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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO COST RECOVERY

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

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON THURSDAY, 7 DECEMBER 2000, AT 8.56 AM

Continued from 6/12/00

MRS OWENS: Welcome to the resumption of the public hearings for the Productivity Commission's inquiry into cost recovery by Commonwealth regulatory, administrative and information agencies. I'm Helen Owens, the presiding commissioner, and with me is my fellow commissioner, Judith Sloan, on my left and our associate commissioner, Robin Stewardson, on my right. Public hearings have been held in Melbourne, Sydney, Canberra last week, Canberra this week and by video in Adelaide and Perth next week. The scope of the inquiry is specified in the terms of reference. Copies of this and other inquiry documents are available on the table out near the bar. The commission has three main tasks in this inquiry: to review existing cost recovery arrangements by regulatory, administrative and 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 inquiry process as the commission is also able to seek clarification and pursue particular issues in greater depth. While we try to keep these hearings informal, we do 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 we will send each participant a transcript of their session's proceedings. At the end of the scheduled hearings today, I will invite any persons present to make oral presentations, should they wish to do so.

I now turn to our first participant, the Therapeutic Goods Administration, and I'd like each of you to say your names and your position with the TGA for the transcript.

MR SLATER: Thanks, good morning. I'm Terry Slater, national manger of the Therapeutic Goods Administration.

MS MACLACHLAN: Rita Maclachlan, director conformity assessment branch, Therapeutic Goods Administration.

MS CUMMING: Fiona Cumming, director of the office of complementary medicines, TGA.

MR CESARIN: Pio Cesarin, acting director, chemicals and non-prescription medicines.

MS HUNT: Leonie Hunt, director, drug safety and evaluation branch, TGA.

MRS OWENS: Thank you and thank you very much for the submission. I know it was done quite hurriedly, and I'm very appreciative of that and I'm very appreciative of you coming today and I know that that also caused some difficulties this morning

with flights, so I think we feel very lucky that you managed to get here. I understand, Terry, that you do have some opening comments you'd like to make and then we will enter into some discussion.

MR SLATER: Thank you very much, Mrs Owens. I just want to touch on three or four key summary points. Firstly, I want to talk a little bit about what is meant by "full cost recovery" or "100 per cent cost recovery" for the TGA. Secondly, I'd like to talk about our current performance benchmarks and how we're going about those. Then, thirdly, really to touch on how we compare in relative terms with international comparative countries. If I might start with just a brief description of the 100 per cent cost recovery system that we have, that 100 per cent cost recovery system is really only those costs which are reflected in the Therapeutic Goods Administration trust account and those costs are the same costs elements as were there since inception in 1991, so we haven't in the move to 100 per cent cost recovery, changed what we're cost recovering.

We would contend that that doesn't include the full cost of a national regulatory system. For example, the TGA uses its Commonwealth constitutional reach. The states also are players in the national regulatory framework and the cost of state operations is not cost recovered as part of our cost recovery system. Secondly, there are public health costs associated with any national medicinal framework that the Department of Health and Aged Care bears that are certainly not included in our cost recovery model and the costs associated with the government's policies around the implementation of the Pharmaceutical Benefits Scheme, any incentives that it provides to industry are certainly not included in our costs, for example the $3 billion that's paid out through the Pharmaceutical Benefits Scheme.

The 100 per cent cost recovery strategy that TGA has been asked by government to follow since 1 July 1998 does give us the opportunity to negotiate with industry players about trade-offs in terms of performance and the resourcing that we have. This would be far more difficult to achieve if 100 per cent cost recovery was not instituted, unless a government of the day was prepared to allow the regulator to negotiate with some flexibility around his budget allocation, which would be difficult, or there was just a fixed amount in dollar terms that the government provided, not a percentage amount. Turning to our current level of performance, our submission includes a lot of details which show that the TGA is currently performing more efficiently and productively than it ever has since its inception.

Basically, we have the same staffing levels in 2000-2001 as in 1995, 96 and earlier years, but our processing throughput and efficiency has shown remarkable improvement. For example, if I look at low-risk medicinal applications, we now process some 93 per cent of those in less than 10 days, compared with up to four months in years gone by; for low-risk medical devices. We process those, on average, in 14 days, compared with about 40 a few years ago; for high-risk medical devices, we're currently processing those in about 61 days compared with about 120 days three or four years ago. This has been achieved despite, as our submission shows, substantial increases in workload in some areas; in fact, an increase of more

than 100 per cent, but across the board around a 30 per cent increase in the application workload that the TGA receives, so I think our efficiency benchmarks show that our performance at present is the most efficient the TGA has ever been.

How do we compare against comparable countries in the area of high-risk medical devices? The US processes those largely in about 150 days compared with our 61, Canada is in a similar vein. It's difficult to compare ourselves with European countries because they use private sector notified bodies to do their pre-market assessment and the commercial nature of those agreements make data comparisons very hard to get, but Ms Maclachlan has brought along a couple of letters to give you some indication of some of the comparisons, where companies have written to us pointing out the differences. In the area of high-risk medicines, we're comparable with comparable countries, but interestingly there are differences in where the time is spent in processing the application.

For Australia, we spend roughly half the time with the TGA and half the time with the clock stopped waiting for data from the companies and if we compare that with Canada, their time with the company is 10 to 20 days, compared with our wait for the company of about 120 to 160 days, so that's something that we're working with the Australian Pharmaceutical Manufacturers Association to resolve, but I think it's due to two elements. One is the fact that overseas head offices are the source of information for companies and Australia is 1 per cent of the world market. It gives it some relative priority, if I may put it that way, which is not in our favour. Secondly, perhaps the TGA has a balance which prefers for us to hold the application and wait for the data, rather than to determine it without that data, at cost to the company in the likelihood that it would be more likely rejected and also in the interests of consumers in Australia in general, so that they don't miss out on new important medical advances.

