminster system principles to the equation. I think that would be a good mechanism and in fact should be intrinsic to it. So the responsible minister, if he has a problem with it, can raise it in cabinet or whatever but you have got the government having an input to it, the elected government.

MRS OWENS: I think we just about exhausted our questions. There are actually other things I could have asked but we have run out of time, Doug, so I'm sorry about that, but we might just - I don't know whether you would be able to stay around. We have got another participant and then we have got morning tea but you probably need to go.

MR KENTWELL: My office is just 50 yards away in the Press Club building.

MRS OWENS: Well, come back for morning tea.

MR KENTWELL: So if you want me to come back I can duck back.

MRS OWENS: We might talk to you - I might give you a call at some stage because there are a couple of other things in your submission I would just like to ask you about but we have got our next participants here so I think we'll probably have to keep moving.

MR KENTWELL: Okay.

MRS OWENS: So we'll just break for a minute. Thank you for coming and we'll talk to you again.

MR KENTWELL: Thank you very much.

MRS OWENS: Our next participant is ScreenSound Australia. It's a national screen and sound archive. I think I have referred to that correctly. Could you both please give your names and your positions with ScreenSound Australia for the transcript.

MR BRENT: Ron Brent, director of ScreenSound Australia.

MS FROST: Elizabeth Courtney Frost, acting senior manager, corporate relations and state offices.

MRS OWENS: Good, thanks very much and thanks very much for the submission. I actually found it a very thoughtful submission. I was particularly pleased to get the couple of examples you gave us but I know you want to make a few opening comments, so please do.

MR BRENT: Yes, just very briefly, and thank you for the opportunity to make a couple of extra comments. We have put the submission together as a balance between not trying to go into inordinate detail but trying to give you a good picture of our organisation. One of the features of our organisation is it's very diverse in the sorts of services it delivers, the sorts of clients it has, and the reasons for delivering those services. So one of the key messages that I hope has come through in the written submission is that there is no single approach to cost recovery across the organisation. Depending on which activities were undertaken and who our clients are, we will vary our approach quite significantly.

The main point I wanted to add to the material in the written submission is that that also includes modifying policies in relation to any particular area of cost recovery. I think I have mentioned in there that in some areas we will give discounts to researchers if they give us copies of their research, but in fact the approach to cost recovery is much more flexible than I think I have indicated in the submission. So that we will come to deals for all sorts of different reasons and all sorts of different circumstances. That might include where we provide cheap services to overseas archives because of the importance of the work that they're doing and the inability of their domestic governments to fully fund the cost of the services they want from us; training services for instance.

At the other end of the spectrum it may be that we see a good commercial opportunity in promoting the archive through getting our material onto a commercial television network and therefore although a commercial television network would normally be expected to pay full price, it may be that there are publicity benefits that we're prepared to trade off against some of that price. So really, the message there is a much more flexible pricing arrangement than perhaps I have implied in the document but we do have a very clear-cut starting position at least in relation to all our pricing.

MRS OWENS: It's mainly the demand functions - - -

PROF SLOANE: That's what they're doing.

MRS OWENS: In economic terms, yes.

MR BRENT: Yes, exactly right.

MRS OWENS: It's not a bad idea. I thought that your approach was actually quite a good approach because a lot of the people we have spoken to really have been thinking more about, "We have to recover some costs. What are our costs?" They're thinking more, in Judith's terms, about the supply side. You know, "We've got to get these costs covered and we'll just impose charges to get there," whereas you're looking at the nature of your market, the people who are using the service, and tailoring it to that market.

MR BRENT: Yes.

MRS OWENS: I think our challenge is we have to develop guidelines that, you know, balance the rationale for doing it, giving some clear guidance as to how to do it, but at the same time ensure that this flexibility is there so that you don't go overboard and do something stupid. We don't want to have guidelines that are going to prevent the sort of flexibility.

MR BRENT: I guess that's music to my ears. One of my main concerns is that I think we have utilised the flexibility we have very effectively, and using some of the economic jargon I guess one of the key issues for us is the elasticity of demand for our various services. We have put a fair bit of effort into regulating price according to demand. The other side of the equation is using that also to align our capacity to serve the customers with the demand that we get for our particular services. Certainly if we were to reduce the cost of some of our services the demand would go up and we would not be able to meet all of the demand.

Price is just one way we regulate that and that's part of what I had in mind when I talked earlier about the flexibility in our pricing policies but the capacity to be very flexible in the cost recovery models that we use, and to vary them according to the area of our operations or the particular clients or the priorities for the archive, has been critical to achieving what I think has been a very, very pleasing result, both in terms of the amount of additional resources we have been able to put into doing our job through cost recovery and in terms of the effect that has had on the service that we have been able to deliver; being able to deliver more service as a result and being able to target that service better.

MRS OWENS: Because I mean, you don't want to ever lose sight of - I mean, you have an important cultural and social function. I mean, you're not there actually just to be running a private business, are you?

MR BRENT: Exactly.

MRS OWENS: I mean, therefore kind of what you do in terms of your activities,

probably you have to think about that ultimate objective too.

MR BRENT: Very much so. That is the bottom line on all of our business and that comes in two parts. On the one hand we have to make sure that our collection is safe permanently and that's an activity that will never be profitable, never be able to be run commercially in relation to the materials that we hold. Secondly, that it's accessible because unless it's accessible it becomes meaningless.

MRS OWENS: Sorry, Robin.

DR STEWARDSON: That's okay. I was just going to say that while I appreciate the benefits of flexibility, the downside of flexibility is that presumably it involves quite a bit of management time making those decisions and presumably that has got to be at a reasonably senior level, and presumably you may well get discontented customers complaining that, "You gave it to him for so much. Why not for me?"

MR BRENT: A couple of comments in response to that. The first is that we generally don't move the decisions on pricing even on being flexible in prices very high in the organisation, so that my branch and section managers, and generally my section managers which is - I don't know how familiar you are with the public service levels but it's at about - - -

PROF SLOANE: We are.

MR BRENT: - - - the APS - EL1 level, I think is the new jargon, EL1 level. That's where most of those decisions will be made. They will generally be made reasonably quickly without a lot of process, but on the basis they have a fair bit of experience of the market and of the customers. On the second comment about the unfairness or fairness, we have had very few complaints about our pricing. Most of the complaints we have are that we shouldn't be charging at all for a particular area of service and most of those have come from academia. That has been the area of the greatest discontent but still a very minor level of concern because most of the time the academics that work with us are actually working with us and not on a straight out full pricing model. Most of the academics who want to do research in our collection either come to some sort of special deal or are actually working much more actively on projects that we're encouraging or supporting and at very little cost.

I think the thing that stands out about our pricing regime has been almost no complaint. That includes on the one hand charging of the door for visitors who come to the door which we have done at various times and not at others according to the exhibition service we have been providing, and what other people around Canberra have done, and again playing that demand equation very carefully. At the other end of the spectrum charging for professional services to professional organisations.

PROF SLOANE: In your submission - and I agree with Helen, I thought it was very useful - but you had the benefits of cost recovery. I mean, on the face of it the first dot point, control of demand, looked a little inconsistent with the third dot point

which is expansion of the service.

MR BRENT: Absolutely right.

PROF SLOANE: So there I am, you know, the serious professor marking an exam saying, "Oh, God, I don't think they understand this." I mean, I think I know what you mean but you might like to expand on that regarding different natures of the market and stuff.

MR BRENT: That's certainly true. Certainly those are directly in conflict and what they reflect is two almost opposite responses to a particular problem we have and that is that there is a lot of demand for access to the sort of material we hold, and it is demand that from government appropriations we would not be able to meet. So the solution is to come to a balance between, on the one hand, charging for services which increases the funds available and therefore increases the service that we can provide, and on the other hand doing that at a level that will ultimately, if we take it to its full extreme, for full cost recovery, make the cost of services prohibitive and stop demand altogether. What we need to do is find that balance that allows us to expand the service as much as possible, not to deter demand unduly, but at one point comes to the level where the amount of demand that we are required to meet has been brought back to our capacity to meet that demand.

In a sense it's an acknowledgment that at the end of the day it's a loss-making business and it's a question of how much loss we can sustain and at what point you reach the optimum between minimising the loss and maximising the service.

PROF SLOANE: Presumably there is an element though of making sure that you're not fulfilling what you might call frivolous demand - you know, people, kind of thing, "Oh, well, maybe I could put a bit of archival material in this," you know, without really - and which might end up not being used. I mean, presumably if you are charging a real price people are actually having to put some thought into the real need for that archival footage in my - - -

MR BRENT: The short answer to your question is yes. The notion of frivolous demand and trying to avoid it is significant. Interestingly enough, most of that sort of concern relates to individuals rather than people wanting material for productions.

PROF SLOANE: Right.

MR BRENT: That does become a difficult issue. On the one hand you might have - perhaps I can give you an example. This is one I think that I got from Elizabeth some time ago, of an ex-soldier who came into our archive and trundled into the library, and saw our service where we have access to our database available in the library - it's now on the Web as well - and wanted to know if we would have any old newsreel footage. He had been a Digger in World War II and had landed on the beaches in Normandy, and he explained that there had been a newsreel cameraman a bit further down the beach and did we have the footage.

Now, given the probabilities of the occasion, was it an Australian newsreel photographer, was the camera running, did the film ever get off the beach, was it lost on the cutting-room floor, did it get properly exposed - - -

PROF SLOANE: Quite a few variables.

MR BRENT: Yes, exactly. The chances were virtually zero but our librarian looked up the database and there was some newsreel footage taken of the soldiers on that beach on that day, brought it out and shoved it in the machine, and he said, "Yeah, that's me, that's me." Now, it happens.

MRS OWENS: That is a wonderful public - - -

MR BRENT: It is.

PROF SLOANE: It happens frequently.

MR BRENT: Yes. I guess the point about that is, yes, it does happen frequently. Where that leaves us is we could say, "That's a pretty expensive service." Our person probably wasn't as expensive as it might have been but that person was probably working 15 minutes to find out the details of an old man, and it doesn't always flow as easily and as smoothly as it should.

MRS OWENS: But he probably spent from 1939 to 1945 working for the army for very little remuneration at great personal cost to himself and his family, and I think it's probably the least we could do.

MR BRENT: Exactly.

MRS OWENS: That's not an economist talking.

MR BRENT: But it's exactly right. That is the sort of equation. We represent - - -

PROF SLOANE: The social and cultural objectives of the organisation.

MR BRENT: - - - the national photo album, and we can't go around saying, "Look, this is an expensive request," and if we were to fully cost recover this service that's \$80 for half an hour's research and then video playing time and machines and so on. That's a simple one. Some of those requests could take days for us to research. In fact, we have got one we're working on in Victoria at the moment where a person wants to get the soundtrack from a movie that was made, I think, in about 1963. It was never publicly released but he believes that the soundtrack is music that he composed and that means finding some snippets of material and some out-takes from that film and recompiling bits and pieces of material that we have got from various sources.

That request will probably run to, well, certainly several thousand dollars worth of work and one has to ultimately make judgments about when is it doing a favour for a Digger who has done a favour for his country and when is it somebody's frivolous or even perhaps quite insane notion that they have got some stake in heritage that they might not have. Those judgments can be very difficult and we have to be really pretty hard-headed at times about making those sort of judgments.

MRS OWENS: Yes. Going from the - - -

PROF SLOANE: The romantic to - - -

MRS OWENS: - - - the romantic to something, can I just clarify something in your submission. There's a graph on page 5 which seems to indicate that the additional cash that you're getting by 1999, 2000, was just somewhere over \$3 million, and in the text later on, I think at page 8, you refer to the last financial year, an increase in revenue of well over 3 million. There just seemed to be a little bit of an inconsistency there but that might be talking about different - - -

MR BRENT: An increase in revenue from - the period is slightly longer. I have taken that figure and that - no, there are two differences. The first, I have taken that figure back a couple of years further. The graph starts in 94, 95, but the other side of that is that there I'm talking about revenue rather than additional cash. It's a subtle distinction that I should have explained a bit more clearly.

MRS OWENS: Yes, okay. It's just one of the questions my team has asked, you see, and I - - -

MR BRENT: Yes. Additional cash includes charges levied plus sponsorship and grants so that we're getting revenue from our services but we're also getting a reasonable amount of sponsorship and money from everything from the Centenary of Federation funding through to Visions of Australia.

DR STEWARDSON: So it's about a million of the sponsorship grants roughly.

MR BRENT: Yes. The biggest component of that is actually grants.

MRS OWENS: Now that we have clarified that, thanks for that, because my team will be very pleased that we have done that, the 2 million last year, do you at any stage try and do an estimate of how much it actually costs you? This is coming back to Robin's point to some extent, the administrative costs of actually having to charge for the services. That's not a costless activity. Do you try and pin that down?

MR BRENT: We do, and we have quite detailed costing models that try and identify the costs of particular services and the costs of the overheads. Most of the cost in charging would be at the overhead and that's in the financial administration end, in that we now have published pricing lists for most of our services and most of our pricing is reasonably standard. Most of the decisions about varying that, as I say,

are pushed down to a reasonably low level in the organisation which means that that process is simply a part of the service delivery. Prices are generally negotiated up-front when a customer is looking for a service. That's not to say there is no cost but it's a relatively low cost. The major cost then is in the administration that sits behind that, sending out bills, following up unpaid bills, receipting funds and so on.

We've had a look at that and we look at that in relation to particular operations and one of the consequences of that is that at the moment we're charging no entrance fee for our organisation because the cost of collecting the money and therefore the additional staff that we would need on the front counter and processing the funds would outweigh the level of revenue that we get, or at least would so largely offset it that it's not a sensible thing to do. Most of the time that isn't a serious problem and I guess one of the other things that I ought to identify in that is that a lot of the services that we're providing will provide large amounts of return often for relatively few enterprises. Therefore we might charge for a training program in South-East Asia and that will be several thousand dollars for a single enterprise. The cost of charging therefore is really quite small compared to the other costs of delivering the service. The time where there is the concern is they're multiple low-costs transactions such as low entrance fees at the front door.

DR STEWARDSON: Can I ask you two questions. I got the impression from reading this the other day that your basic charge is for access, that if I go and ask you for a copy of something or other then you charge me for getting that and you don't charge me for your basic initially having got the thing into your archive in the first place. You're nodding so I take it that's - - -

MR BRENT: That's correct. Yes, that's correct.

DR STEWARDSON: Are you making that charging on the basis that it seems a reasonable sort of fee in the light of your estimate of demand and what you think can come to you from government appropriation and that it's a sort of a practical decision in that sense, or from a more sort of principled point of view that you can, in some way, distinguish putting the thing into your archive from giving it to me?

MR BRENT: It's a clear mix of both. On the one hand, preserving the materials, putting them in our archives, looking after them forever, is the fundamental driving force behind the archive. That's our business as an archive. At the same time, as I mentioned earlier, it makes no sense to do that and not make the material accessible. It becomes irrelevant. So the principle that underlies the way we charge for our services is that the core business of building and saving the collection is something that not just current users should pay for but that is the fundamental responsibility of this government and this generation, to itself and to future generations, and therefore is not something we ought to sheet back to individual users of the collection right now, and that's reflected in that language of amortisation that we used in one of our examples.

The other side of that is the very practical side and that is that given the sorts of

costs involved we couldn't, in any case, recover the costs of storing material against the people who wish to use those materials. On the other hand, that given we do have the concept of regulating demand and measuring demand and charging what demand will bear, there's a very practical consideration about where we can actually get the additional funds and that those additional funds are generally applied to increasing access services. That's where the variable service delivery option exists. In relation to our management of the collection we have to do it and there isn't much scope for doing more or less, or not doing it or doing more of it. But in relation to delivering access it's as long as a piece of string and if we can get additional funds from that, they will go back into expanding that access.

DR STEWARDSON: Have you contemplated a royalty system in addition to your access? I mean, suppose a film maker were to get some video footage from you and then put it into a film about satellite tracking stations in New South Wales, to take a hypothetical example, and then make a considerable amount of money from screening the resulting film commercially?

MR BRENT: We have a range of fees and I'm not sure whether you could perhaps talk about how much we use that in relation to client services and professional users.

MS FROST: We have a usage, a schedule of usage fees, which is in line with similar providers of footage for those sorts of productions. So what we look at is standard rates or depending on the medium, whether it's going to be on television or pay TV or to be used for an educational video product. There's a scale of fees.

DR STEWARDSON: But it's just a larger up-front fee that you charge?

MS FROST: It's on the amount of footage that they use in the final production, so that - - -

MR BRENT: We have on occasions used a royalty on sales. We have one that I recently got the cheque for, from what is now I think Festival Records and used to be Larrikin Records. I think our latest cheque was for 18 cents. One of the problems of those sort of arrangements is that there can be an awful lot of administration for trivial sums of money. Occasionally there will be something like The Dish and if we were to come to that sort of a deal it may well be because that way we could make more money. But it's worth noting that most producers will not pay a lot of money for that sort of opportunity. A film like that could use footage from a range of sources and it's not going to make or break the film, if they got the really good footage from us or the second-rate footage from somewhere else, so that if we're going to push our luck and try and bite into their long-term administration of revenue flows, which are complex enough with all the copyright rules of today, I think we'd probably discourage usage of our collection very quickly.

MRS OWENS: And they'd say you were dragging down the Australian film industry.

MR BRENT: Exactly right.

MRS OWENS: Yes.

MR BRENT: It's the administration.

MRS OWENS: You wouldn't win that one.

MR BRENT: It's the administration cost of that sort of an arrangement that really is the killer and particularly when very few films are as successful as The Dish.

MRS OWENS: Can I just ask you, the examples you gave here on page 3, the first one you say that the overall costs would mount up to about \$1300. Is that what you'd actually charge?

MR BRENT: No, that's what it would cost and indeed - - -

MRS OWENS: What would you charge in that sort of instance?

MR BRENT: It depends who the user is and that's an important point.

MRS OWENS: Okay, so we come back to our demand side again, yes.

MR BRENT: Exactly right, and if we're talking about a grandmother who's looking for that footage where she was an extra in a silent movie it may be free. If we have an access video sitting in our headquarters building and she comes to our headquarters building and asks for a copy of - or to look at materials on site that are already in access format, that costs nothing. At the other end of the spectrum, if we're talking about the Nine Network wanting material for its 60 Minutes program we charge them big time.

MRS OWENS: I would charge them \$2000.

MR BRENT: Exactly. In fact I don't know whether you'd know off the top of your head how much they - and rarely would they use a whole hour, but let's say a television station wanted an hour's worth of material, full rates.

MS FROST: Full rates would, once again, be dependent on copyright and rights and that sort of thing. But just the copying costs themselves would be in the vicinity of about \$350. But then the usage of that material would then - and that's just straight copying costs.

MRS OWENS: You've said here the total cost to make the film accessible in video format would be in the order of 1300.

MS FROST: Yes.

MRS OWENS: So would you charge them that 1300?

MS FROST: We wouldn't charge them for the initial part of the dot points there for the - it would be really be when we're going to copy it, to actually do the copying. That's when the charging actually starts.

MRS OWENS: So it's really an incremental cost. So it's the incremental costs of access.

MR BRENT: The second table perhaps shows that a little clearer and when you go down to telecine - I probably should have explained some of these terms, but telecine is the process of turning film into video.

MRS OWENS: We knew that.

MR BRENT: And video transfer is then taking it from a master video onto the video that we can actually send out to an individual. So you can see those two costs together, if those are the two costs that need to be borne that's about \$400 an hour. But if they're looking at simply a video transfer, video to video copy, it could be as little as \$125 an hour.

MRS OWENS: And that's what you'd really charge. You're really talking incremental costs.

MR BRENT: Incremental costs, yes, very much so.

MRS OWENS: That's useful. So you're really saying that the rest of that is really your basic infrastructure. That's your infrastructure and that's basically free and then if you want access to that infrastructure you really pay the costs of copying the video or whatever, the incremental costs of doing that.

MR BRENT: Yes, very much based on marginal costs, and that comes back to this concept of the balance between regulating demand or getting the resources to expand that end of the service where we can fund it from the revenues that it generates.

MRS OWENS: Has there ever been any pressure brought to bear on you from your department or anyone else in government to actually charge more?

MR BRENT: No. When I joined the - and the reason for that statistic at the very end of the document where I say we went from \$289,000 to in excess of 2 million, the reason I quote that is simply - - -

MRS OWENS: Well done, Ron.

MR BRENT: I guess when you have a record like that - - -

MRS OWENS: No, I'm talking as the department.

MR BRENT: Exactly right. When you've got that sort of a statistic you don't get a lot of pressure from government. When you've delivered the results like that, then they don't see any need to tell us that we're not doing well enough.

PROF SLOANE: Because you're receiving material into the collection all the time.

MR BRENT: Very much so, yes.

PROF SLOANE: So it's very fluid, isn't it?

MR BRENT: Very much so, yes. We'd be acquiring perhaps 10,000 items a year and that might range from our news program where we collect news from somewhere in Australia every day of every week of every year through to home movies, bits of old film that somebody found on a rubbish dump. All that sort of material is still flowing in at a very substantial volume.

MRS OWENS: Now, you talk about the digital age here and presumably that's going to make quite a big difference at the end of the day to how you do your work and presumably to your cost structures. Would it potentially mean that your costs could come down considerably for some of this activity?

MR BRENT: There is a sort of nirvana at the end of something or other that suggests that one day managing digital information electronically on large computers that ship it around and renew it and check it could be very cheap. But between here and there, there are huge costs and just to give you an example when the archive was set up the archive ran two video formats, two-inch and one-inch. That was in 1984. Soon after that we had to add Beta "SP" digital which was the new cassette-based version of video that television stations use and we always had an access form which was a VHS. We now run - I think probably it's up to about 15 video formats. We're running four digital formats and I'd estimate that within two years we'll be running another four digital formats.

What digital has really done has been to explode the range of technologies that we have to cover and that is a real nightmare for us and it becomes even worse when you understand the technology involved, which is very complex but means that you can't necessarily go from one digital format to another, so that if we were to decide the new digital answer was DVC Pro 50, the digital format that seems to be preferred at the moment by news services - - -

PROF SLOANE: We knew that too.

MR BRENT: Exactly, and if tomorrow we find that Sony comes out with a product that's better and everybody moves onto the Sony product we can't shift all our DVC Pro 50s directly onto Sony because it uses different compression technologies and you

lose half your signal.

MRS OWENS: And I knew that.

MR BRENT: Exactly. The equations get more and more complex and therefore the technological gambles and challenges that we make are actually getting more complex at the moment. So this nirvana of managing everything digitally and it's all done automatically is a very long way off yet. The other side I should just mention is that for film digital doesn't help as much at all, and to put that into context the average feature film, if you fully digitised it so as not to lose any of the visual information, would take about 15 terabytes of storage. Just to put that into context, that's about the same amount of storage as 2000 home computers.

In other words, you just can't do it. You cannot store film digitally without losing large amounts of visual information and even if you could, if you then wanted to project it back on a large screen as distinct from a television, you'd have to put it back on film because no digital projection yet matches film. Now, again one day that will change and 15 terabytes you'll store on - I don't know, the button on your shirt or somewhere. But at the moment the digital age is a promise but the reality is just an awful lot of expense and an awful lot of work.

MRS OWENS: I think that's a very good quote you've just given us.

DR STEWARDSON: Can I come back to something I can understand. One of the earlier comments that we made this morning was that we're trying to draw up guidelines that will be sensible and helpful and one of the problems is that there are guidelines covering a range of organisations. Now, if you take the ABS for example which is fairly analogous to you in a way, basically what they do is, like you, they provide the basic thing into archives, so to speak, at public expense and then they charge an access fee for their basic material and then if they value add they charge the full incremental cost of the extra work that they do to provide more detailed information for somebody.

Now, it's within this framework of trying to think of regulations and guidelines that are useful for all things, or all organisations, and I'm asking this question, you do the same up to a point. You have your basic product into archive at public expense. You charge an access fee. Other things, the value-adding if you like, you're hunting around seeing if the soldier from Normandy was in the film and the other examples, with the value-adding you exercise considerable flexibility. Are you telling us, or should we think, that overall by the time you balance out the soldier from Normandy and Channel 9, that you fully recover those value-adding sections of your activity and that what you are in fact doing with your flexibility is sort of some forced cross-subsidisation between one and another of those users for what you believe to be good grounds, but are you overall fully cost recovering that value-adding activity or is the net result of your individual determinations meaning that some of that activity has not been covered by the fees and is being covered from government appropriation?

MR BRENT: Definitely the latter. We are well short of recovering the cost of access services overall.

PROF SLOANE: I love the taxes to pay for the Digger.

MR BRENT: Exactly, and indeed, not just the Digger. To put that into context as well, very few people in the population at large have ever heard of ScreenSound Australia or the National Screen and Sound Archive, and certainly vastly less than have ever heard of the National Library or the National Gallery or the Australian War Memorial. On the other hand, vastly more of them have used our collection. They just don't know it. Our collection appears on television and on radio all the time. We did some research through AGB McNair, was it?

MS FROST: AC Nielsen.

MR BRENT: AC Nielsen, which demonstrates that last financial year between 70 and 75 per cent of all Australians saw something from our collection. Our extrapolations show that roughly 30 to 40 per cent of the population saw at least an hour's worth of material from our collection. Whether that be on 60 Minutes, 7.30 Report, This Is Your Life, Barry Humphries' Flashbacks or whatever, Our Century - - -

DR STEWARDSON: You see, I think that that point you made that a much smaller percentage of Australians actually know of your existence or deal directly with you than say, as the case with the ABS and the other organisations you mentioned, that you can, as it were, get away with your benign paternalism on this charging of fees. I'm not quite sure how it translates into some of the more widely known bodies like the ABS.

MR BRENT: That is a difficult question. It's for us a very important one. On the one hand being an obscure organisation in some ways allows us to be obscure from the glare of scrutiny on some of these issues, but having said that, our users are very conscious of the prices that we charge and very realistic about whether they're prepared to pay them, and our political masters are very conscious of the amount of money that goes into an organisation that doesn't provide a lot of votes. So that does give us a pretty strong incentive to find the right balance between what is reasonable to charge and what is consistent with delivering the ultimate service that uses the public taxpayers would expect of an organisation of our character. So although they don't know that they're using us, they are using us. They are getting value.

PROF SLOANE: We assumed you exist, like a good economist.

MR BRENT: I think most people in the public would assume that somebody is actually doing some work to preserve this heritage.

PROF SLOANE: We hope so.

MR BRENT: And I think most would be prepared to pay the sort of money that the average taxpayer pays for us which is not like the ABC's eight cents a day but is a fraction of a cent a day, and most of them I think are quite comfortable with the sort of concept that where they want some extra service they should pay a reasonable fee for it. Our challenge is to make as much service available with as reasonable a fee as possible. So one of the things we have done is we have actually got our own product development program so that we know there are interesting things in the archive that people would like to see; footage of Grafton in the 1920s that the residents of Grafton would love to see.

PROF SLOANE: Yes.

MR BRENT: But if we say to them, "Well, come and research our collection and have a look for it and find it and then pay our fees and get it if you like," it won't happen. So we compile it on a video, take the video up there. We do it very cheaply so that it's not going to be a big burden to the taxpayer and then we sell that product.

PROF SLOANE: I bet they love it.

MR BRENT: And they love it, exactly right. That range of products now turns over about between a third and half a million dollars worth of product a year. It's sold through 700 outlets around the country. It's sold mail order. Literally hundreds of thousands of people have seen our collection through that vehicle. What that's about is trying to deal with this constant balance between the cost to the taxpayer of running an institution and storing materials and the fact that for it to be relevant it has to be accessible at a price that people can afford.

MRS OWENS: I think at that stage we might actually bring this session to a close. I'm sorry we have kept you longer than the designated half an hour that we had optimistically put into the program. We will now break for morning tea and we will resume at 10 past 11.

MRS OWENS: The next participant this morning is J.T. Larkin and Associates. Would you both please give your names and positions with the company for the transcript.

MR LARKIN: Yes. My name is Terry Larkin. I'm a director of J.T. Larkin and Associates, an economic and policy consulting firm in Canberra.

DR DWYER: My name is Dr Terry Dwyer and I'm a research associate with J.T. Larkin and Associates.

MRS OWENS: Good, thank you. Thanks for coming this morning. I'm sorry about the delay given to you but hopefully we will have enough time to cover some of the issues that you raised with us in your submission. But I understand, Terry, you would like to make a few opening comments.

MR LARKIN: Yes, I will make some opening remarks: firstly, to say it's a pleasure to be here and a most welcome inquiry by the Productivity Commission. In the work that we have done over the years, my colleague and myself, this issue of cost recovery and user charges is something which has engaged our mind more particularly from a theoretical viewpoint and then of course with its practical implications and its impact on the economic efficiency of the Australian economy, so it is a pleasure to be here. I have referred in my brief paper to some of the key points we wanted to make; firstly to refer to the publications in which we have been involved and which we believe should be drawn to the attention of the commission in this inquiry. Those publications have quite a large amount of theoretical discussion on this issue as well as practical aspects.

I talk about the empirical evidence and it does seem clear that there has been a profound change in Australian public finance with what we would call the rise of user charges that seems to have occurred around about the mid-1980s and of course that's also documented in the publications I referred to. We are strongly of the view that the user charges and cost recovery that we have witnessed in this change in Australian public finance is a disguised form of taxation and I must say we're rather pleased to see that the issues paper that you have prepared does indeed at least allow for that viewpoint to be taken. Indeed, I think you also notice, as we have, that it's surprising that this cost recovery and user charging, even though it might be argued is not taxation, is actually given effect to by formal taxation legislation by governments, so governments must be a bit worried that if they were challenged they would lose on that particular point.

I hope you won't think it's impertinent of me to suggest to the inquiry a number of the things they should do in this inquiry in relation to the collection and publication of empirical material. I think it would be good if, in your report, you could quantify the increase or the apparent size of cost recovery and user charges in Australia and either I suppose demonstrate to what extent they might have risen over the years. This is probably a little difficult to do, it might require some specialised statistical work, but I think it would be desirable. I also think it would be desirable if you could

model the cascade effects of these taxes as we believe they are on business and on economic efficiency. That could be done I'm sure with the use of the Prismod model which no doubt I'm sure the treasury would be glad to make available to you.

MRS OWENS: At a cost.

MR LARKIN: And also the contribution to departmental agency spending that these costs and charges which, as I say, we regard as taxation now contribute. We did want to mention there is a dead weight cost in cost recovery and user charges and that dead weight cost does arise from the elaborate administrative structures which accompany in departments and agencies the need to comply with an account for these costs. I have put a helpful little quote in there from the USDA which I think encapsulates it very well. Even the Americans who appear to be having a lot of success in running their economy at the moment are aware of the dangers of this sort of activity. I think it would be desirable again if you could quantify that in your report.

I suppose the most central point of our view is that short run marginal cost pricing should be the norm. It should be the point of departure for consideration of this matter and one should consider to what extent, if there is, any departure to be taken from marginal cost pricing. There was quite a long discussion of that issue in the publications I have referred to and we won't go over that here at the moment, nor on our, I suppose, discussion of Ramsey pricing which you will find dealt with at great length in those publications. I do think it's important to note that, it seems to me, that what has crept into the usage nowadays is not cost recovery but indeed full cost recovery and departments and agencies are now being told that they must have full cost recovery, not just cost recovery.

Now, why is it that there has been this, one might say, strengthening of this view, emanating no doubt from the Department of Finance and the Treasury, and indeed, not only in federal spheres but in state spheres, and I do think that, as I have mentioned later on, that full cost recovery not only exacerbates what we would see as the implicit taxation content and exacerbates the dead weight costs on the economy, but also it does lead to gold plating. It's more or less an invitation to departments to say, "Look, you must," so the departments can throw an extra bells and whistles and I suppose my discussion here is centred more on publications but one can have most gorgeous publications, beautiful colour, lovely, beautiful stuff, throw in more and more graphic designers, more journalists, more whatever, and (indistinct) has got departments pumping out agency's publications which certainly are most stunning in their visual and graphic quality but really what does that do for the economic efficiency of the nation?