For low-risk medicines, I believe Australia has a world-leading system. It allows the use of known ingredients, whose safety profile has been assessed; it allows a wide range of approved low-level claims associated with these ingredients to be made, providing the applicant holds the evidence for those. The TGA doesn't as a matter of course call for that evidence. It charges about $400 for an application compared with up to $200,000 for a high-risk application, which demonstrates the risk-based nature of where we put our effort and I guess $400 means probably about a half a person day as the TGA's cost that it's allocating with overheads to that particular application. In Europe, any similar products, if they want to make similar medicinal claims, they would be sent down the high-risk route or they are marketed as foods and unable to make the sorts of medicinal claims that are available in Australia.

In the US, they're treated as dietary supplements, as they are in New Zealand. In the US, there are some prescribed health claims that they're allowed to make, but not medicinal claims, and in New Zealand, they're not supposed to make any claims at all. In Canada, they go down the high-risk route at present. They do have a new system on the drawing board, but it hasn't been implemented as yet. With those remarks, Mrs Owens, we put our submission to you and look forward to receiving

questions.

MRS OWENS: Thank you very much. I know we haven't got a lot of time, but we'll see what we can get through. I know that your staff have looked at quite a few of the submissions we've received, because that's reflected in your submission, but I think out of all the bodies that we've been looking at for this inquiry - and there has been quite a few, because we're covering a wide range of areas - there are probably more comments about the Therapeutic Goods Administration than any of the others and some of the comments you have actually addressed in your submission, but I'd just like to run through them. We can't talk about all the issues that they've raised today and some of the comments, I have to say up-front, are really - there is a degree of inconsistency between what different participants are saying, but there are also some consistent lines coming through from widely different groups, but I should say there have been some positive comments as well and they particularly think that the staff are very helpful and I think the interaction with the TGA is appreciated and I think that we got that general flavour, that there is a degree of responsiveness and the staff are helpful.

But because this is an inquiry about cost recovery, the focus has been on the dollars and some have said that the regulatory costs are higher in Australia than in other countries and, in some cases, people have said they're the highest in the world. Those sort of sentiments particularly come from the complementary medicine people and the devices people. Most have rejected the 100 per cent cost recovery, which won't surprise you. They either argue it's a form of taxation or their cost recovery is unrelated to the actual costs incurred. There are concerns about the broader compliance costs, particularly in relation to good manufacturing practice. There are claims that the annual listing fees are high and they don't reflect costs. Australia is missing out on products.

Cochlear, for example, came to our Sydney hearings and said that with their new implant models they were only going to register one instead of two because of the costs, but they would be selling that product in other markets, but not here. Another concern is that people say that the amount of TGA regulation for dietary supplements, complementary health products, is inappropriate. They either should be treated as food is in other markets or the regulation should lie somewhere between food and drugs. There have been concerns that the attitude of the TGA to risk is somewhat balanced and that it is highly risk-averse in its approach to regulating some of the drugs or devices. There's a disincentive to industry development - they're arguing it's driving industry offshore. I think you have heard all these.

MR SLATER: Yes.

MRS OWENS: Another one is that it is not accountable to industry for the costs or its efficiency. There's a lack of transparency. At the same time some have said, "We'd like the TICC - the Therapeutic Industry Consultative Committee - to be more effective and have greater influence" but, at the same time, we have heard from others that there is regulatory capture, so there is a bit of an inconsistency with that one.

Others have said that some of the activities - in particular conformance assessment - are not contestable and they should be and there have been others that have raised the laboratory and referred to it as a Taj Mahal, so there's a whole heap of concerns and I don't know whether you would like to pick up any one of those. I think probably the issue of greatest relevance to this inquiry - although they are all intertwined - is the issue of 100 per cent cost recovery and the underlying rationale for that.

MR SLATER: Yes.

MRS OWENS: I think somewhere in your submission you said you charged 100 per cent because the industry is there. I don't know when we're developing our guidelines whether having an industry there is going to be a sufficient rationale for cost recovery at 100 per cent level, but I was wondering if you would like to clarify for us exactly what you think the underlying rationale for the 100 per cent is in the case of the TGA.

MR SLATER: Without doubt, the fact that the TGA is 100 per cent cost-recovered is a government decision but, increasingly, I think, throughout the world, there's a recognition that it's not an inappropriate model; for example, the UK Medicines Control Agency has been 100 per cent cost-recovered for some seven to eight years and in fact has a 6 per cent above-cost element for capital purposes. We are aware that countries such as Indonesia and Malaysia are moving in that direction. Certainly Singapore are in that group. Canada sat around the 75 per cent mark. New Zealand is currently around 50 per cent, but with considerable noise that it's likely to move to a 100 per cent cost-recovery regime, so for this industry it is not a model that is out of step or, if you like, at the leading edge of policy.

PROF SLOAN: That doesn't make it right.

MR SLATER: No. I agree with that. However, I do think what the Therapeutic Goods Administration registration of a product does bestow on industry is a benefit which says that an independent government agency has evaluated the product for quality safety and at the high-risk end certainly for efficacy, and says it is fit for the purpose, and I think that's important because we are dealing with risk here. We're not dealing with consumer goods. We're certainly not dealing with telephones or televisions or refrigerators. We're talking about something that someone takes for a specific either treatment or relief of symptoms or for some medicinal purpose or in the area of medical devices for some therapeutic benefit.

So the therapeutic promise the company is making carries with it, if you like, a government endorsement that that has been verified and, I think in terms of marketing, I think that is a significant benefit that is bestowed on the industry and certainly in the area of exports a number of companies have said to me the very best advertising they can have for their product for overseas markets, particularly in the region, is the fact that the Therapeutic Goods Administration has approved it, and it carries with it one of the highest quality regulator stamps in the world.