PROF SLOANE: Not the Productivity Commission.

MR LARKIN: No, I was going to say, the Productivity Commission - - -

PROF SLOANE: We put out three dull looking - - -

MR LARKIN: I know. I wanted to say that in my view the Productivity Commission should be a model of - - -

PROF SLOANE: We are a little straight.

MR LARKIN: - - - because I can see they have stuck to black and white and it's fairly parsimonious but when one compares some of the other government publications and the gorgeous annual reports with departments vying to - - -

PROF SLOANE: No, ours is pretty dull, I'm afraid.

MR LARKIN: - - - collect the Institute of Public Administration prize for the best annual report. You can understand what I'm getting at.

PROF SLOANE: We even reused our photo of the commissioners.

MR LARKIN: So we recommend that you should affirm that marginal cost pricing should be the guiding principle and that you should indeed promulgate marginal cost pricing methodology guidelines through agencies of the department. I note in your issues paper I think you suggest this might be difficult but I don't see why a body such as yours couldn't promulgate what you see as the essential elements of marginal cost pricing if the Department of Finance can spend so much time in elaborating the full cost price in principles in accountancy departments, why can't you do that. So I do think - I have also mentioned here that it seems to us, I think again which we have referred to, that what seems to be taking over is the discipline of accountancy in this exercise, and more and more departments and agencies are enmeshed and the Department of Finance is issuing instructions based on accountancy principles rather than economic principles, and there is quite clearly a serious difference. If there wasn't a serious difference then there would be no need either for the discipline of economics or the discipline of accountancy, they would both be the same, and I think all of this comes back to the point of departure which Otelling, we believe, correctly put his finger on in 1938 and which we discussed at length in our publications, certainly in the private sector.

It is axiomatic that you must have full cost recovery, let us say, if BHP or CSR or any company did not have full cost recovery and wasn't run by accountants, and wasn't fully recovering its costs, it would clearly go bankrupt. It is not true the public sector and that conundrum or paradox of economics which I think was crystallised by Otelling and attacked by Ramsey and so on we feel should be central to the way in which you think about and approach this task. On marginal cost pricing, I extol the virtues of the Reserve Bank who - the good old Reserve Bank Bulletin, the price of which has actually never changed. Here it is, the Reserve Bank Bulletin, 12 copies a year, still \$25, \$2 a copy. Now, that's pretty good. That surely is marginal cost pricing.

PROF SLOANE: With some heavy degree of subsidising by the taxpayer.

MR LARKIN: No, no, not at all.

PROF SLOANE: Or by the Reserve Bank profits.

MR LARKIN: We would say it's a correct application of marginal cost pricing whereas elaborate and gorgeous publications, let us say for example, what do we have here, the ABARE Quarterly - here's the ABARE Quarterly, magnificent, beautiful, triple colour, fabulous, four copies a year, \$60, telling you about the supply and demand for beef and wool and things. I mean, it's clearly full cost recovery in the sense of average cost pricing or worse and so we would think the good old Reserve Bank deserves to be congratulated and indeed, one thing I thought of was you might even invite the Reserve Bank to give helpful seminars to departments and agencies in Canberra about the principles of pricing government documents, or to put it another way, if the Reserve Bank wanted to engage in Ramsey pricing which is clearly what is happening with most departments and agencies, this is clearly Ramsey. So is the ABS publications, clearly in my view Ramsey pricing.

If the Reserve Bank would engage in Ramsey publication, here we are, this has got the governor's semi-annual statement on monetary policy. I mean, merchant banks and banks would pay, how much, \$10,000 a copy. Really, if you want to engage in Ramsey pricing the Reserve Bank could extract enormous rent. Well, it's an amusing - I don't think it's necessarily a foolish comparison but there we are. But the gold plating, I do think the PC should develop and promulgate some undesirable gold plating indicators. You should say, "Thou shalt not print in triple colour and fabulous graphic designed should go to this." You should give some guidance to departments and agencies - - -

PROF SLOANE: That's probably going beyond our (indistinct)

MR LARKIN: No, I don't know.

PROF SLOANE: But coming back finally, I do think contestability and privatisation - I do think the current system does retired contestability and privatisation, the unvirtuous circle, as I call it, of full cost recovery, where departments are "instructed" by the Department of Finance to recover more and more of the full cost. Effectively then it means those departments and agencies, provided they play the game, recover more and more of the costs, are never put to the best of zero-based budgeting and the question is never asked, "Should you exist, shouldn't you be abolished, why is this function a core function of government?" I mean, for example, in the witness we just had before us, the National Film and Archives, it's all very nice, it's lovely, but that question is never put, and the present system doesn't invite that question; but there's an unvirtuous circle of, "If you continue to play the game, pull in more and more money," which is (indistinct) you will never be asked that question.

Governments will never put the zero-based budget test to you which was the

test of public finance up until the mid-80s so I do think there is an unvirtuous circle and that again should be - and I do think there is a role for contestability privatisation, and there should be a regulator-general. Why doesn't the Commonwealth - it has its regulatory reform unit, I think housing or institution - why can't that regulator have teeth? Why can't the Department of Finance instructions to XYZ Agency be subject to public inquiry for users and businesses to put their viewpoint. So I do think it's simply not acceptable for these monopoly and quasi monopoly agencies and departments of state to continue in the fashion they have. I would hope that would engage your vigorous attention in the course of your quite fascinating and interesting inquiries. I think that's all we really wanted to say and we hope that that will engage your attention.

MRS OWENS: Yes, I think it has. You have actually raised quite a number of issues but you said, Terry, at the beginning - I should probably ask the other Terry - - -

MR LARKIN: Yes, let the other Terry - I'm by no means loquacious and if you start with him, you will likely finish in half an hour.

DR DWYER: I would like to second that and give you an example. Remember when, in a previous incarnation, the Tariff Board it then was, was agitating for getting rid of tariffs and reform, getting rid of these costs in the Australian economy, and I remember when the 25 per cent tariff cut was introduced, I wrote to the prime minister of the day, Mr Whitlam, asking for a copy of the report. It came back no questions asked with a nice With Compliments slip from the prime minister of the time and I was pleased with the service as a voter and a taxpayer and a student of the time. I remember one of my uncles saying, "So it should be. Anyone who's interested in a democracy should have access to information to promote informed discussion."

Now, let me put it this way: how would you feel as a shareholder in a company if you asked for an annual report and you were told, "It will cost you \$50." Why isn't every voter given the budget papers as of right upon request? This is information which has to be compiled. The taxpayer is already paying for it and it should be available on demand. I will give you an example of monopoly abuses in the public sector. For years on and off I have subscribed to that excellent Reserve Bank publication, Australian Economic Statistics, and it's a beautiful set of complete historical statistics back from 1949. I rang up the other day to get a copy of it and they said, "We no longer produce it."

Now, it was a set of statistics that was compiled by expert researchers, no doubt for their own internal purposes for their econometric modelling and they said the Bureau of Statistics - and no doubt you might find difficulty getting them on oath on this - but what they told me on the phone, and I'm quite happy to state it on oath was, "The Bureau of Statistics told us not to do it because we were undercutting the marketing for their publications." In other words, they asserted a monopoly right to tell another government agency to stop disseminating information in a useful form. Now, what sort of dead weight loss is imposed upon researchers such as myself who

now has to go back and collect the individual ABS publications and update the series? The ACCC should be investigating that sort of conduct. It's totally unacceptable.

I think we can actually learn from the lawyers in this. The High Court is not, contrary to what some economists say, a stupid body. They are wise, they do think about things and the test the High Court has laid down for a tax is basically a charge which is not warranted by the service supplied. The High Court has indicated familiarity with concepts of marginal cost pricing and this came out in the Air Caledonie case. Remember when they tried to impose an incoming passenger charge to recover the costs of processing passengers for the Department of Immigration? Well, Air Caledonie took that to the High Court and the High Court quite properly through it out on the basis that every Australian citizen has a right, an absolute right to enter this country without payment of any toll or charge whatsoever if it's not done as a tax. It's not a fee for a service.

I would say that it's a right of a citizen to have access to information and the abuse of crown copyright to charge people for information that has already been compiled at public expense through taxpayers' money is nothing other than an abuse and that should be clearly understood. So I think there is a fundamental question here of who owns the public sector. I would say in a representative democracy the ultimate persons to whom we're accountable are the taxpayers and anything that has been levied or collected by departmental appropriation by parliament should be freely available to the public at marginal costs and anything else is an abuse of power.

PROF OWENS: Good, thank you. I think it raises - as I was saying before, I think you've raised yet another important question. We probably should go through some of those issues one by one, but there is this issue about what, for example, the information agencies are actually producing. They tend to have a core set of statistics which you may say is the basic set which you could argue - well, we don't say necessarily it's a public good because it may not fit the test of excludability, they can exclude everybody but it may be in the public interest to collect that core set. Then there is the supplementary tables that they produce where - and I think it would probably be those supplementary tables that you would argue maybe should be judged at a marginal cost.

MR LARKIN: No, I would the input-output tables, for example, I've got here now that's - what have we got, it's \$26.

PROF OWENS: They'd probably be the basic.

MR LARKIN: That's an ABS - they collect that anyhow, it's clearly elemental to their - but \$26 is clearly average cost pricing. I'm sure if you question the ABS closely and say, "How did you arrive at this price?" - they will say, "Well, yes, it is an average cost." "Why isn't it marginal cost?" Well, I think you will find that if you press them and press them, as I hope you will when they appear tomorrow, they will break down and say, "We are instructed by the Department of Finance to full cost recovery." I mean, we, yes, ultimately as economists - and I'm sure press ABARE

tomorrow and they will finally, ultimately break down and say, "All right, look, we agree with you but the Department of Finance - we've got no alternative now."

So everyone is hiding behind the apron strings of the Department of Finance. They say, "Yes, really, we are economists and we understand the difference," and all that, but ultimately they will hide behind the apron strings of the Department of Finance and then say it's the Department of Finance who has to be called to account. That's where I would believe you really do need a regulator-general or someone who can bring some discipline into the system.

MRS OWENS: Actually, I was talking more not about what happens now; I'm talking about what in an ideal world if you were categorising you may think of the supplementary tables being available at marginal cost and then - - -

MR LARKIN: The supplementary should, marginal cost.

MRS OWENS: Then you may have other activities they do that they might want to charge out at full cost. But then it begs the question that, if they are at the more commercial end of the spectrum, another agency that does do some commercial activities is the Bureau of Meteorology, which is also an information agency, and they do have a commercial unit and they sell some of their commercial products at full cost. I think that raises the question which I think you alluded to before as to whether they should be doing those sorts of activities in the first place; you know, is this a role for government to enter into these markets, particularly where both markets are contestable or they may be actual competitors out there in the market. So it raises a really interesting question.

DR STEWARDSON: It does indeed because the universities are facing the same problem. If you really want to talk about dead weight losses and inefficiencies in an economy, knowledge is a peculiar good. It's a wonderful good because knowledge breaks the normal boundaries of scarcity in extraordinary ways, as we've seen in our lifetimes, but the object of universities is to discover and disseminate knowledge freely, and that in my view should be the object of government departments that collect public information and public expense. But the commercial imperative is to conceal knowledge, to hide it as know-how, to patent it, to lock it up and impose a tax on using it. As consultants we know it from both sides.

But the point is that as far as a government's concern and government bodies are concerned, then they should recognise that spreading knowledge is aiding the productivity of the economy completely, enormously. Therefore I remember that fight between I think it was the Bureau of Meteorology and the New Zealand bureau over access to information. I mean, that's a classic case where a function of government was being charged for, I think it was in New Zealand, in a way that actually possibly endangered lives and people would not get information they should have had and therefore wouldn't know about the weather conditions when they set sail. That to my view is scandalous.

MR LARKIN: So I suppose we would come back to the essential principle: there are clearly positive externalities from the Bureau of Meteorology supplying information. Now, to the extent some of that could be skimmed off and sold commercially, we would say that's wrong. We would say either it is a core function of government to have a bureau of meteorology because it brings positive externalities, positive economic benefits, to an economy. A modern economy has to have one, and we would say services should be charged at marginal cost and its losses picked up in the normal way through general taxation revenue, and if indeed governments say, "Wait a moment. We're on a zero based budgeting basis and, having considered everything, we think we shouldn't have a bureau of meteorology," well and good, it doesn't exist.

PROF SLOANE: I'm not sure it's as simple as that, though. I mean, yes, the taxpayer will pay a bureau of meteorology to provide general forecasting and the like, but if there's a wheat farmer at Jeparit and he rings up and says, "I'm thinking of harvesting my crop this week," this is actually an additional service that would be required.

MR LARKIN: Yes, well, they can charge him marginal cost for that. That's what I'd say.

PROF SLOANE: Okay. But that doesn't then call into question the whole public ownership of the Bureau of Meteorology.

MR LARKIN: No, but I would say they shouldn't charge him on a Ramsey basis.

PROF SLOANE: I thought you were kind of objecting to even that.

MR LARKIN: No, I thought your use of the word "commercial" implied that you were agreeing that there should be a Ramsey approach that you'd screw the client for whatever they'll pay.

MRS OWENS: It may not be Ramsey, but there's a question in you're out there competing in the marketplace with other providers of services, which the commercial unit in the bureau does - I think they said there were about 30 competitors. There is this issue of competitive neutrality. So it's a matter of charging market prices. You really can't be out there undercutting them.

DR DWYER: Wait a second. In a way you should be undercutting them and let them resell, let them package it up and repackage it. But if you aim to meet the market, then what you're doing is ramping up the market and creating a collective interest and monopolisation by both the public and the private sectors. This was what I was driving at with the universities. Once you start acting in a commercial way and thinking commercially, there's no reason why you should get a cent in taxpayer funding. I mean, we've got to ask who owns this - - -

MRS OWENS: That's what I was saying before. You really have to ask the

question of why these things are being done in the public sector at all.

DR DWYER: Exactly. Who owns these bodies? Who is the shareholder? The taxpayer is the shareholder. Imagine how you would feel if you went along to a company general meeting and you were charged an admission fee for entering the meeting, that you were charged for the chairman's time in answering your questions or you were charged for your annual report and you were charged a processing fee for your dividend cheque. You would be absolutely outraged.

PROF SLOANE: You might be, but you are actually paying for those things as a shareholder. One way or another, you are paying for it.

DR DWYER: But so is the taxpayer. That's my point. The taxpayer is paying for certain things and the taxpayer has a right to them.

PROF SLOANE: Actually, companies have got quite aggressive at trying to ration the release of their annual report by putting out a cheaper version, so you've got the footy record version which you'd get unless - - -

DR DWYER: But that's a matter of choice. I've filled in those forms and I've demanded the full annual accounts and the ANZ Bank tried to buy me out as a shareholder. They tried to buy me out as a shareholder and said, "Your shares have fallen. Would you like to sell?" I wrote back, "Certainly not." So basically you know you have rights. In the same way, you are the owner. The taxpayer is the owner of these bodies and the information.

PROF SLOANE: I think you're making some good points, but there are of course very large deadweight costs associated with collecting with general taxation, so you actually have got to be a bit careful. You say they're funded by general taxation, there are very large deadweight - - -

MR LARKIN: Yes, but you've already got those. They're sunk costs in a sense.

PROF SLOANE: No, I don't think they're sunk costs because - - -

DR DWYER: And you should think about whether you want to take the activity in the first case. We agree that zero based budgeting should be the way you approach it.

PROF SLOANE: There's also a kind of a fairness principle. In some ways I want to sneak out of the universities - because universities are not within our remit. But there is a sense in which it might be fairer for the direct beneficiaries at least to pay a proportion of the costs. I know you'd say the Fisher and Turner out there in Mount Isa is getting something out of some 17-year-old going to university in Brisbane, although arguably it's a huge form of middle-class welfare, the university system. Is it not fair to charge at least a portion of the cost to the direct beneficiaries and to leave another portion to the taxpayer because we know universities generate externalities? Haven't they got that right?

DR DWYER: Actually, the universities are an interesting one. If you're talking about university fees for students, my understanding was part of the argument was: university students earn higher incomes, therefore why should they be subsidised by people on lower incomes? There are several answers to that, because first of all university students are penalised because if they earn higher incomes they pay higher marginal rates of tax anyway, so there's already a cost recovery mechanism in force.

PROF SLOANE: But hang on. Someone who earns a high income who hasn't been to university pays high tax too, so that's a very weak argument.

DR DWYER: But the statistical argument doesn't rest on individual cases.

PROF SLOANE: That's not a fairness principle.

DR DWYER: Secondly, I would have said that when I went to university I felt the person paying for it was my father, who was paying an ample amount of taxation anyway. The third thing is that if you're going to be consistent about it, and in this case it's really wandering off the subject of cost recovery, university fees should be tax deductible because if they're seen as a cost of earning income then they should be treated like any other non-capital cost of earning income. In fact, there was a special amendment put through to the taxation law to block the deductibility of HECS, which would have been otherwise deductible under section 51(1). So you can argue that particular one up and down the patch a bit more than most people realise.

PROF SLOANE: But the general principle is the sense in which the beneficiary pays rather than the general taxpayer. I'm going to be a bit hard to budge on that one, because when you're a user of a regulated product, is it not fair that you kind of are paying for the cost of the regulation rather than a non-user?

DR DWYER: Let's step back and think about it. I have no general difficulty with the point that the beneficiary of a service should pay. That isn't a situation where it's a voluntary exchange. Much of what government collects, for example, in census data is not a voluntary exchange. I am required by law to fill in forms, tell them how many children I've got, how much income I've got, and if I get cranky maybe I won't and then they won't know. That's their problem.

What I am driving at is we're not talking about voluntary exchange. Fair enough to charge a beneficiary where there's a voluntary exchange. Take for example the Sydney harbour bridge and user charging. The Sydney harbour bridge would never have paid its way on user charging. If you look at pictures in the 1930s all you will see are half a dozen Ford model Ts going across it or whatever. User charging would never have seen the Sydney harbour bridge built, but what the state government of the day did was say, "Well, there are more beneficiaries than just the motorists out of this. The land values on both sides of the harbour will go up through the improved ease of communication." So they levied non-user beneficiaries, namely, they imposed a rate on both sides of the harbour to finance it, so where there were

externalities you can use the taxation mechanism to recoup those externalities through a fairly efficient form of taxation. Not all taxation involves dead weight losses.

PROF SLOANE: No.

DR DWYER: So we agree that it should be marginal cost and we agree that the beneficiary of a voluntary exchange should pay but where you have no choice in the functions of government they are mandated by legislation or you're obliged to cooperate with public authorities. We'll take, for example, user pays. ATU uses my backyard to run through cables, so does Telstra. Maybe they should pay me for going through my backyard and maybe I should be like the Papuan New Guinea tribesmen and climb up and chop it down. I mean, where would society be? The reason we have these laws is that I'm forced to allow them to use my property in the interests of the greater good of the community and I am forced not to make any charge against them, so why should they come against me?

DR STEWARDSON: What about the regulatory bodies such as the Therapeutic Goods Authority and all those sort of things who are regulating or testing and ensuring that goods are of a certain standard for the benefit of the consumer, and perhaps for the community. Is it fair enough for the beneficiary of that service which is primarily the consumer, I guess, to pay?

DR DWYER: No, I don't think so, not unless you're going to say that anybody can sell anything including patent medicines as in the 19th Century. If you have a legal requirement that you cannot sell a drug in this country without certification, your commercial freedom is being infringed in a way, therefore if the government is going to insist that it be certified before it can be sold and that's a legal prohibition, the government should pay for the costs of enforcing that prohibition.

DR STEWARDSON: The government rather than the consumer who is getting the safe product.

DR DWYER: But did the consumer ask for that? Parliament did. In fact, this is a fight going on at the moment Many consumers would try ginseng and herbal medicines and other things and they don't necessarily want the services of the therapeutic goods administration. My understanding for example is that the Blackmores' company has had many fights with them so they don't want them.

DR STEWARDSON: Yes, but Blackmores aren't the consumers of the product. Blackmores are the producers of the product.

DR DWYER: But it's not a voluntary exchange. It's not a case of the consumers coming along and saying, "I want a certified product." Now, if you think of a pure voluntary-free market, you could have a situation where regulation evolved naturally. For example, for organic food products there is a national association for certifying organic products and consumers pay more for Weet Bix that are certified organic than Weet Bix that isn't. Therefore that's a voluntary system of user pays. If you wish to,

you could say, "We're not going to have a therapeutic goods administration. It's not a core function of government any more. If people want to sniff glue, drink metho, or give themselves heart attacks with ginseng it's not our business." If you took that policy decision then the users would naturally, who were cautious, would pay.

DR STEWARDSON: Yes.

DR DWYER: Just as some people do check out insurers or whatever.

PROF SLOANE: Through self-regulation.

DR DWYER: Self-regulation.

DR STEWARDSON: But there are two points here in your answer about, you know, do people want therapeutic goods authority testing. It's a legitimate thing to say do the consumers really want it, but you made a more detailed point and said the consumers didn't ask for it. I don't think that's the way society really works in a complicated society these days. There may be some people who ask members of parliament for it, perhaps a few, and then parliament may decide that this is a good thing but in the sort of complicated society we have people don't actually, within a physical sense, ask for this, so while I think it's legitimate to say, do the consumers want it, I think that to say, as I think you were saying, that hundreds of people didn't front up to Parliament House and say, "We want the TGA," is not a fair bit of evidence, is it, because that's not really the way things happen.

PROF SLOANE: It is a fair point though, I think, if we can garner evidence, that the effects of the regulation is to significantly restrict the number of substances on offer which we seem to be able to - I think we will probably have to gather some evidence. I mean, what you're saying is that you have to assume the democracy works in a way the governments are taking this to be what consumers do want.

DR DWYER: Assuming government stands for consumers as a whole and saying, "We've had a decision, 56 per cent of people want everything regulated and 43 per cent want crazy alternative medicines but we're not going to let them kill them and poison themselves, then the government says, "We'll have a TGA." The government, having made that decision, must use as a public decision, should use public funds to implement that decision, because there will be many people who, on a voluntary user pays basis like foreign manufacturers of substances, people exporting rare teeth or herbs from China who would bitterly object to having the cost of having things certified by the TGA. So I think the principle is that collective decisions made by parliamentary enactment, their implementation should be paid for through public funds. That way the public weighs up the costs and the benefits at the time it makes the decision.

MRS OWENS: Just changing tack a bit, do you accept the principle of polluter pays? If somebody pollutes the environment, that they should pay for that pollution?

DR DWYER: Yes, I do, because that is a resource rent argument. In other words, if you say the environment like land or like the airwaves is public property owned by the crown in trust for the people, then the crown is perfectly entitled to say that anyone who devalues my estate should pay for it, just as for example if I'm a land holder in my leases - suppose I owned a shopping centre, in my leases with all my tenants, I will make any tenant who floods another tenant's shop down below, I will make them compensate me for the losses done to the general estate. I see that as nothing more than an application of simple property rights principles.

MRS OWENS: Just thinking of it another way, you could say that there are products out there that are produced by the pharmaceutical industry, medical devices industry, that could actually do harm to people, do harm for the community. The government might make the decision that they want to reduce that level of harm. They'll set up a regulatory body to help police that activity, and that you could argue that there's an externality involved in that activity, the harm that's done to the population, and that the industry should pay to cover that cost.

DR DWYER: But the industry would pass that on to the consumer.

MRS OWENS: Eventually but I'm just talking about the principle. In that situation do you think there is a case to argue that the industry pays for the harm that its products might do to the community, potential harm that you're trying to minimise?

DR DWYER: I'm not sure with pharmaceuticals, how the example would work unless it's something that gets into the water and poisons people like a virus that gets out of control or something. What are you thinking of exactly?

MRS OWENS: There are pharmaceuticals, that if you over-consumed them they interact with each other or they could have damaging impact on your body unless, if you took the wrong drugs, so you have to regulate that drug, you have to determine what the labelling is going to be on the product so you have a regulator that helps determine whether that particular product should be registered or not, and if so, and what the conditions are that that's going to be registered or listed or whatever, so that the community gets some reassurance that the product that it's getting is a product that can be consumed under particular conditions.

DR DWYER: Is that an externality or really a question of certifying the quality or use or fitness of a product, like saying it's unleaded; petrol shouldn't be used with leaded cars or vice versa.

MRS OWENS: But it's excluding other products

DR DWYER: I'm not sure that the externality argument is quite right.

MRS OWENS: It mightn't be externality but it's excluding other products from that list and the role is to exclude those products that potentially could do harm, not register those particular products.

DR DWYER: It seems to me if society says, "We have many things out there, some of which are useful and some of which are bad. Consumers have to be educated to read and write to understand the labels. We should have these things labelled." Society is saying through parliament that it's making a public decision to do something, and it seems to me I come back to the argument that the public should pay for it with public funds; however you raise them; whether you use income taxes, land taxes, death duties, whatever. So I would say that the principle there is that just as there is a public policy decision taken in this country that consumers should learn to read and write so they can inform themselves, just as we have taken decisions in the Trade Practices Act that corporations should not engage in misleading or deceptive conduct.

Just as we have made decisions that poisons should be labelled, I would see this really as like education, a public function, which the public wants and the public has said it wants through legislation, therefore the public is willing to pay for through taxation. So I don't think that you then have to go trying to trace it down because, see, what do you do then if you say to someone who says, "Look, I don't need this labelling. I'm an educated person. I've got a PhD from an American university. I don't need this service. It's of no benefit to me. I can make my own inquiries on the Net and find out whether clytostrichnine or whatever is good or bad for me. What's the service to me? Why should I pay anything for it?" That's why we don't have user charging in non-voluntary exchanges.

DR STEWARDSON: Your example about that a few minutes ago was 60 per cent or something like that of consumers want the regulation and 40 per cent don't and the government decides to impose the regulation, then clearly that should be something that's paid for out of the public purse. If you could take a plebiscite amongst the consumers of therapeutic goods and you found 99.5 per cent wanted the regulation and .5 didn't, .5 was your person with the PhD from the American university, I guess, you would still take the same view, would you, that the regulation should be paid for out of the public purse, not by the consumers?

DR DWYER: Yes, I would say it should be paid out of the public purse because it's not a voluntary activity. See, the whole concept of user charge only makes sense when somebody is free to choose whether or not to accept the service. I'll give you an example which has absolutely outraged me, is when they started imposing charges for customs clearances of postal packages. Now, when my mother-in-law sends a present to her only daughter in Australia the customs people are not rendering me any service by having me go out to the post office and pay them money so that my wife can collect her Christmas presents. It's not a voluntary exchange. I mean, a cost there is a tax, nothing other than a tax. I don't want an import duty on gifts to my wife. She doesn't want one.

DR STEWARDSON: Yes. It is a tax.

DR DWYER: It is a tax.

MR LARKIN: It concerns us that so many of the user charges, cost recovery, really is a tax.

DR STEWARDSON: So if we can just follow through the TGA, suppose only 20 per cent of the population were to use therapeutic goods, and the other 80 per cent don't use them, and say, "Why on earth should our taxes go to pay for the 20 per cent of consumers. You consumers pay for it."

DR DWYER: Then the 80 per cent are fairly stupid voting in politicians who impose it because the remedy is in their own hands. They can say to their politicians, "We don't want it any more. Get rid of it. It's a cost we would prefer to get rid of," and I think this is exactly what's happening in the push for smaller government. A lot of people are saying that we don't want these things but departments are defending themselves by protecting themselves against declining budgetary appropriations by thinking of excuses to levy their own taxes with less parliamentary accountability and that is particularly objectionable from a legal and constitutional point of view, and that is why I'm glad the High Court has taken a strong view on what the definition of a tax is; that if you think about it as the public resists the burden of regulation and says, "We want to get rid of some things we don't consider core functions.

Governments find pressure, they cut back on agencies," agencies are thinking, "Well, let's be smart. Let's levy our own taxes and call them user charges and keep things going that the public has shown it doesn't want," and that destroys constitutional government and that's why we had civil wars in England in the 17th century.

PROF SLOANE: And America.

MR DWYER: Yes, exactly.

MRS OWENS: That gets back to my unvirtuous circle between the Department of Finance and agencies.

MR DWYER: You think about it. I mean, when I was working in Parliament House I took great offence at the idea that a clerk in the Department of Finance could tell parliament what its budget was going to be because parliament stands for the people. They are the masters, not the Department of Finance and parliament's budget should have been a standing appropriation and Finance should have realised it was the servant and not the master.

MRS OWENS: I think that's probably getting just a little bit beyond our frame of reference.

MR LARKIN: We've drifted from our - - -

MR DWYER: But constitutional concepts are very important, as the social paper has recognised, and that is why the truth comes out when the lawyers have to draft

because the lawyers know that these are not fees for service, the lawyers know these are bona fide user charges. They have to draft as taxation bills to ensure they're not subject to challenge under section 55 of the constitution.

MRS OWENS: I was just going to clarify something. You've mentioned in your submission that you think that we should quantify and publish how cost recovery user charges have increased and we're actually - a part of that terms of reference is to try and do this and we've issued a questionnaire to all the agencies and departments asking them this very question, so we're getting some of these responses. So we are actually endeavouring to have a go at this.

MR DWYER: That's good.

MR LARKIN: That's good. Because my impression is in departments nowadays the hapless first assistant secretary - every division has got their own finance section within a division, not just a department. Every division has got its little accountant and financing and trying to make (indistinct) and as that USDA quote - I found that quite interesting and it says senior officers are distracted with this crazy sort of, almost absurd accounting and accountancy and it's really - really you do have to ask - and all this has only happened in the last 15 years so there must be a huge dead weight costs.

MR DWYER: Another example of the stupidity of some of this user charging and being above marginal cost is when I was in treasury one of the advantages of working in the Commonwealth government was you were in one employer and you could ring up a department and say, "Could have a copy of this or that report on something of mutual interest," and they'd just chuck it in the rounds to you and the government was more efficient because people would informally share information and they'd know what each other's agenda is. By the time I'd left the public service if you wanted something they'd say, "No, can't send it. Go down and buy it from AGPS," and of course nobody would reimburse you because strictly it wasn't part of your job, although you were actually a better officer and serving the crown better by doing that.

So in a sense this idiocy of trying to pursue full cost recovery means that the public service is rendering itself less well informed internally and sharing information less and becoming more stupid.

MR LARKIN: That's where it's crucial for you hopefully to distinguish between the accountant's view of life and what ought to be the proper approach in the public sector and it's quite proper for BHP or CSR or whoever to cross-charge and so on and have all sorts of elaborate cost accounting principles because indeed a company in the private sector must fully recover its costs. But it's not true that that should be translated to the public sector and unfortunately, our public sector nowadays is embracing - driven by the Department of Finance - far more what I could say the principles of private sector accounting than is desirable when one takes a view as an economist. So I suppose we'd only want to sum up by saying we hope in your great tradition you will approach your task from the discipline of economics rather than

from the discipline of accountancy.

MRS OWENS: That's not fair because we don't understand accountants so there is no worry about that. I don't think any of us have got any accounting qualifications. I think Robin has got a company director's, whatever it is, statistic. So that's almost like being an accountant but I think he's a very good economist and I think we'll probably be able to work it out eventually. But thank you very much for coming - - -

MR LARKIN: Thank you. Thank you for your time.

MRS OWENS: - - - and providing a different insight to most of the agencies.

MR DWYER: I'm sure we did.

MRS OWENS: We will now break and we are resuming at 2 o'clock. Thank you.