PROF SLOAN: But who do you think ultimately bears the cost of the regulation?

MR SLATER: That's a complex question because if you go to the issue of the pharmaceutical benefits subsidies, working out just where - who benefits and who pays is a very difficult equation. In the medicinal industry we're talking about probably a 6 billion plus sector totally, and the government payments are over 3 billion in that for subsidy for medicines and under the factor (f) scheme, again, further industry incentives on top of that of substantial size, so - - -

PROF SLOAN: Isn't that all irrelevant? I mean, if I were marking this as an economics 1 essay I would just put a cross to that. It's absolutely irrelevant to this argument. The government decides to do those things for other reasons - - -

MR SLATER: No, but you asked me who pays and I'm trying to say to you I don't think that's a really easy answer to come to. It's a complex issue.

PROF SLOAN: Presumably the consumer pays.

MR SLATER: Through the taxation system, you say?

PROF SLOAN: No, no. Through the price of the products.

MR SLATER: But they're having a subsidised price.

PROF SLOAN: But that's not the issue. That's done for another purpose.

MR SLATER: I guess the argument that - - -

MRS OWENS: There's no free lunch. That's what we're saying.

MR SLATER: - - - says there's $6 billion of turnover in this industry - a proportion of that - some 40-plus per cent - is in exports, so if you look at what is domestically provided you've got very, very close to 100 per cent government subsidy and/or price support for medicines, so when you ask the question, "Who pays?" it is a difficult answer to give, so I would really say to you the taxpayers pay for it.

MRS OWENS: Then why shouldn't they then pay for the TGA?

MR SLATER: But that doesn't mean they're the consumers because of the various safety nets and other things that are in place. Right?

PROF SLOAN: That looks like a very mucky arrangement, doesn't it?

MR SLATER: Do I get a better mark now for my economics 1 essay?

PROF SLOAN: No.

MRS OWENS: Terry, coming back to the basic principles, there are a few ways you can look at it. We have got to think of some guidelines, you see, and one approach is to say the user pays, or the beneficiary pays. Now, the beneficiary in this case is partly the industry because the industry, as you said, can export the product and it gives some reassurance that it has gone through a process and so on, so the industry benefits significantly.

MR SLATER: Yes.

MRS OWENS: We are just thinking about this process. Right?

MR SLATER: Yes.

MRS OWENS: This is what we're thinking about - what we're paying for. Partly the consumer is going to benefit because they can be reassured that what they are ingesting is safe and so on, and then the community as a whole has some reassurance that you know we live in a world where we have access to these products which are safe and so on, so you could think of it as being - the rationale is that each of those groups shares that burden in some way. Another way of thinking of it is that, well, we've got an industry here - what you've got in your submission - and it's a fairly well-to-do industry. Bits of it aren't. I mean, there are some little companies there, as well, and they can afford to pay so we'll just get it from industry, and there's another approach which says the industry is putting up these products.

They get a significant benefit from you doing this work and that benefit outweighs the costs of the regulation, so why shouldn't they just pay for the whole lot and basically we, the public, can free ride on that - or the community can free ride on that. What we're trying to grapple with is which is the legitimate way of thinking about this because we have to develop the guidelines but I think Judith is right. All the other arguments about the fact there's a PBS there and they get a lot of other benefits from running their businesses in Australia, are not particularly relevant. What we're trying to think of is the rationale for charging for this particular regulatory activity. It's a complex question.

MR SLATER: It is, and I did leave out of my answer the intellectual property rights that are given to some products, not all. There's free-rider effects. But I would like to really perhaps do a contrast with foods where there isn't a registration system and there is very large free-rider aspects at work; the fact that when a food is advertised there isn't a body like the TGA to say that that food has been assessed to meet a standard. The standards are laid down and I guess it's up to the companies and the manufacturers to manufacture to those standards, and that it has been checked for safety by an independent government authority, I think is an advertising advantage that medicines have which is of major benefit and the question is, given that we do know every product that is on the market whereas with foods there is not even a notification system in place - so long as you manufacture to the standards you are able to sell your product. Again I think this is another aspect of the system which I think is

a benefit to the industry because of the post-market activity that we have on behalf of consumers, which ensures that those products are safe and fit for the purpose and of a quality - of a guaranteed quality - and meet quality standards and hence a lot of our work is about measuring, checking, enforcing, if you wish, those standards and that level of quality.

DR STEWARDSON: I doubt if anybody is questioning that industry benefits from what you're doing for the reasons you have given. I think the question is whether industry is the prime beneficiary or whether the consumer is the prime beneficiary and, secondly, whether, even if industry isn't the prime beneficiary, there is some reason why it should pay along, for example, some of the lines that Helen is outlining.

MR SLATER: Yes, well, it is a complex set of interactions here with - whether it's 50 per cent, whether it's 75 per cent, I still think those questions equally have to be answered, and I'm not quite sure whether then the model for comparison isn't zero versus 100 per cent.

MRS OWENS: It may be - that's what we think.

MR SLATER: Yes.

MRS OWENS: There are some other issues and I think I ran through them when I gave you the list at the beginning, but another issue is, are there any costs to the community of having a system where there is 100 per cent cost recovery, and we have had, as we said, the Cochlear example, and quite a number of other examples of people saying, "Well, we haven't registered that product in Australia because it is too costly to do so." It may not just be the fee they are talking about.

PROF SLOAN: Small market.

MRS OWENS: It's a small market. There are quite significant compliance costs, so I mean there is a lot of mixing up of the fee element with all the other arguments in there and it is hard to just pull out fees as being the issue but, nevertheless, there is this other side to the question as to whether we are missing out on significant products - pharmaceuticals, devices - that other consumers in other countries get - or whether we are missing out on anything significant or are there other substitutes, so we're not doing too badly. I know when we did the pharmaceutical inquiry it was very hard to pin that one down, too.