(Luncheon adjournment)

MRS OWENS: We will now resume. The next participant this afternoon is the National Standards Commission. Welcome to the inquiry. Would you like to give your name and position with the commission for the transcript?

DR BENNETT: My name is Judith Bennett and I'm the executive director of the National Standards Commission.

MRS OWENS: Thank you, Judith, and thank you very much for the submission, which we've all read with interest. We've got a few questions for you and there may be a bit of discussion, but in the meantime if you wouldn't mind making some opening remarks.

DR BENNETT: Thank you. I guess by way of explanation, I've been in this position for only six months and in fact it's the first position I've had within the public service, so it's been quite an interesting few months for me coming to grips with the system and it's the first time I've been before a commission hearing of this sort. I was appointed specifically to make cultural changes and strategic planning changes for the National Standards Commission, and so over the last few months I've been very much concentrating on developing a new strategic plan.

I inherited essentially a budget crisis. I did know that when I accepted the job. I accepted the challenge of doing something about it. In fact, the commission has reported a deficit for the last two years now, so we are actually obliged to undergo an output pricing review with DOFA, but from my perspective that's been actually a welcome process because it has enabled us to present our case for particularly a review of the cost recovery targets that have been imposed on our laboratory but also for a recognition of the need for funding for additional responsibilities that have been given to us without the associated funding.

So we're actually going through that review. It's been quite a good collaborative process between ourselves, DISR, which is the portfolio that we belong to and DOFA, and we've had a couple of tripartite meetings about it. The initial reaction from DOFA is that we have a case and that we could expect some additional funding from next year. So this issue of cost recovery is certainly a timely one for us.

MRS OWENS: Yes, it's topical, isn't it? That's good. We're in the throes, as you know, of running an inquiry where one of the outcomes is a set of guidelines. You may have resolved some of your issues before the guidelines are finally produced, but hopefully the guidelines will be consistent with whatever your outcome is. I notice you have some concerns about full cost recovery for your organisation and I presume that it's those concerns that you've made known to DOFA and that you've put an argument that marginal cost pricing is a more efficient, more appropriate way of pricing your services.

DR BENNETT: Yes.

MRS OWENS: I presume there may be some services you provide where there

would be no charge?

DR BENNETT: Not services that we provide to specific industry customers, no. I think we charge for all the testing that we provide for specific customers.

PROF SLOANE: I think this is a nice sort of micro example of where a policy of full cost recovery has essentially failed, hasn't it?

DR BENNETT: It has, yes.

PROF SLOANE: Because what it's done in a sense, it has kind of in effect undermined - the purpose of the regulation was to ensure a quality assured measurement system, but according to your submission the regulatory system has almost broken down.

DR BENNETT: It has had some very negative effects on the regulatory system, but essentially it at one point in time suddenly failed to recognise the public interest component of what was being done in the laboratory.

PROF SLOANE: But, notwithstanding the policy of cost recovery, you've actually not been able to achieve too many recoveries.

DR BENNETT: That's right. No, we caused a lot of problems but did not actually earn a lot of money in the process.

MRS OWENS: You actually want people to do the testing and have certain standards in place. You want to provide incentives for them to do that rather than put blockages in the way, I would presume.

DR BENNETT: Yes. The unfair part about it is that the cost of certifying of trade measurement instruments falls almost totally on the manufacturers, whereas the traders and consumers are the main beneficiaries of having that safety net in place.

DR STEWARDSON: Can you perhaps give us sort of a rough breakdown of your agency's costs in terms of testing equipment where you are theoretically aiming for 100 per cent even if you're not achieving it, what proportion that is compared with other things you do where you're, I gather, not trying to cost recovery, such as providing policy advice and setting standards and international liaison and that sort of thing?

DR BENNETT: We have a total budget of approximately \$4 million. Is it okay if I use round figures in this context?

MRS OWENS: Yes, absolutely.

DR BENNETT: Out of a total budget of about 4 million, we estimate that the cost of running the laboratory and the associated costs of keeping up with the international

standards which are used in the laboratory is of the order of 1.2 million. Our cost recovery has been of the order of 700,000 in recent years, so we are actually achieving close to the marginal cost but certainly not the full cost. The problem is that that difference hasn't been made up from anywhere, so we've actually run into a deficit situation. That difference should be used for public interest market surveillance testing and we haven't been able to do that.

DR STEWARDSON: And the other three - - -

DR BENNETT: The other areas of activity that we have are coordinating the national measurement system and developing new standards. We have a number of consultative committees with various industry and regulatory sectors which have emerging needs which will require a national measurement infrastructure. One of the big ones that we've involved with at the moment is with the introduction of market competition in the electricity, gas and water supply industries it is necessary for all metering to come under the National Measurement Act, which means that we have to actually develop a national standard based on whatever existing international standards we can use and either carry out the testing ourselves or appoint laboratories to do the testing of these metres and the certification of them in service.

So there's a huge infrastructure, and we've been talking for the last 18 months just to the electricity industry, to all the interested stakeholders, and they include the state regulatory bodies - NEMMCO, which is the marketing organisation for electricity; all of the distributors and retailers; and of course the manufacturers of the meters, who for the first time in their lives will have to be paying for a certification of their instruments to be used in the Australian marketplace.

PROF SLOANE: So it's obviously been quite costly for you to gear up for that.

DR BENNETT: It's been a long process of negotiating a standard and establishing the capabilities in, in this case, external laboratories, so it's an outsourced function, and we've had one person who we've been able to allocate to this job. We have to do the same job for gas and water and we have no resources to do that. We've squeezed this one person out of our existing budget so far. This was due to a change in the act which was introduced in 1998 which was supported by cabinet, but there was no adjustment to that funding at the time. We've had two new policy proposals for this which have been knocked back in the meantime, simply because they haven't been big enough to - - -

MRS OWENS: Get on the radar screen.

DR BENNETT: Get up, yes.

PROF SLOANE: This output pricing review, that was undertaken by DOFA. Is that right?

DR BENNETT: Yes.

PROF SLOANE: What was the purpose of that?

DR BENNETT: That was really initiated by us because of our deficit budget situation, because we feel we have a big case for increasing our budget to allow us the resources we need for the utility metering work and also to achieve recognition of the public interest component of our laboratory work.

MRS OWENS: But there are a number of output pricing reviews that the department does at any one time, as I understand it. How do you actually get the Department of Finance to prioritise you ahead of other departments or agencies that may also have a similar story to tell?

DR BENNETT: I think the fact that we've reported two deficits and we're not allowed to report a third one means that they actually have to do it.

MRS OWENS: I noted in your submission you talk on page 3 about:

Over the past 10 years, prices have been adjusted to meet budget imperatives, without any consultation with industry.

This probably all happened before you time, but then you said:

Each price rise has been followed by a drop in demand, as suppliers decided not to launch new models in Australia.

It would be very interesting I think for us if possible to get some examples of things that haven't been launched here because of the charges and possibly high prices that they couldn't afford. I presume some of these suppliers might be quite small companies.

DR BENNETT: They are small to medium-sized enterprises, yes, and a lot of them are importing models as well as assembling their own in Australia. So the Australian component is actually quite small.

MRS OWENS: Can you give examples or is that a difficult thing to do?

DR BENNETT: I think if we were to approach the industry associations the individual members may well be prepared to provide evidence of decisions that they've made in the past based on the cost. We certainly have graphs of revenue versus price changes which quite clearly show these peaks and costs where price adjustments have been made, and there's been plenty of feedback from the industry to the effect that they have decided not to introduce particular models at the time. Essentially it's keeping new technology out of Australia. The electricity meter manufacturers are already telling us that that will happen with the cost of patent approval for electricity meters, which is a new cost to them. They're actually rationalising their product range now on the basis of what this will cost.

PROF SLOANE: It sounded like you had a long period of time where you only thought of costs and how do you recover costs without thinking about the demand, and of course what you did was drive down demand.

DR BENNETT: Yes.

MRS OWENS: It's probably not - - -

PROF SLOANE: No, not you.

MRS OWENS: - - - that was thinking about this; it was somewhere else in the system.

DR BENNETT: It was a financial imperative, I think. It's just what was done to try to meet the DOFA objectives to balance the budget.

MRS OWENS: We're taking a broader view than the DOFA may because we're interested in the overall impact, the incentive effects, of these charges on the industry - the impact on the industry and the impact back on the regulator as well, in your case your organisation, and what impact that may have in terms of the efficiency of the organisation and so on. That may be less of an issue in your particular case. I think it just sounds like you've been struggling along doing the best you can with the limited resources you've got.

DR BENNETT: Yes.

MRS OWENS: Was there a lack of recognition that there were activities that you were undertaking in the public interest that needed to be funded for the benefit of the community? Was that not understood?

DR BENNETT: This seems to have been the case, and despite several reviews and recommendations the recommendation of the marginal cost approach for instances was knocked back. I think there has just been a very hard line approach to cost recovery from industry without a recognition of the characteristics of the industry; that in fact they're all small people, and that - - -

PROF SLOANE: You can have this non-approved product out there, can't you? Isn't that - - -

DR BENNETT: Yes.

PROF SLOANE: So in a sense it's not as if you have got any monopoly really.

DR BENNETT: The situation, particularly in the weighing industry, is that there are trade approved models and there are non-trade approved models which are

considerably cheaper which are used for things like scientific research or industry development or whatever, where no transactions depend on those measurements, but the requirements for what we call pattern approval which is this rigorous certification process, they require that the instruments not be susceptible to changes in temperature and humidity or sparks on the voltage supply or electromagnetic radiation from Telecom towers, mobile phones and so on, and so this is the rigorous testing process that we put them through and in the process not only the cost of the test but the design costs to have that electromagnetic shielding and the temperature stability and so on, actually add to the cost of compliance and so there is a big difference between the trade approved and non-trade approved models, and it's a big temptation for traders to try and get away with using the wrong one, to claim ignorance, and it's happening. The weighing industry have told us that they know it's happening because they know what the ratio of those two should be - - -

PROF SLOANE: For sales, yes.

DR BENNETT: - - - and the ratio is going in the wrong direction.

PROF SLOANE: What about policing too? I mean, presumably there is only - unless it's enforced - - -

DR BENNETT: That's right, and this is a state and territory weights and measures inspection role and of course - - -

PROF SLOANE: Right, they have been cut back.

DR BENNETT: - - - they are in an even worse position than we are, I think, in terms of resources for market surveillance. It's quite a problem nationally that has to be addressed.

MRS OWENS: You actually say that this shift is contributing to a breakdown of the regulatory system which is a pretty strong statement but is there any way of getting a handle on this sort of general shift to these non-approved scales, for example? I mean, is there any way we can pin that down?

DR BENNETT: The weighing industry has offered to provide us with data and with their opinions on - - -

MRS OWENS: That would be useful for us.

DR BENNETT: Yes.

MRS OWENS: Yes. Jerry says, "Yes, we would really like that back, those data."

DR BENNETT: Okay.

MRS OWENS: So we have reinforced that for Jerry.

PROF SLOANE: I'm just worried now that when I go out and buy my fruit and vegetables I'm getting robbed. Would that have to be a trade approved - - -

DR BENNETT: Yes, absolutely.

PROF SLOANE: I might ask them when I go down, short-changed 100 grams.

DR STEWARDSON: You talk about training in your submission and you say, "Full cost recovery targets have applied to this." I take it that's you, the trainer, recovering your costs from the state agencies whose staff are being trained.

DR BENNETT: Yes.

DR STEWARDSON: You say that state trade measurements haven't been able to afford this and there's a loss of expertise there. Is the training something that you would regard as a public interest activity, that ought not to be full cost recovered?

DR BENNETT: I would say it's within the national measurement system so it's within the community of people who are actually responsible for delivering a market surveillance operation so in that sense it's totally a public interest. What the states and territories deliver is a public interest. It's a consumer protection approach. If they are not adequately trained in how to inspect and test and certify instruments then that job isn't capable of being done and clearly isn't being done very effectively at the present time. In fact, I had a conference with all the state and territory trade measurement managers last week as part of a joint approach to trying to solve the training problem because they have all been coming to us saying that our expertise is retiring and we have got a desperate situation. In the case of Victoria they have actually contracted out the certifying role and they have no-one to train all their contractors so it's actually now a critical situation.

We have one person who provides this training and we have no earmarked funding for that person so it's essentially expected to be a cost recovery so at the moment we're trying to provide it as best we can but the states and territories can't even afford to pay for our travel expenses at this stage.

MRS OWENS: Is this sort of experience something that is common in other countries? The sort of squeezing and these resource constraints and the pressure and so on?

DR BENNETT: I attended a meeting of the International Organisation of Legal Metrology which is the international body that we belong to and I was in a way heartened that all of our counterparts are struggling and undergoing similar sort of budget constraints and reviews. There seems to be a general taking for granted of the technical infrastructure and when a system is so historically embedded within the national infrastructure it's very difficult for people to actually either measure or recognise the benefits that it delivers.

PROF SLOANE: Presumably we got all enthusiastic when we went metric and the enthusiasm kind of waned ever since, you know?

DR BENNETT: Yes.

MRS OWENS: I suppose the message that doesn't get across is what would happen if this system did break down. If the regulatory system broke down what does that actually mean out there in the community?

PROF SLOANE: We get ripped off.

MRS OWENS: There's nothing to prevent that.

DR BENNETT: When I was speaking to DOFA in relation to this, what are the implications of us not continuing to exist or not having the funding to do what we need to do and he was saying, "Well, how many extra people - what level activity do you need in this market surveillance role?" and I used the parallel of a police service, that you need sufficient presence for people to know that they have a chance of getting caught if they're going to try and practice fraudulent measurements. At the moment there's a clear message being sent out there that we have no police service in this area and I think that's a very dangerous message, particularly at a time when we're trying to reduce technical barriers to trade, we're trying to make it easier for imports to come in here and so it's going to be even more important that we have this market surveillance role and capability.

MRS OWENS: I suppose the question that DOFA might ask and that is, "How much is the right amount?" could you do too much? I mean, the terminology is there's gold plating. Is there a chance that you could do some overkill in this area and they won't want that, because they won't want you to actually pay for that, they want you to be lean and mean and they're providing the incentives for you to be lean but you've become too lean and too mean.

DR BENNETT: I don't think we need to do a lot to have a policing presence out there and what we are proposing within our pricing review is that we actually use the spare capacity that we have in the laboratory or that that spare capacity be recognised as being available for public interest activities. We have spare capacity from time to time simply because we have no control over the level of demand or the time at which the work actually appears on our doorstep which in itself is a difficult. We have to respond as and when the jobs arrive and there are times when we could undertake auditing work in parallel with what we're doing.

MRS OWENS: You say here on page 2 that the calibration of legal measuring instruments and master meters that in that area you don't have a monopoly on these services but you're the only providers of the calibration services of LPG master meters. Where you don't have a monopoly, do you charge at what you think the market price is or how do you set your fees?

DR BENNETT: We don't actually do a lot of that sort of work. The main calibration that we've been involved in, certainly since I've been in the job has been the LPG master meters and again, that's using the same cost recovery model that we've developed for everything else in the laboratory and I think if there were a demand for other calibration work it would be on that same cost recovery model at this stage and then we'd either win or lose the work according to what other people were charging. But the other people in most cases would be say, the CSIRO National Measurement Laboratory and they'd be under similar constraints to ourselves.

MRS OWENS: Except the CSIRO has to get 30 per cent of their revenue from outside sources. They've got a goal that they have to work towards.

PROF SLOANE: No, I think that's fine and it's very clear and thank you for the submission because, as I said, it's a good little micro example of the dangers of ignoring the demand curve.

MRS OWENS: Yes, thank you very much.

DR BENNETT: So you were asking me to provide some data on the proved and non-proved - - -

MRS OWENS: Yes, that particularly.

DR BENNETT: And if possible some anecdotal evidence of restrictions in the launching of models.

PROF SLOANE: Restrictions in the kind of models and new technology, introduction of new technology.

MRS OWENS: Both of those would be very useful for us and I think you could possibly talk to the team when we finish now and they can tell you how to go about doing that.

DR BENNETT: Sure.