PROF SLOAN: A very serious issue, though.

MR SLATER: It is a very serious issue. I am going to ask Ms Maclachlan to talk about Cochlear but, before I do that, I think any decision about whether a company goes ahead with a project or puts a product on the market is determined I guess by what they see as the income streams they might receive from it. There's a whole host of - I don't have to tell you - input to that taxation establishment cost and so forth, and I couldn't say to you that at some point that marginal cost of a fee from the TGA

wouldn't tip the decision one way or the other. I think we would have to accept that somewhere you would find a case where that marginal cost tipped it one way or the other, but whether the right way of dealing with incentives or disincentives for that product to be marketed is by then saying, "Well, you get rid of the regulatory fee here rather than providing industry incentives or taxation incentives which might deal with the margin I think is something for governments to wrestle with.

MRS OWENS: I don't know whether the industries - and it's a few industries we're talking about here - actually are asking for the fee to be abolished altogether. I think again there's a general presumption that they will have to pay something, and I just look back to 1996 when we were doing the pharmaceutical inquiry and I think the area where the industries were most satisfied was in the activities of the TGA, but at that time I think you were back at the 50 per cent level.

MR SLATER: 50 per cent, yes, that's right.

MRS OWENS: And I think they accepted that as being appropriate. I don't think we got a lot of people complaining about that, and I think when we did the medical devices inquiry a lot of the concerns were about other issues like conformance assessment and so on. There was some concern about fees, but I think what's tipped the balance is the hundred per cent.

MR SLATER: The hundred per cent, yes, I think you're right and I think there's an argument there about why those functions of government, if you like, being part of a department of state as we are, are included in the price. I do say though, in having moved from 50 per cent to 100 per cent - and maybe the decision is still reasonably fresh in people's minds because we've really just made the move in the last two years and there's been some adjustment to the fees as we've done that - we actually haven't reached the doubled 50 per cent level that you would have looked at in 1996. If we'd just used a simple doubling of the fee we would have had quite significantly higher fee rates than we have now.

PROF SLOAN: It's still pretty horrendous though.

MRS OWENS: Just earlier you said something like - - -

PROF SLOAN: 38 per cent.

MRS OWENS: 38 or 39 per cent.

MR SLATER: Discounts, yes, but not a doubling of the fee. We did actually pass on to industry as we moved to that 100 per cent cost recovery I think some $20 million of savings that would have been - - -

MRS OWENS: Efficiency savings.

MR SLATER: Dollar savings in terms of the 100 per cent - sorry, yes, and it does

translate into efficiency savings as we made the move. Clearly our fees and charges are going to be reflected to some extent in the rate of applications that were received because application flows allow us to be more productive and more efficient.

PROF SLOAN: The trouble is I think participants probably quite rightly feel they're now paying for all sorts of things which are pure public goods or which are quite illegitimate for industry to pay for - for example, post-market monitoring in compliance. I mean, that's a bit like asking me to pay for my tax audit, isn't it? You're doing non-specific research; you've got admin; you're advising government; you're interacting with international bodies, etcetera, etcetera. I mean, these really aren't legitimate items for cost recovery.

MR SLATER: No, I disagree.

PROF SLOAN: You think people should pay for policy advice.

MR SLATER: Let's work our way through most of the list that you mentioned there. I think for adverse monitoring and post-market activities, what we're talking about here is the fact that we have products of risk; they are specifically assessed for the purpose. If we have a terminally ill cancer patient the level of risk that they might be prepared to take in terms of the medicines that are available might be very, very much higher than somebody who wants to take a dietary supplement, for example; and the adverse reactions that are associated with medicines are, I think, a key role for us to ensure that the safety and quality decisions that we've made are right and that products that aren't safe for the purpose are removed from the market, and I think that's a cost that is legitimately one that industry should bear.

In the area of international contributions, Australia's contributions to international standard setting is important for the industry. If Australia had a set of unique standards of its own that the TGA developed there would be additional cost to industry, and in fact I would put to you that that would be a barrier to products coming on the market. We try to the extent practicable to not have unique Australian standards, but it's important that Australia's voice in setting those world standards is heard and put appropriately by the appropriate experts, and I again think that is much to do with our quality and safety aspects of our work, which again I think is a legitimate charge for industry to bear.

PROF SLOAN: Bearing in mind that industry probably, you know, without a doubt doesn't bear it, it's the consumer, so I think we've got to be very careful about that. The incidence of this will almost certainly fall on the consumer.

MR SLATER: But again adverse reactions end up often with hospitalisation or visits to medical practitioners, which is a cost that consumers would not have had built into their assessments of maybe the costs involved in taking a medicine.

PROF SLOAN: Compared with the benefits.

MR SLATER: Yes, compared with the benefits. I mean, there is a risk-benefit trade-off here at the high risk - - -

MRS OWENS: There's not much flavour of benefits in your submission.

MR SLATER: At the high risk end of medicines there's a considerable risk-benefit trade-off to be made between medicines that treat very serious illnesses but come with considerable risks.

DR STEWARDSON: Can we look at this risk business slightly differently, a different aspect of it, and that is the degree of risk and the degree of intensity of assessment that you make. It's been a very common criticism from industry that you don't make a reasonable adjustment for the degree of intensity of assessment in relation to the degree of risk. You've referred to this in your submission and at least at some of the points there you seem to be talking about the three or four different industry sectors that you deal with, and you're saying the complementary goods low risk, low assessment, and so on, and I more or less understand what you're doing there.

MR SLATER: Yes.

DR STEWARDSON: But within each sector, I think, is where the criticism is coming and I'd just like to understand what you do there. I think that we've been told that in the devices area you're introducing or looking at the EU system of four categories of risk assessment, but I don't think a similar sort of thing is happening in the other areas. Can you tell us what is happening within the sectors rather than as between them?