MRS OWENS: Thank you, Judith.

DR BENNETT: Thank you very much.

MRS OWENS: Thanks very much, Judith, for that and we'll just break for a minute while we get our next participant.

MRS OWENS: We will now reconvene. The next participant this afternoon is Avcare. I should just clarify that the submission has been put in in the name Avcare. You have a longer title, or is it just Avcare?

MR GAUCHAT: It is the national association for crop production and animal health, but we're no longer Avcare, that's the brand name.

MRS OWENS: Could you each please give your name and your position for the transcript and I suppose we should maybe go from left to right.

MR GAUCHAT: It is Claude Gauchat, the executive director of Avcare.

MR HOLDSWORTH: Peter Holdsworth, director, scientific and regulatory affairs, animal health, for Avcare.

MR SHARPE: Colin Sharpe, director for scientific and regulatory affairs, crop production, for Avcare.

MR WATERHOUSE: Paul Waterhouse, regulatory affairs manager for Crop Care Australasia.

MR McALLAN: Bruce McAllan, government relations manager for Nufarm Australia.

MS STEVENS: Naomi Stevens, public and government affairs manager for Aventis CropScience of Australia.

MR BLOWES: Bill Blowes, technical director for Monsanto Australia Ltd.

PROF SLOANE: Can I just make a suggestion, Helen, in a sense that I think this submission looks as though it's kind of in two parts. It is kind of the NRA and then there is the Office of Gene Technology and it's probably worth not mixing those things up. The principles might be the same, but - - -

MRS OWENS: Yes, there may be some general principles and then maybe we will talk about each in turn. Claude, you said you would like to make some opening comments at this stage.

MR GAUCHAT: If I may.

MRS OWENS: Thank you.

MR GAUCHAT: Just to thank you for the opportunity and we think this topic of cost recovery is very topical, because we have lived with the NRA cost recovery model for the past seven years and we are about to engage in a new experience with the OGTR. Around the table you have member companies and those companies

represent around 50 per cent of the market share in terms of crop protection products, so we have a lot of experience in terms of this particular topic around the table. We are in the food and fibre business and therefore we are highly regulated. We feel that regulation is obviously necessary; on the other hand what we do want is value for money. We have been paying currently \$17 million for the NRA and it's not so much the amount, it's really the value that we get for that money that's being invested.

Key to us is really how Australia can remain competitive in terms of food and fibre production and exports of the produce. We need to compare our cost recovery models with those that exist overseas, so that we can determine the real costs and that they are transparent to those who have to pay for the service. So transparency and scrutiny of the cost information is important and that's been highlighted in our submission. But if I could suggest an addition to the principles that we have on the recommendation 1 and that is that if we are going to start using cost recovery for a newer technology, that we do so at a time when the market is mature enough to be able to bear those costs. That's really a case in point for gene technology, where we are just at the beginning of an evolving market and we have in our submission highlighted the importance of giving due recognition to the infancy of that market and the ability of the market to pay for what the OGTR will cost. Currently it has been estimated at close to \$8 million.

MRS OWENS: Thank you. I would like to thank you for the submission and I thought the OECD survey was for us quite useful as well, so thank you for attaching that. I would like to spend a bit of time going through your recommendations and I think we have quite a lot of interest in the Office of Gene Technology, the gene technology regulator and it is an issue that has been raised by us by others, but more in the context of the fact that some of those that are being charged are researchers that can ill-afford it and I don't think there has been another submission that has raised the question of it being an infant industry if you like where there are companies that are still very much at the development phase, where there may be no moneys coming in for some time in the future. I think that is a very important perspective for us to understand and take on board.

We have to develop some guidelines and I think the guidelines that we develop will need to recognise the whole range of circumstances that may arise for regulators charging for their services or for listing products, registering products or whatever. This particular instance I don't think has properly been accounted for in the thought processes that have taken place to date, in terms of thinking through 100 per cent the cost recovery policy for that regulator. But we will think about it.

MR GAUCHAT: So what you are saying, Madam Chair, is that you are also looking at the future to try and predict maybe what happens in five or 10 years' time to an emerging industry. Is that correct?

MRS OWENS: We want to make sure that the idea of an emerging industry is thought about. If we have guidelines we don't want to just take a snapshot of here are a range of industries and we need to develop guidelines that fit here and now. We

need to think about industries that will be in the development phase and how do your guidelines take that into account? Should special arrangements be made in terms of charging for those industries where those industries may not be actually getting much revenue or zero revenue, or they might be still very much in the red in terms of doing the R and D. Should a regulator take that into account in setting their charges?

MR GAUCHAT: We welcome that, because it's a question of the cost of entry into a new market and we have some experience in that. So if the cost total is too high, then obviously a lot of companies aren't able to afford to enter the market and that may take away a potential product from the market and in five years' time that might be of high demand.

MRS OWENS: We think of barriers to entry in other senses as well. There are barriers to entry of products coming in from overseas, so that is a different sort of barrier for importers if the costs are too high, the charges too high or the compliance costs are too high. The problem may lay more with the compliance costs of complying with the regulation than the actual fees for getting something registered. But we need to think about those barriers as well, because we at the commission are more concerned not just with government raising revenue to undertake particular activities, but we are interested in the whole impact it has on the community and the economy more broadly. So we take a broader perspective.

PROF SLOANE: If you think about the NRA, which is obviously an organisation that affects you all now, one of the things you say in your recommendation is that the agencies like the NRA should clearly distinguish between private and public benefits, whereas you note in your submission that apart from some - I think it is \$100,000 or something from AFFA - basically NRA is funded by those they regulate. I mean what are some of those public benefits? Are you actually identifying activities that the NRA undertake, or are you making a broader point which is the whole basis of what the NRA does is in part to promote the public, to promote the national interest, or is it both? Do you object to paying for the NRA - - -

MR McALLAN: The NRA has done its own activity costing exercise and it has separated out the cost of compliance, the cost of registration and the cost of reviewing existing chemicals. It is from there and the cost of its administration, the cost of attending overseas conferences and keep up-to-date with regulatory people overseas etcetera, so it has been quite a good exercise for them in terms of self-discipline and accountability. But there is a huge whack of money that goes over to the Department of Health to the TGA, where there is no accountability on that. The TGA are not doing any costing to say, "Is this a simple case, is this worth \$5 of our time, or is it worth \$5 million of our time?" It goes into one big lump and they charge the NRA one bulk fee for their service and there is no discipline on that cost.

PROF SLOANE: So you are more critical of the TGA than the NRA?

MR McALLAN: My word, yes, and I'm critical of any government agency that has picked up on this philosophy that has been pushed by treasury over the years and this

is how we get to this point. There is some feeling here that treasury think that industry is some sort of milk cow and can be charged indefinitely and forever to fill black holes and whatever, without any attempt from a lot of those agencies to step back and say, "Just what are we doing and who are we doing it for?" I think that's the first thing we would be asking you, for all these agencies that charge industries, is to sit down and say, "What are we doing and who are we doing it for and whose interest is this activity done for?" You are going to run up against a bit of problems, even though you do sit in the treasury department, because I think the forces of evil there - - -

PROF SLOANE: We are very independent.

MR McALLAN: I hope so. The forces of evil will say, because if this exercise is done properly, there will be more call on budget funds than industry funds. So you go slap bang into a policy argument if you like about getting your recommendations through.

PROF SLOANE: Who ultimately bears the costs though? You are with Nufarms, is that right?

MR McALLAN: Yes.

PROF SLOANE: So when Nufarm is - - -

MR McALLAN: The farmer.

PROF SLOANE: But does it also affect what you are offering to the farmer?

MR McALLAN: To some extent and you have heard Claude just mention in every activity you have to look at the cost of pursuing all the regulatory requirements, weigh that up against the market and make a decision about whether to proceed or not. In some instances, yes, this is a real concern. The cost of doing business in Australia is not cheap. When you take the market size and I suppose you have heard this umpteen times already, the market size doesn't justify the cost.

PROF SLOANE: Yes, that's a good point.

MR McALLAN: You are getting old technologies, old products and we cross over between the chemical industry and the general agricultural chemical industry. We have half and half in our company; half a chemical company and the other half an ag chem company.

MRS OWENS: Do you deal with NICNAS as well?

MR McALLAN: Yes, we deal with NICNAS as well and you look at some of their programs, their compliance programs for instance are not fully recovered from industry and the government contributes the compliance with NICNAS. In the NRA

you have somewhat of an anomaly there in that ECRP, which is the same sort of thing looking at existing registrations etcetera, but the need to look at those is generated from the consumer side. The public are saying, "We don't know about these chemicals, or these agricultural chemicals that are in the market and we want to be sure that they are okay."

MRS OWENS: To me, what you are saying is that you need to identify the beneficiaries.

MR McALLAN: Yes.

MRS OWENS: Because you are saying really the costs are borne by the purchasers of the products.

MR McALLAN: Yes.

MRS OWENS: They are not always the sole beneficiaries, are they?

MR WATERHOUSE: No.

MRS OWENS: Maybe where there are fertilisers or something, you could argue there they are primarily the beneficiaries, but we are kind of trying to protect the environment, aren't we?

MR McALLAN: The environment, yes, the integrity of food.

MR WATERHOUSE: If I can just say something there, it's quite simple to look at the Agvet code, which is the driving force behind the NRA, may have a list of objectives of course in the front and one is to protect public health and another is protect the environment and another one is overseas trade. They quite clearly in my mind are rather public interest aspects.

DR STEWARDSON: Can we look at the issue of getting value for money which I think you raised in your initial comments and the question of Australia being very expensive in this testing business. We have had a submission from the NRA and have you seen it, have you looked at it?

MR WATERHOUSE: It is a publicly available thing, it's on our Web site. It's number 39.

MRS OWENS: So it only probably came in last week. We haven't had it for very long.

DR STEWARDSON: I guess in that case my question probably is would you care to look at it and give us any comments that you may have on it? Towards the back of the submission they have some attachments that give comparisons of the NRA compared with comparable bodies overseas in a number of countries and Canada is I

imagine the one that is most relevant, because it is a similar sort of sized country and the tables that they give there showing performance indicators in terms of elapsed time between starting a test and completing it, and in terms of costs and other measures fees, actually appear to show them in quite a reasonable light, so it would be helpful to have your comment and interpretation of this table, and I presume that the costs and fees are including the costs that the TGA charges them.

MR McALLEN: The external agencies.

DR STEWARDSON: So you obviously can't make a comment now, I guess, without having seen it, but it would be useful to have your comment in the light of what you've been saying about value for money.

MR WATERHOUSE: Could I just explain that agency, and make sure we're all clear. The NRA, of course, has got the legal responsibility, but they do have arrangements with TGA, with Environment Australia and with Occ Health for them to advise.

PROF SLOANE: Yes, they're planning to contract out a lot of their activities.

MR WATERHOUSE: Yes.

MRS OWENS: I presume that bulk fee you were talking about would be a fee that's negotiated between NRA and TGA, that's some sort of contract that they've developed, but what you're saying is that that contract is not a transparent contract?

MR McALLEN: No, it's not a transparent arrangement, because we are not privy to, you know, what work is being done for the contracted amount. Is it a simple numerical exercise, you know, six, seven hundred evaluations a year for five million bucks, based on current wage rates or whatever, without looking at the actual work to be done, is the point we'd like to make, because a lot of those might be very cheap and simple procedures.

MRS OWENS: Coming to your recommendation one then, in the light of that recommendation perhaps, does that reflect the Part III where you've got one industry sector should not cross-subsidise another? Could you see that that contract between NRA and TGA could lead to cross-subsidisation?

MR McALLEN: It's possible, unless you know the workings of it, yes, yes.

DR STEWARDSON: We are in fact getting a copy for you now, and if within the short time while you're here you've got any comment, well, that would be helpful.

PROF SLOANE: Let's read it now and give us your response.

MRS OWENS: I think that's a bit difficult to - - -

DR STEWARDSON: But you can obviously come back to us later as well.

MR McALLEN: I think you need to overlay that Canadian regime across the Australian market scene, if you like, and you've got a lot of allied factors in there. What other costs are born in Canada and not born in Australia, you know, in terms of local, environmental? We would need to take that back, I think, and have a good look at that.

PROF SLOANE: That issue of cross-subsidisation though, I took to be - it seems to me, let's say the NRA, you set up a kind of charging regime which has caps and discounts for small users, you kind of throw out cross-subsidies which you don't even kind of know about in the first instance, and what you're saying in your submission, seems to me, so there's clearly a cross-subsidy to smaller players.

MR McALLEN: Yes.

PROF SLOANE: You know, because there's kind of small - - -

MR McALLEN: Yes.

PROF SLOANE: Okay, so in a sense you're objecting to that.

MR SHARPE: That's correct.

PROF SLOANE: Secondly, you're also making, probably, a more important point, is that there seems to be a cross-subsidy from the agricultural industry to the non-agricultural industry, which is kind of - that to me is an unintended consequence.

MR SHARPE: Correct.

PROF SLOANE: I mean, the first one, I don't think, is unintended at all. You know, I think the first one is kind of like, "Oh, we've got to worry about the small firms with small quantities of multiple products," you know, that's intended, which brings me to the point - because I know the team will ask you this - if you can kind of pin some of these cross-subsidies down a bit more, that would be very useful.

MR SHARPE: Perhaps I could just reflect on that a little bit by an explanation of how the NRA charging system works in that they have a fee for applications, and they also have a levy on sales, and then in the middle there's a fee for re-registration each year. Now, the way it's set up is that there has been some limits put on what they will charge for applications, and the application costs are actually subsidised by the levies. So the more you sell of a product, the more you subsidise those who are making applications for new products, new uses etcetera. So the better you do in the market as a company, the more you subsidise those who are not efficient, and that obviously creates some market distortions. Now, what - - -

PROF SLOANE: But maybe they'd say they want to encourage applications.

MR SHARPE: Exactly, that's why it was set up that way, but it has created this cross-subsidisation issue by doing that, and that's why we've asked you to look at that. Is that the proper way to encourage applications? Is it to take from one company and give to another company, or is it a government policy where the government - - -

PROF SLOANE: Well, you've heard of this recovery regime, when you take the one, you've got to go to someone else.

MR SHARPE: Yes.

PROF SLOANE: I mean, so it's kind of in a sense also a threshold question. If you want to encourage applications, you might be better to just fund that from the public purse.

MR SHARPE: Exactly, that's the question we're asking you to have a look at, is that a more equitable way than having one company subsidising its competitors?

PROF SLOANE: What about that charge for just more or less the thing on the list? I mean - - -

MR SHARPE: That's a relatively small charge.

PROF SLOANE: Okay, so people don't object to that?

MRS OWENS: But there's no costs, there's not many costs associated with keeping things on lists.

MR SHARPE: No, no.

MR WATERHOUSE: Well, if I could, like, we could be selling \$25 million worth of one product and 10,000 of another product, and they cost, in essence, the same sort of money to retain that registration within the NRA. I mean, the NRA doesn't have to pay anything extra to keep one compared with the other.

PROF SLOANE: Yes, I just wonder whether the courts are in any way related to actually keeping something on a database.

MR WATERHOUSE: I don't think they are.

MR SHARPE: Just picking up on your other point about cross-subsidising between industry sectors, I think we made the point in our submission that the farming industry is in fact subsidising the home owner, because the big volume products come out of the farming industry. So they're paying the big levies, and the small volume products are those for the pet fish and the home garden, and so that's where the cross-subsidisation comes there.

DR STEWARDSON: You do make that point, I think, on page 7. I wondered if you'd be able to give us some examples of products that do that.

MR WATERHOUSE: I can. Crop care has got the largest market share. Anyway, without giving specific figures, can I say that we pay over a million dollars worth in levies and fees a year, over a million dollars worth. So you've got two companies paying a million dollars worth, and crop care is purely agricultural, purely crop protection.

DR STEWARDSON: This is by product, isn't it, rather than by company that it's levied? Is that correct?

MR WATERHOUSE: Yes, by product.

DR STEWARDSON: So within your range of products, are you talking about a relatively small number of individual products that have specific sales?