MR SLATER: In the devices sector we are participating in the Global Harmonisation Task Force which is setting a global system. That has defined the various risk categories and the device classification requirements. Australia is being honoured by being given the chair of that Global Harmonisation Task Force; the TGA will have that honour for the next period. We're one of five countries that sit around the table.

MS MACLACHLAN: Indeed, if I could just say - if I could just interrupt - that the legislation that we're moving to has been heralded as world leading by the international regulators.

MR SLATER: So we're one of five countries - Japan, the US, Canada, Europe and ourselves - who sit at the table, so that is recognition, I guess, of our status and the importance of our voice, which I think, as I said before, is very important in international standard setting.

DR STEWARDSON: That's for devices.

MR SLATER: That's for medical devices. So that best practice model is scheduled

to go before the parliament in the next session. In the area of high risk medicines we have adopted the international ICH, International Convention on - - -

MS HUNT: For approximately 10 years in the area of prescription medicines, which are high risk medical products, we have been accepting dossiers in the European format and have adopted European guidelines, and more recently ICH - International Harmonisation - guidelines. The guidelines themselves reflect very much a degree of risk assessment relative to the condition being treated. So, for example, the guidelines, which are guidelines, not legally binding documents, give guidance to regulators into industry on the appropriate sorts of study and level of evidence that would be required to justify claims for these high risk products.

So, for example, as Mr Slater has referred to, a drug for the use of a patient with terminal conditions such as cancer will have different requirements and lesser requirements than a drug that is to be used in a larger proportion of the population to relieve a minor symptom, and the level of risk is actually reflected in the level of evidence recommended to be presented in the guidelines, and that's been in place for approximately 12 years - 10 years now.

MR SLATER: We then have categories of over-the-counter medicine, and I think it's important to note that at the high risk end these products are only available on prescription, so they aren't something that consumers can self-select, and I think that's another important element of the safety-related system that we have. But with over-the-counter medicines we have a level of assessment which is different and less stringent than for prescription medicines because the risk is considered to be lower, and of course the fees are proportionate to that, and for low risk medicines we have, as I've said earlier, a fee of $400 for these products with, I think, a world-leading opportunity for these products to be marketed with claims that just are not available to them in other countries.

MRS OWENS: Is that the up-front assessment fee or is that the ongoing fee?

MR SLATER: To keep your product on the register, in other words, and to be able to sell it each year there is an annual fee of $350 for those low risk medicines.

MRS OWENS: But what's the cost to you of keeping those products on the register?

MR SLATER: The cost elements for us are monitoring, the post-market monitoring, that Dr Sloan referred to; the recall arrangements where, if there's a contamination or a safety-related recall or a quality-related recall, we run a national recall system. It's for surveillance and for random checks on the quality level and any enforcement activity that we might take. Any enforcement successes - well, "successes" is the wrong term, but any enforcement outcomes through the courts, we're not the beneficiary of those fines.

MRS OWENS: What about the complementary medicines that Fiona looks after?

We've also had quite a lot of concerns from that area as well, about whether we really should be treating these like drugs or whether they really could be treated in some other way. I wasn't really quite clear as to how much the sector valued - would be able to make claims about these products. They didn't actually make that a big point. The point they were really concerned about was they felt that there was a degree of regulatory overkill. Fiona, do you want to make a comment?

MR SLATER: By all means. I just introduce that by saying a lot of these products are able to be sold as foods, and hence if they wish to market them as foods they're able to do that at no regulatory cost. If they choose to market them as medicines because they want to make a therapeutic promise about the product, the TGA enables them to do that and for that we, I think, have a set of fees and charges which are remarkably low.

DR STEWARDSON: Can I just clarify that. Can all the products in the complementary medicine area have that choice, or are you just talking about some narrow group within it?

MR SLATER: No, it's just a number of them in the area of - particularly in the area of dietary supplements.

MRS OWENS: I think we've almost run out of time to talk to you because our next participant is here, but I think you mentioned that Ms Maclachlan is going to talk a little bit about Cochlear, and you also mentioned something about a couple of letters that you have there too.

MS MACLACHLAN: Just looking at the Cochlear submission and the comments that they have made, I can provide you with some comparative work that we've done on the cost of notified bodies in Europe. It's very difficult to get that information, as Terry has indicated earlier, but I do have that information and similarly information on, I guess, the TGA's competency in assessing products to the European standards, and I guess the effects of the Mutual Recognition Agreement with the European Union is something that the TGA and Australian industry are looking forward to - bearing some fruits once the European Commission gets into the mode of confidence-building with us. So, yes, I have those documents there.

MRS OWENS: Will you table those documents?

MS MACLACHLAN: Yes, certainly. I can table those now.

MRS OWENS: Is there any confidential material among that? I know you have given us a confidential attachment to your submission on the - - -

MS MACLACHLAN: The first one is a comparison of TGA costs with an Italian notified body and that's not confidential information, because their fees are in the public domain.

MRS OWENS: Good, thank you.

MS MACLACHLAN: So that is how we obtained those. That is one. Then we have some documents relating to an Australian manufacturer of lasers and he actually gave a public presentation to a conference in Sydney and Melbourne early last year, so all the information that is in these documents were included in that public forum. Indeed he provides also information, I guess, about the performance of the TGA compared to a European notified body.

MRS OWENS: Presumably favourable.

MS MACLACHLAN: Absolutely, yes, it was. Yes, it was. I think this is across the board, because we've undertaken about 25 conformity assessments for Australian manufacturers to enter the European market and I can say that certainly we have received favourable comment across the board. If they don't want to proceed of course they pull out before we even sign a contract with them. So that's just some documentation in relation to European comparisons. Now, I guess in relation to Cochlear we have provided our comments to you. I think we have got to bear in mind with Cochlear that their regulatory compliance costs were virtually minimal with the TGA from 1995, because up until that period of time their products erroneously, but on our current system of regulation, were considered to be low risk; but the regulations were amended at that time.

Some of the comparisons that they are making between the performance times of TGA's assessments with the various variations on their bionic ear are based on the fact that we never evaluated the predicate device. So I guess we are in a stage of catch-up now. In the US the products were evaluated back in 1991 and similarly in the EEU. In relation to the compliance costs with the European notified body, I think it's important to note that we have an arrangement with that notified body to undertake the surveillance audits - the quality systems audits - for that notified body. We were actually, I guess, bearing those costs of that European notified body. The European notified body isn't passing those costs onto Cochlear and we have similar arrangements with other European notified bodies as well for other Australian manufacturers, so in that way we are reducing their compliance costs for their particular European notified bodies and I think that's an important point. That wasn't a point that was included in the Cochlear submission.

I think that also it's important to note that the fees paid by Cochlear amount to 0.03 per cent of their revenue and overall this is a low compliance cost when we look across the board. As I said, I think part of the reasons they are feeling - they have probably felt it in the last couple of years - is because we are actually catching up and evaluating those older devices which we hadn't done before. Our evaluation times are superior to those of the US, perhaps equivalent to those of Canada, but once again Canada accepts US evaluations.

I think in relation to medical device innovation, it's very true that prior to the product getting to the stage of being marketed and going through the regulatory

hoops, Australia does provide a very favourable environment for medical device innovation. Our clinical trials environment is one that is held up by the industry throughout the world. It has been very conducive to innovation. Indeed I was a participant at a conference in Sydney a couple of months ago on medical device innovation at which of course there were a number of medical device companies, start-up companies and whatever, and the comment was made that the environment for medical device innovation - and also it covered the regulatory aspects - has never looked better in Australia.

Now, we had a whole range of manufacturers that haven't provided submissions to you, but who actually believe that the environment they are now - well, that they are looking forward to operating in and actually they are seeing now, is very conducive to innovation.

MRS OWENS: It's all very well to have a very strong environment for innovation, but if we don't actually end up with the product that's being developed at the end of that process, there is a concern. I think Cochlear was putting to us that there were products that we were not going to see in Australia. Australians would not benefit from that innovation process because they were not going to register them in Australia.

MS MACLACHLAN: Yes, I take that point. However, they also made comment that Australia has - it's a very small niche market and they did acknowledge that in that small niche market the TGA does provide a very favourable system under our special access scheme for providing approvals to clinicians who all want to use those products. I think they made that point really quite strongly, so there is a balance there and certainly if there is a need to use those products in patients we have got a system that can be used.

MRS OWENS: So you don't think it would be a good - - -

MS MACLACHLAN: We call it the individual patient usage system.

MRS OWENS: Not identified - - -

MS MACLACHLAN: Even though those products aren't registered and they're looking at a very, very small market here for profoundly deaf individuals.

MRS OWENS: I think we have just about run out of time. Did you want to - - -

PROF SLOAN: I was just going to say that, you know, with this world of mutual recognition and the fine regulatory activities done overseas, I suppose over time the TGA gets smaller and reduces costs. Is that what we have got to look forward to?

MR SLATER: I think with the world of harmonisation and with the ability to recognise the decisions of highly comparable regulators, I agree with you particularly in the area of low risk medicines and medical devices there will be a very high degree -

an increasing degree - of mutual recognition. I think at the high risk end it would be most important that there was at least a minimum number of complete evaluations, because I do think the higher the risk there is value added by additional scrutiny of those applications. It is remarkable the different things that the different regulators have found as they have gone through the applications that were missing or were missed by one authority. So I think it is crucial that at least there is a minimum number of those that are done. I think Australia is well positioned and it would be in our interests to have such a capacity and such a sovereign evaluation of those high risk devices and medicines.

MRS OWENS: I think that was actually quite a good place to stop, unless you wanted to follow up with that, Judith.

PROF SLOAN: No, that's all right.

MRS OWENS: Thanks very much for coming. I am sorry it was a bit rushed and we didn't get on to any issues that (indistinct) wished to have raised and I am sorry about that, but I was just pleased that we could see you at all this week, so thank you very much all for coming.

MR SLATER: Thanks very much for having us.

MRS OWENS: We will just break for a minute.

MRS OWENS: The next participant this morning is the Australian Chamber of Commerce and Industry. Could you please each give your name and your position with the Australian Chamber for the transcript.

MR PATERSON: Mark Paterson, chief executive.

MS CURTIS: Karen Curtis, director, industry policy.

MRS OWENS: Good thank you, and thank you for coming in. I am sorry about the slight delay. Thank you for the submission. I understand, Mark, you would like to make a few opening remarks.

MR PATERSON: Thanks very much, chair. The first remark is one of clarification. There is a submission that has been put in by a Dr Mark Paterson from Downer in the ACT.

PROF SLOAN: We know about - - -

MRS OWENS: Yes.

MR PATERSON: He is not me.

MRS OWENS: We have already spoken to him and he's nothing like you.

MR PATERSON: Good.

PROF SLOAN: You might not disagree with him, mind you.

MR PATERSON: Sorry?

PROF SLOAN: You wouldn't disagree with him.

MR PATERSON: I might not.

MRS OWENS: No, he was talking about the Australian Bureau of Statistics.

MR PATERSON: I don't propose to go through the submission in detail. You have it and there are a number of observations that I think I would like to make to draw out the key elements of the submission. (1) We welcome the Productivity Commission's inquiry into cost recovery arrangements and our hope is that the result of this inquiry will see the development of some principles in relation to cost recovery; a framework in which those principles ought to apply; clear linkage with broader issues of regulatory development so the regulatory impact statement process needs to be linked in with any arrangements that are developed for cost recovery. We need to recognise that up front in all forms of regulation.