MR WATERHOUSE: Yes.

PROF SLOANE: Now, the NRA has a board, you know, so do you think that - I mean, that looks like a fairly transparent, open governance arrangement. Does that - I mean, you're saying you think NRA is better than TGA?

MR GAUCHAT: Yes, there's a difference, just because we have two industry representatives on the NRA board, and hence there is more transparency, because those industry people would have obviously access - - -

PROF SLOANE: But that does kind of contribute, doesn't it, having a board?

MR GAUCHAT: It does help, and I think if we're talking about, you know, future arrangements, that may be one way to achieve transparency and scrutiny of some of the costs.

PROF SLOANE: Yes.

MR GAUCHAT: Because, you know, looking at going back to your suggestion to look at this table, attachment 2, it is interesting, and, yes, the NRA is doing quite well in certain areas compared to overseas agencies, but in terms of costs, if you just look at these ones here and relate those costs to the actual market size, we are over-proportionate again, compared to the States and Canada as well. So it's all a question of the markets and the stage of development and capability of that market to pay for a cost-recovery system.

PROF SLOANE: I mean, we'll give you time to respond to that, by the way, and if you want to put in a supplementary submission - - -

MR GAUCHAT: We can make some comments - - -

PROF SLOANE: Yes, because it's a bit unfair to get you to respond on the run. Sorry, Robin.

DR STEWARDSON: It would be helpful, though, to have comments later, but when you say disproportionate to the market share - - -

MR GAUCHAT: Market size, sorry.

DR STEWARDSON: To the market size, what market are you talking about? The market for your products in the two countries, is that - - -

MR GAUCHAT: Yes.

DR STEWARDSON: Okay, so it's bigger in Canada, is it, than in Australia?

MR GAUCHAT: Well, the costs as per this table are lower than here in Australia. They're both in Canadian dollars, and the market is slightly lower for the market size here, so proportionately the cost of this regulation is obviously less in Canada than it is in Australia.

DR STEWARDSON: I see, well, that's an interesting comment.

MR GAUCHAT: But we'd have to look at the scope also of the services provided, so we'd like to come back to you on that one.

MRS OWENS: Can I just switch back to cross-subsidisation for a moment, because we've raised - so far there's been three sorts of cross-subsidisation that we've been talking about. There's the cross-subsidisation which you refer to in your recommendation between industry groups, there's a cross-subsidisation between large and small companies, and there was a cross-subsidisation between those with existing products and those that are trying to put in new applications. We've had other participants that have said that there may be a cross-subsidisation working the other way, that the pool chlorine industries actually provide a lot of revenue to the NRA, which potentially could be cross-subsidising the farming sector. Would you care to comment on that?

MR SHARPE: I'll comment a little bit on that. When we analyse the NRAs income and look at what our AVCARE members provide in dollar value, we come up with the 80/20 rule. Our 36 members provide 80 per cent of the NRAs income, and we've got less than 5 per cent of the NRAs customers, or registrants, if you like.

MR McALLEN: We recognise the position, if you like, of say the pool chemical people. They are caught in a net. It was probably never envisaged that pool chemicals ought to be under the NRA, but when we pulled the pool chemical people in, they said, "Yes, we want to be regulated, right? There are a lot of cowboys out

there. We like the idea of a bit of regulation to keep the industry standards high and so forth." I think I can speak for most individual companies, we recognise that they're caught in that dilemma under the existing regime where they're slugged with a cost which is probably disproportionate to what they want, a little bit of regulation.

PROF SLOANE: Owing to the value of the services provided to them.

MR McALLEN: But the NRA, to its credit, I suppose, is looking at tiered registration, and looking at sort of costing that on some more reasonable basis. They've taken forever to put it in, but tiered registration, exempting certain categories of goods like stuff you put in aquariums and things like this, obviously are not the main game, if you like, and demand a lower cost and being caught, you know, in the net of a 2, 4-D or a Triforine or a big product like that. But at least there's a process there that they're working through, and this is what I'm trying to say. Wherever these agencies are charging at, they should be looking at what they are doing. What is the cost of the activity they're doing? That's the first thing that's got to be done, in my view, in this exercise.

PROF SLOANE: One of the things that some of the participants have raised too is that whether 100 per cent cost recovery actually ultimately kind of undermines the independence of the regulator, that because you are, you know, funding the jolly thing, if you were - - -

MR McALLEN: You can tell them what to do.

PROF SLOANE: Yes, or you can try to.

MR McALLEN: Well, you know, that's a myth.

MR WATERHOUSE: It's a myth, but it's - - -

PROF SLOANE: But don't you think there's a view that they're only cost-recovering say 75 per cent, then, you know, there's a kind of sense in which their independence is actually noted, particularly in their public interest functions.

MR WATERHOUSE: It's a position that's put by detractors of the chemical industry that the NRA are in their pocket because we are funding them, and it's been hotly debated around many tables, and, yes, the fact that there is very little public interest recognised in the NRA, it doesn't help.

PROF SLOANE: No, I just think it's a theme that's emerging, isn't it?

MR McALLEN: Yes, switch it the other way. We won't mind. We pay 25 per cent of the costs and 75 per cent budget - - -

PROF SLOANE: They can have their independence.

MR McALLEN: They can have their independence, yes.

DR STEWARDSON: Well, what would you see as the appropriate form of industry input into the activities of the NRA if your representatives on the board attract this accusation? What alternative would you suggest?

MR GAUCHAT: Perhaps I can start and then invite my colleagues to add on. But one area would be the compliance cost, for example. So there are three core measurements, I guess. One is the setting of standards, the second one is compliance to those standards and the third one is the communication aspect and with regard to the NRA that would be risk communication. So that the compliance program - I mean, they now have assigned more resources to that but that would be an area we could look at where public funds could be used because that is direct benefit to the public.

DR STEWARDSON: By compliance are you talking about testing the assessment of new products or - - -

MR GAUCHAT: No, the compliance in the field.

DR STEWARDSON: Okay.

MR GAUCHAT: Once a product has been registered and is out there being used by farmers, how well is it being used, is it being used according to the regulations and other best management practices that are out there and I think that's one area. We can certainly come back with a figure for that compliance project but I think that is one area where we would see the application of public funds. Another area is, as I mentioned before, the risk communication area and I think that's important that the public is advised of how the NRA works and to explain the legislation as well as the regulations so that there is more comfort by the public in terms of the government being in control with regard to the use of chemicals.

PROF SLOANE: Brian and Naomi, you mainly want to participate in the discussion on the - - -

MS STEVENS: We're waiting for our cue. We're getting there.

MRS OWENS: I'm basically - - -

PROF SLOANE: We're all getting so excited about the NRA that, you know.

MRS OWENS: I've been actually working my way through without you probably realising you're recommendation 1 and we've been actually covering a lot of those issues as we've gone through the discussion and I think they other important one is the competitive neutrality issue. You say that that needs to be actively pursued. A lot of things you've put there we actually would agree with, but you say:

The agency costs that are recovered must be transparent and there is some degree of transparency but there's some degree of non-transparency -

You seem to be reasonably happy with the fact that there is a board which promotes some degree of transparency, but maybe not enough because you talked about the contractual arrangements with the TGA. "Application and competitive neutrality," that goes without saying. "Levies should not be set on an ability to pay basis," and that really comes back to the cross-subsidisation, that's another cross-subsidisation point. "Fees should be set by regulation for prescribed periods to provide certainty," so that you don't - TGA, for example, has these swings and roundabouts depending on how much revenue they need for a particular year. I don't know whether NRA does a similar thing.

MR GAUCHAT: No, they don't.

MR WATERHOUSE: They did lower the levy this year to their credit. It was .75 per cent of each product selling more than \$100,000 and they did lower that to .65 because of a budget - - -

PROF SLOANE: But there's certainly a sense in which - and it's, I suppose, for various reasons understandable that if you're big and ugly they'll try and extract - - -

MR WATERHOUSE: Yes, a problem I get all the time.

PROF SLOANE: I was referring to the company.

MR McALLEN: But the NRA to some extent is run like an enterprise, it's a board of management and directors are appointed and, of course, that gives it accountability and if they can see that there are some costs that they can hand back, they hand them back.

PROF SLOANE: So that's good.

MR McALLEN: I wish to God the Department of Health was that way, you know, was run by a board and had more accountability.

PROF SLOANE: Well, that raises another question - - -

MR McALLEN: Or the work site people or Environment Australia. I mean, they do their work exposure models etcetera. Just what is involved there?

PROF SLOANE: I think that's coming out that transparency in accounting. I'm not sure that actually is quite as obvious - because if they've got contestable functions why aren't they just kind of privatised? What contestable functions do these agencies do? Have you got examples?

MR SHARPE: With the NRA are we talking about?

PROF SLOANE: Yes.

MR SHARPE: We have health provide health advice, so that's the health agency which could be provided by a private organisation if necessary. There is the Department of Small Business which provides occupational health and safety advice and Environment Australia which provides environment advice. All of those there's the potential for that same advice to come from a university or a CSIRO or another source of information other than the government agency.

MR WATERHOUSE: If I could add to that they are setting up a system of listed consultants and you, as a company, go to that consultant and pay a fee for them to gather a report. All the data in the report then goes to the regulatory authority for them to - so it's a much less intense government assessment.

PROF SLOANE: Yes, that's a kind of question about - the TGA is probably at one extreme where everything is held in house, whereas you're saying you can have a model where you have a very small agency and it's essentially contracted out to a credited agency.

MR SHARPE: Certainly the NRA their policy is to go down that track as far as practical.

MRS OWENS: But I think to the extent that there is something left there for whatever reason - when I say it's an obvious thing, if they've got that - - -

PROF SLOANE: Well, it's probably obvious to you but you've probably - - -

MRS OWENS: We have the competitive neutrality complaints unit with the Productivity Commission so I guess it seems to me like a reasonable thing. If you're going to be competing with others out there in the private sector you need to ensure that there is some degree of competitive neutrality. I just sort of took that one as a given, and I think we've discussed the public - so I think we could probably get onto gene technology.

MR GAUCHAT: Can I just say a positive thing about the NRA?

MRS OWENS: Yes, I didn't mean to be all that negative about it.

MR GAUCHAT: It is a model that has worked, given where it's come from and it has a lot of interesting aspects to it. What we were after is basically just continue some programs in terms of seeking out value for the investment of \$17 million. The fact that we actually have two industry representatives on the board that help us access two top level discussions on that aspect. So it is a model that I think we should try and preserve and continue to improve.

PROF SLOANE: You're not likely to be so chirpy though about the cost recovery

arrangements for the OTGR.

MR GAUCHAT: It is a different market. One needs a market being borne and hence it's quite different to the ag chem market that is years and years old and has a lot of experience.

PROF SLOANE: Did you two want to say something?

MR BLOWES: Yes, I guess just to put it in perspective. We've talked about with the chemicals the access in an already established market. With gene technology it goes way back R and D and our company, and I presume every company, is resource limited and so the way that we operate in terms of whether we do research and development in this country is I basically tender to our organisation for resources to develop whatever technology is available. So far we've been relatively successful. We've had the second GM crop in ingate cotton and we've got a few others on the board. What happens from now on will be interesting because all of a sudden we look as if we're going to be handling some fairly sizeable regulatory costs which we haven't had to before and I don't know what impact that will have in my tendering process, if you like.

PROF SLOANE: Because you have to make a case back to head office as such.

MR BLOWES: That's right, to a crop team. So if it's cotton - and they look at it very mechanically. If they can get more, being for their dollar, in India than Australia then the resources go to India. It's about as simple as the way you do your own family budgeting. So I see a problem arising for us in the next five years as to whether we're going to have the sort of pipeline that we thought we might have originally.

MRS OWENS: Would this be a similar problem in other countries? If your company was trying to do this off shore, would you still run into the same sort of problems, 100 per cent cost recovery, huge compliance costs.

MR BLOWES: Every country will be somewhat different and I guess the reason that we've been successful is - there are a couple of reasons - we have a clear or relatively clear road to market with GMAC as it was so that we could say, "Yes, we have a system to get these products to market." We have the market in terms of cotton, that's got another prerequisite and then the cost effectiveness of what you're doing comes into the equation as well. So if in the long term Argentina has a much more cost-effective system than Australia and all those other things are equal, clearly the resources go to the Argentina.

PROF SLOANE: Would you agree with that, Naomi?

MS STEVENS: Yes, there's certainly a large amount of mobility in the biotechnology industry. We have an example where our canola activities coming from North America were very much focused in South America to add value to that global

production and development system and at the point where the regulatory pathway became too clear and there were cost problems mounting in South America we moved the operations to Australia and to New Zealand and to South Africa and since then we've really only fully developed the operations in Australia because there is the clear regulatory pathway or some clarity at least compared to other countries and that there is an ability to capture the value for the investment that we're making.

PROF SLOANE: I can't believe this was true, but the way we were led to believe the original proposals of the Office of Gene Technology Regulator was the first person making an application would pay all \$8 million.

MR BLOWES: We heard that too. It's a bit nerve-racking.

PROF SLOANE: And I suppose the next one would pay nought because the costs were recovered. I mean, it's your issue, isn't it, Claude, that this - well, first of all this isn't really an industry anyway.

MR GAUCHAT: No.

PROF SLOANE: This is in a kind of research and development phase where there's no stream of profitable products of any magnitude anyway.

MR GAUCHAT: Not so - we have one in cotton.

PROF SLOANE: You have in cotton.

MR GAUCHAT: Is established and we're on the way to crop hopefully.

PROF SLOANE: Yes, but you couldn't expect the cotton industry to be funding the entire operation, could you?

MR BLOWES: No.

MRS OWENS: This is probably where the \$8 million would come in if the cotton industry was asked to do so and the food was still seen to be in the development phase.

MS STEVENS: But the problem was that we weren't privy to the assumptions that were made in coming up with that figure and that's very worrying for us when our strategies do change and we are subject to mergers and acquisitions and changes in our activities on a very regular basis. Given that it is still very much in the development phase we haven't yet decided whether it will reach the market. Regardless of how many regulatory ticks it has, we still could not commercialise in the eleventh hour.

MRS OWENS: So this clear regulatory pathway has been something that you saw as an advantage in the past. I just want to clarify that, but now you feel that with this

Office of Gene Technology Regulator that that sort of image is going to change or has changed?

MR BLOWES: I guess it depends a little bit on the senate. I think the model as proposed, if it comes to fruition without too many amendments, it's still a clear pathway to market. It's then a matter of what it costs us. But, yes, as proposed the system is workable.

DR STEWARDSON: I didn't understand your response to the question about the first person to lodge the application for the particular product or process phase and then the next person jumps in. Are you agreeing that that is what appears to be likely to happen?

MR BLOWES: I really don't have a comment other than to say that there won't be a first.

MS: No-one will do it.

MR BLOWES: We're not going to do it.

MR McALLEN: Coming back, Madam Chair, to your observation about this is an infant industry and perhaps the government ought to step back and see what role it should play here. I mean, we've looked at the regulatory model for gene technology, it's horrific. If all those charges are going to be recovered, you know, we're probably terrified of the costs. But given the fact that it is an infant industry argument, the same principles apply as WW2, post World War II when we were trying to set up industrialised industries who go a tariff protection, if you like, or whatever but the governments did play a role in fostering and creating that industry. The government needs to step back from this one and see does it need to play a role here, because I think if you ask some of the big players here, there's a real concern that Australia has missed the boat on gene technology, that the competitiveness of our agricultural exports and our agricultural domestic products as well will be severely attacked by the advantages that are happening overseas.

PROF SLOAN: I don't know whether - - -

MR McALLEN: It's a big question.

PROF SLOAN: Yes. I'm not wild about infant industry. Why are we setting this thing up? We're not really setting up for the benefit of Monsanto etcetera; we're setting it up to protect the public, aren't we?

MR McALLEN: We're setting it up for a public benefit as well.

PROF SLOAN: That's why we're setting it up, isn't it?

MR McALLEN: We grow blue carnations, right.