At the end of the day the consumer pays for those forms of regulation and therefore there's got to be a genuine assessment of the public good in the implementation of regulation and the impact of that regulation on consumers. Any cost recovery arrangements that are imposed on industry will invariably be passed on to the recipients of those goods or services, so the consumer at the end of the day pays. There are some who argue that in relation to some forms of regulation it is in the interests of industry. Our strong submission is that there is no form of regulation that is solely in the interest of industry and one would question whether there is a public benefit or public good in intervening in an area which would be solely to the benefit of regulation.

So I think the emphasis of the inquiry, the emphasis of any submissions, ought to be tested against the benefit to the public, the benefit to the consumer and the extent to which the implementation of cost recovery arrangements would impact the consumer paying for that good or service. I don't think we make reference to it specifically in the text of the submission, but in many respects the Archaean process of hypothecation has to be considered in terms of any arrangements for cost recovery. There are many who argue against hypothecation in relation to revenue collection by government with respect to specific taxation measures, but then don't apply the same argument in relation to hypothecation when they're seeking to pursue cost recovery. Our submission would be that there needs to be a consistency in terms of the approach.

We outline in the submission the framework in which we believe the guidelines for the development of regulation ought to be developed. We advance an in-principle policy statement in the submission with respect to cost recovery and would strongly urge the Productivity Commission in its report to further develop the proposal that we have put forward in terms of that policy statement and the guidelines and the framework in which cost recovery arrangements are entered into and, as I said, to link that very strongly with the other arrangements in relation to the development of regulation and particularly regulatory impact statements. I think there's a key role in a regulatory impact statement for any cost recovery arrangements.

The recent report of the Office of Regulation Review have clearly indicated that not all agencies are performing as well as they should be in terms of development of regulatory impact statements and I think some added emphasis to that proper process would be helped by statements from the Productivity Commission in its report. I am happy to respond to any questions that you may have.

MRS OWENS: Good, thank you. Thank you for those comments. I think one of the really difficult issues we're grappling with is this whole issue of the rationale for cost recovery and on what basis do you determine who pays for what. I don't know whether you were here when we started our discussions with the earlier participant, Therapeutic Goods Administration, but there are various ways you can look at cost recovery. You can think of it as a beneficiary pays arrangement, so in some way you try and divide up the cost between the different beneficiaries - whether it's the industry, the consumers, which sometimes becomes the same beneficiary if the

industry passes it on; it depends on the state of the market - and then the community more generally. So you can think of it in that way.

The TGA thinks of it in terms of - they put in their submission that, "The industry is there so we can charge the industry." It basically is inferring, "The industry can afford to pay, so we'll charge the industry." So there is another approach.

PROF SLOAN: The Mount Everest approach to regulation or cost recovery.

MR PATERSON: Yes.

MRS OWENS: Then there is another approach which is a bit similar to that which says, "Well, industry can get significant benefits from regulation and those benefits can outweigh to them the cost of the regulatory activities. Given that those benefits to industry outweigh the costs, we can charge industry." To the extent that the public more generally can benefit also from those activities, the public can actually free ride.

I presume, based on what you've just said and written in your submission, you basically say that you can't think of any situation where there should be 100 per cent cost recovery from industry, because the fact that you've got a regulatory arrangement - we're talking here about regulation, I think, more than ABS and so on - but the fact that you've got that regulation in place, there is an inference there that it's there for some broader community benefit. Is that right?

MR PATERSON: That's true, and I think we need to move beyond those who assert the proposition that there is a benefit to industry and say, "If you argue that case, demonstrate it." So in a framework of principles in relation to cost recovery, if there are agencies who claim a very obvious benefit that may well flow to industry, let them clearly articulate it in the process of development of the regulation and demonstrate how that benefit justifies the cost that they seek to impose. It's much easier to assert that there is an industry benefit than it is to demonstrate it.

Our view would be if there are benefits that flow to industry from some form of regulation - that is, if the regulation provides to an individual company or industry sector a right to market a product and others are prevented from marketing that same product, you may be able to argue that there is a benefit to that particular company - but demonstrate it. Is it a regulatory agency saying, "By regulation we're giving monopoly powers or oligopoly powers to particular players in the marketplace"? If it is saying that, then let it say it.

PROF SLOAN: That is a real concern, I think. In the case of prescription medicines, presumably the argument about patents and exclusive periods actually is a kind of different argument, which is an argument that if you don't have that kind of arrangement, you'll never get that kind of R and D. It seems to me a whole lot of arguments get muddled up, you know. What's that got to do with cost recovery? You're giving the patent exclusive period because you know that without that there would be free riding and you'd never get the R and D in the first place.

MRS OWENS: It's a different - - -

PROF SLOAN: Okay, I accept that, but what has that got to do with cost recovery of the regulatory rate? The second point you raised, which I think is a really important one, is that we have to be quite analytical in looking at some of these regulations that when we talk about benefit to industry what we're not actually saying is that the regulations throw up some rather nasty anti-competitive effects. The regulations, as well as the cost recovery activities, in fact generate barriers to entry for small players. So in some ways the bigger players probably are quite happy with the arrangement, so you might get some people saying, "Oh, we're pretty happy with the TGA as a matter of fact," because they know that small entrants are very put off by the - - -

MR PATERSON: And not just small entrants.

PROF SLOAN: No, new entrants.

MR PATERSON: But there is often a big divide between the capacity to deal with the regulatory environment between big business and small business. The nature of cost recovery arrangements can, for a large business with a narrow product range, be argued to be acceptable when a much smaller business with a much broader product range - the same pricing regime may well be so onerous as to force that participant out of the marketplace, or prevent them adequately competing.

PROF SLOAN: I think that's an important theme. Once you start having minimum thresholds and caps and the like it's generating all sorts of funding incentives, isn't it?

MR PATERSON: Yes.