PROF SLOAN: So you'll go along with the regulation, yes.

MS STEVENS: There's an industry clarity requirement as well. We need to have it set up so there is a clear and a level playing field for all of us to be able to make that assessment as to whether we want to come into the market in Australia.

PROF SLOAN: But the fact that tis' not really even an industry at the moment - we've had plenty of agencies which have only moved over time to cost recovery, so there's been a kind of five-year period or whatever - - -

MR McALLEN: Creeping disease, it was.

PROF SLOAN: It might be a creeping disease but at least it starts low.

MS STEVENS: Also overseas, I think there's experience with the regulation of gene technology overseas that is somewhat five years ahead of Australia that have not adopted full cost recovery models, and that's very good - I think there's a few examples given in various documents around that show that the fees for applicants in terms of doing field trials are much smaller in other countries, in many places. In other places, for instance New Zealand, it has become prohibitively high.

DR STEWARDSON: For gene technology.

MS STEVENS: For gene technology, yes.

DR STEWARDSON: Have you given us any evidence about that in your submission, or can you?

MR SHARPE: If I may just draw your attention to page 7 of our submission. We made a comment in the second paragraph which as best we could determined from what information KPMG provided. Naomi may care to talk to this particular one, but essentially we identified that to get a crop like canola to the marketplace it would cost in the order of somewhere around \$3 million, if I remember rightly, in regulatory charges. That's just what the OGTR would charge, and the potential market out there is only \$30 million.

DR STEWARDSON: Where are you on - - -

MR SHARPE: That was page 7 or 8. It depends how you print it out. Mine says 7, but 7 or 8.

PROF SLOAN: Okay, we're going over to - that was our 7.

DR STEWARDSON: It is page 8, yes.

MR SHARPE: Naomi may care to expand on that perhaps a little bit as to how that might impact a decision by a business. If you've got a huge regulatory cost and a very small potential market, I guess the decision is made for you.

MS STEVENS: And I think the figures that we've talked about here are very, very conservative in terms of estimated costs and also markets as well from our perspective. But I think your comment was more about the fee structure in New Zealand?

DR STEWARDSON: Yes. This is relevant too, but I was specifically asking about fee structure in other countries.

MS STEVENS: I'm not sure if you have access - I know the KPMG report has some reference to the New Zealand system and the New Zealand fees are available via the ERMA Web site, but I guess we could dig out the fee schedule for you for comparison.

DR STEWARDSON: That would be helpful.

PROF SLOAN: You were here for the Standards Australia one, where they had such a high fee structure it was killing off the industry or killing off the regulation. Is that a possibility here with gene technology?

DR BLOWES: New Zealand is a perfect example, because it's a relatively small market or very small market and we've just not done anything. I mean, it's not as if anybody makes a conscious decision to walk out of New Zealand, there's just nothing going on. I guess in Australia we have some reasonable size markets so there's that attraction, but unfortunately what you see happen is that as costs go up - and regulatory costs is just one of them but it's a significant one - then the number of crops that you can participate in starts to get very small, and unfortunately some of the best technologies are in some of the smaller crops and you just can't afford to do it.

DR STEWARDSON: What's the position with international recognition, with Australia recognising American agencies' approvals?

MS STEVENS: It's something that they request some comment on in a regulatory application. Indeed, NRA do the same thing in terms of providing other countries where you might have gained approval in one of those risks assessments that have been made. That's certainly something that as an industry we're trying to promote a harmonised approach and a reduction in duplication of reviewing and coming to the same decision, and I think issues of world trade negotiations like the biosafety protocol, whereby there will be set up a master database of all products that have achieved clearances and regulatory approvals, will be accessible by all other countries to determine whether this has been assessed and what were the factors that were brought up in the safety assessment.

That will certainly add some elements of interest to how a country might want to establish its own risk assessment and evaluation process, and we would like to see that becoming as efficient as possible. So if Canada have deemed that this food is safe for Canadians to eat, that we want to have that taken somehow into good consideration in the Australian assessment, albeit that we will still want to come to our own conclusions, but that we should expedite - - -

DR STEWARDSON: When you say, "albeit they will still want to come to their own conclusions," given that you're talking here about very big assessment costs, particularly in relation to size of market, which is very important, the mutual recognition point would seem to be particularly economically important for your area. Is there any active consideration of mutual recognition?

MS STEVENS: I'm aware of examples where there are bilateral agreements, for instance, between Canada and America to work on mutual recognition of assessments and actually mutual evaluation of activities, but so far the examples are only on a two-country basis.

DR STEWARDSON: Nothing for Australia?

MS STEVENS: Nothing I've seen, aside from us as applicants putting in and encouraging the use of the Canadian evaluations or the European assessments. We certainly make those available as part of our submission but it's not something that's necessarily actively pursued by the evaluator as such.

DR STEWARDSON: The sorts of things your companies would want to have approved in Australia, are they by and large things that would also be relevant in overseas countries, or is it developing things that are peculiar to Australia that you're concerned with?

MS STEVENS: At the moment they almost have to be because of the large cost of research and development. They fall very much into the commodity categories, where we have corn, soya bean, cotton, rice and canola. There might be some vegetables and cereals as well in that list. They are sort of the key world commodities, so if you're working in these commodities you've almost got to expect that they will have global applications so you will have a global investment and a global return for your investment dollar. You've also got the trade of all those commodities into all the major markets around the world, so you must have the regulatory clearances, however big or small that product is, in all those countries.

So the considerations are very large, and if you were just to step back and talk - from an Australian company trying to develop a product like lupins, there is still the world commodity market and trade in such a seed product that they would have to make sure that they had approvals in all of the countries that lupins might find their way into in all aspects of regulation. So in terms of working with global food biotechnology products you have to look at the big scale in all countries and at proving the regulatory status in all countries.

MR SHARPE: Just following on that before Peter comes in, if we separate gene technology and agriculture into the crop and the food - your question about mutual recognition happening in Australia - if we look at the food aspect and reflect upon what ANZFA tried to do, which was to get mutual recognition, and that was not accepted by the community, so we have this dual assessment process now where ANZFA has to do exactly the same as the USFDA did simply because the community would not accept mutual recognition on a food aspect. I think food you could probably get down that track very easily. It's perhaps not quite so easy to get down it from growing a crop which has some local components to it. Sorry, Peter.

MR HOLDSWORTH: I just wanted to pursue the issue of mutual recognition, harmonisation. It's not a new initiative. It is well established within the traditional agvet chemical industry in relation to regulation. It's a slow process but confidence is building between regions with respect to regulatory activities. There are many examples in place. Where they are leading to is standardised guidelines or trial protocols, the results of which will be accepted in various reasons. It still does result in those trial results being assessed independently in the region, but this is a slow process. We're talking about sovereign rights and it will take time. But there is the confidence building in traditional industry, agvet industry, and I'm sure that over time that would be able to be picked up in the new developing gene technology industry.

DR STEWARDSON: The problem of developing confidence in the overseas regulator, is that the key issue? Some people have told us that in the area of mutual recognition it's a problem of different environmental conditions in Australia compared with the overseas country and therefore, even if you trust the overseas regulator 100 per cent, what he's done is not relevant to Australia.

MR HOLDSWORTH: I think some people take a somewhat simplistic approach that everything is equal, whether it's studies that are conducted in Canada, Australia, South America or South Africa. The reality is we have a thing called good agricultural practice. That is on how the product is applied in the farming community in that region, and that will vary from geographical region. Even within one geographical region it can vary from area to area within that one region, and that is a big impediment in this harmonisation or mutual recognition across the board of the outcome of any study. So, yes, there are the problems there.

MS STEVENS: But the public confidence levels are quite different in each country and gene technology is just an amazing example of that. The government perception in the UK, for example, has a very low rating compared to the public perceptions in the US of their government system, which is very high. So from that perspective we have to find our own level of where our public is confident in the regulators here and the processes that they're using or adopting from other countries.

MR McALLEN: It's the second step in the process. The first step in the process is for the agency to say, as we said before, "What do I do, who do I do it for, and how much does it cost?" The second step is to say, "How can the cost be reduced?" and

this is where you start to look at opportunities maybe in international harmonisation. There will always be what we call the koala factor, the unique circumstances in Australia.

MRS OWENS: Yes, we hear about the koala.

MR McALLEN: You've heard about the koala factor, right.

MRS OWENS: In all sorts of areas. It's unique.

MR McALLEN: All have to be looked at and examined when the koala factor is there. But the second step in this process is for agencies to be driven by the ideology of reducing the costs that they're charging, and I think that's the missing element. There is no discipline out there in those agencies to say, "How can we do it cheaper?" We in business are always looking for "How can we do it cheaper?" and I would contest anyone who said that government agencies are the same, "How could we do it cheaper?".

MRS OWENS: I guess people say there's no incentive for the agencies to ask that question if they're being underwritten by industry.

MR McALLEN: Exactly, that's right, and it is a double whammy, isn't it? It's a self-defeating system.

MRS OWENS: Can I just ask about the consultation process relating to the OGTR, if there is such a thing. Is the industry involved in any way on any board or advisory committee or anything that is going to prove useful for you?

MR GAUCHAT: Do you mean in the future or - - -

MRS OWENS: Yes.

MR GAUCHAT: We have been consulted during the preparation of the legislation and the regulations.

MRS OWENS: Is a formal committee going to be set up? Does the legislation specify that there is going to be some sort of formal body?

MR GAUCHAT: There will be a community consultative group, but we are not included in that.

MR SHARPE: There is in the community consultative group an opportunity for industry to be represented. Now, it doesn't define what industry is, but there is an opportunity for industry of some sort to be represented.

MR GAUCHAT: This is the farming community?

MR SHARPE: It doesn't say that, it just says there will be an industry representative. One of the points that we made in one of our submissions was that from the point of view of monitoring costs that we should look seriously at the Canadian model which has an advisory board for - - -

MS STEVENS: Economic advisory board.

MR SHARPE: Economic advisory board, which we think would go some way to providing a similar role to what the NRA board does in overseeing the economic side of all this. But that wasn't taken up. So what we are left is really no body which can oversight the operation of the Office of Gene Technology regulator from an economic point of view. There is a body called the Community Consultative Group, but that's simply policy in regard to approvals and so forth. There is an ethics committee and there is an a Ministerial Council, none of which as we read the legislation, has any role to play in the cost of the operation.

MR GAUCHAT: I think in your discussion paper you mentioned the term "padded costs" - - -

MRS OWENS: Cost padding or gold plating.

MR GAUCHAT: I think that particular consultative committee has the potential of cost padding in future. They would probably put pressure on more regulations, hence more costs. Again, if you go back to the NRA model there is at least a check and control in there, because we have two voices on the board. So during any sort of discussions on new expenses, there would be at least the voice being heard. It's important when we are looking at the OTGR that - we have two expectations as we have put in our recommendations. One is that there won't be any costs recovered in the first five years until the market has achieved a certain level of maturity. I think by then it will be quite clear who wants to be in that market and who doesn't.

The second expectation is that the current estimated costs of \$7.8 million does not explode out over those five years, because if you look at the NRA, they look after some 6000 products and have something like 105 or 110 people at a cost of 17 million, whereas the OTGR I think has around 40 people budgeted, at a cost of 7.8 with basically no products at this stage and the number of products will be just probably a handful as compared to the NRA. So these would be our expectations with the OTGR. I guess cost recovery is fundamental. We believe that as a principle, but we don't believe that it should happen with the OTGR for five years.

MRS OWENS: So probably you would add onto your recommendation to possibly another part of that which says something like there should be some sort of economic advisory board established.

MR SHARPE: Sorry, we didn't pick up on that. It was an oversight on my part not to bring that to your attention.

MRS OWENS: But we have now. So that's fine, I have just added it.

MR GAUCHAT: Could that be just a generic set-up - or that could even be specific, depending on the legislation and the amounts to be cost recovered. It may well be just a national economic advisory body that gives advice on different areas.

MRS OWENS: It could be recovery of all regulators.

MR GAUCHAT: That's right, talk about cost efficiency. I mean it will have a cost and may be more efficient and also advise expertise from one sector to the other.

PROF SLOAN: I think the governance emerging is quite an important thing, because people are calling for transparency and accountability. You then have to ask yourself the question what's the best mechanism to ensure that? A board with particularly users - "users" is a terribly term, an American term for drug users - but, you know, members of the industry to be represented on the board.

MR SHARPE: I think there are two aspects to transparency as well. You have the transparency from the users of the system, if I can use that term again, and you have also got the increasing demand from the community for transparency in the operational process which is adding a very significant cost as we see under the OGTR or the Office of Gene Technology Regulator. I think the KPMG report highlighted that most of their activity is in fact to take account of this demand for transparency and participation from the community.

MR WATERHOUSE: The question I would raise is is that for public good or is that - - -

MRS OWENS: That's exactly right, who are the beneficiaries of that?

MS STEVENS: The problem is if the GM canola for example as a commodity costs so much more to develop and put onto the market over and above a conventional canola product and the value difference is not delivered at the end of the day when the oil product they all go into, get mixed into, then the products just won't reach the market if we make them so much different and add so much more cost.

MRS OWENS: I think we understand what you are saying and we will look at your recommendations. It is always nice to have a set of recommendations, because it gives us a bit of a check list in terms of our thinking. You have a recommendation through which seems to be a generic one that says you would like us to acknowledge the current cost of recovery arrangements applicable to ag and vet chemicals. I suppose we are acknowledging them and we are actually going to have some sort of case study on this. So we will be looking at it.

But I think what we will be doing is it will be more than an acknowledgment, a critical appraisal of the arrangements. So we won't just be saying, "This is

happening", we will be doing some sort of evaluation of how well we think the system is working. You have said, "We recommend that the cost recovery regime be reviewed to conform with the recommended costs recovery guidelines." I think any guidelines would have to look at the whole official review, ongoing review, because otherwise things have a tendency to slip backwards.

MR SHARPE: I guess we are aware that the NRA has a proposal in the system to actually amend their current cost recovery process and we are kind of hopeful that that won't occur until they have seen the outcome of your report.

MRS OWENS: Okay. Does anybody want to make any comments about the Trade Practices Act? We have the terms of reference which asks us to look at those issues. Is that anything that anybody at this table has taken a close interest in?

MR GAUCHAT: Could we take this on notice and come back to you?

MRS OWENS: Yes.

MR GAUCHAT: So that will be another thing on our list. May I just summarise the things that we have just noted down to provide you with?

MRS OWENS: Yes, please do.

MR GAUCHAT: Further information on our views on attachment 2 of the NRA submission in terms of cost comparisons

PROF SLOAN: Or more generally on you reaction to the NRA submission would be useful to.

MR GAUCHAT: More in general, okay. Also provide you some figures with regard to where the community funds could come from for the compliance area. We might just give you a specific figure. IRMA: some details on the fee schedule. Would you like this in writing on the economic advisory boards and some more dot points on that, how that could work?

PROF SLOAN: I think just put in a supplementary submission I think.

MRS OWENS: I think with that it's only really if you have more to add to what you have already said today, because we will have a written transcript and you will get a copy - - -

MR McALLAN: A draft report - - -

MRS OWENS: You will get a copy of the transcript, so you can have a look and see what you said on those issues in the transcript and if there is anything further you want to add to what you have said on the economic advisory board or any other issue that you have raised that you feel you maybe would have liked to expand on, you are

perfectly welcome to submit more material to us.

MR GAUCHAT: Good.

MRS OWENS: You get another opportunity after we have put the draft report out as well if you want to put in another submission at that stage.

DR STEWARDSON: But we would prefer to have it before.

MR GAUCHAT: Okay.

MRS OWENS: Yes, I wasn't inferring to wait.

MR GAUCHAT: And the last, the Trade Practices Act, if we have any comments on the specific terms of reference. Thank you very much.

MRS OWENS: Thank you very much. We will now close for today and we will be resuming tomorrow morning at 9.30 with the Australian Livestock Transporters Association..

AT 3.52 PM THE INQUIRY WAS ADJOURNED UNTIL
WEDNESDAY, 29 NOVEMBER 2000

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