PROF SLOAN: Sometimes it's the big ones subsidising the small ones.

MR PATERSON: Sometimes, and sometimes a cap can mean that the small are effectively subsidising the large. It's a very difficult balance.

PROF SLOAN: Yes.

MR PATERSON: It's why a much greater degree of rigour needs to be applied, than is presently applied, to setting those fees and charges. I can imagine circumstances where totally uncapped fees would be windfall gains to regulators but the imposition of a cap, if inappropriately applied, can have significantly distortive impacts in the marketplace.

MRS OWENS: What about the argument that Mr Slater used about the ability to market offshore provides a leg-up for companies wanting to export - the fact that they've gone through a process in Australia? He is arguing that there is really a degree of government endorsement of that product and it's going to help them in

export markets. It's not really establishing market power in the Australian market; it's basically saying it's actually going to benefit any industry or any company that wants to export. It puts them in a stronger position.

MR PATERSON: It depends on the extent to which mutual recognition arrangements apply. There's mutual recognition arrangements in some areas but it's certainly not comprehensive and it would depend on the marketplace in which they seek to operate. I think if you tested the agency or their minister and asked whether that regulatory arrangement was providing government endorsement of particular product, they would start to walk away from that proposition pretty quickly.

Most regulatory agencies, from my experience, whilst they may regulate within a particular marketplace, are very, very uncomfortable about any assertion that it's got an endorsement, or the backing of government behind a particular product. It's met a particular form of regulation, not government endorsement. It may assist and, once again, if the regulator in a proper review process is able to demonstrate that benefit directly flows to those businesses, they may be able to justify some cost recovery arrangements. But let them demonstrate it.

PROF SLOAN: First of all, it's a monopoly regulation so it seems to me that that argument is a bit weak, because people might be prepared to pay for export facilitation, but you're actually giving them no choice. It also, I think, demonstrates - one of the joys of being in this inquiry is the enormous number of kind of institutional details we're having to get across - you go over to the Customs Service where they have an import processing charge, but no export processing charge because the government wants to facilitate exports.

MRS OWENS: Exports are good.

PROF SLOAN: But then we have the TGA tell us that companies should be happy to pay for something because it facilitates export, so there doesn't seem to be any consistency of principles across these agencies, in terms of their cost recovery activities. Hopefully that is one thing we are going to be able to sort out.

MS CURTIS: If I can just add there, I think one of the problems we've had is that it has been so ad hoc, the way agencies over the years have developed their approach, and they're very insular a lot of the time - these agencies - and they don't look to see how what they're doing dovetails with what other agencies may be doing for those same businesses. I really think that a great advantage of - I hope your recommendation will be for all those agencies and departments to go back and start a process and comprehensively review how they approach cost recovery.

MRS OWENS: Yes, we've found an enormous degree of inconsistency across how agencies are approaching the issue of cost recovery. Some have actually really thought it through very well and have really sat down and worked out their rationale for doing it and very carefully sorted out a policy. Other agencies - you say, "Why are you doing it in that way?" They say, "Well, it's government policy."

MS CURTIS: "And we've always done it like that."

MRS OWENS: "And we've always done it that way. This is what the government expects." Then you go back and try to find where that government policy is written down and - well, usually it's not written down anywhere. It's really quite interesting because, as Judith said, we were blessed with getting across a whole wide range of areas and seeing a fairly wide range of approaches.

MR PATERSON: In fact I think that if often tested against the assertion of government policy, more often than not an agency asserting that proposition would be found wanting. If you looked behind the principles in terms of regulatory impact statements in fact I think you'd reach a contrary position, to suggesting that the nature of those charges is by way of government policy.

MRS OWENS: Yes.

MR PATERSON: Because more often than not they've been introduced without that assessment having been undertaken.

MRS OWENS: Yes. I don't think we've found that many cases where there has been a regulatory impact statement produced for charging arrangement. There has been - I think AQIS does it, or has done it in the past. Can you recall, Robin, or Judith?

PROF SLOAN: TGA didn't do it in respect of some new arrangements and have got into terrible trouble.

MS CURTIS: The gene technology regulator, yes.

MR PATERSON: That's a great example where even in the current environment with a contemporary issue, they not only haven't justified the cost recovery arrangements that they assert, they didn't do the regulatory impact statement before the development of regulation, and asserted that it should be on a full cost recovery basis. Now, that meant on a literal interpretation, the first person to make an application was up for between 7 and 13 million dollars, whatever the set-up cost for the agency work.

PROF SLOAN: But that's okay because the industry came along and told us without a doubt there would be no first applicant.

MR PATERSON: Yes.

DR STEWARDSON: Can we look at one of the points you made about the cost to innovation or, more to the point, the detriment and deterrent effect to innovation of regulatory costs, and that was one of the main points you made I think on page - somewhere or other. You've also said in your submission and very strongly in your

presentation this morning, that there is no doubt that regulatory costs are ultimately passed on to the consumer. I just wonder how those two statements stand together. Won't the extra regulatory costs loaded onto innovation be, in fact, passed on to the consumer if it's something that the market really wants?

MS CURTIS: We need to look at our innovation policy. The first question is whether businesses are going to undertake the R and D in Australia, because it's more cost effective for them to do so. There is a whole range of issues associated with that; whether the R and D tax concessions are appropriate or whatever. So a lot of the businesses may decide, because the knowledge is global, to undertake the research and the innovation overseas, in Canada for instance. That's something we're finding. Skills are still the same appropriate level and it's much better incentives over there for them to do the research and then it can be imported back into Australia.

Whether the innovation is undertaken in Australia is the first question, but if the costs of them getting something through a regulator is added onto it, then they say, "Well, there's no point in doing the innovation here. We can have it undertaken - innovation, the research undertaken overseas. We'll then register the product in Canada and then try and import it back in here." We've had a number of examples of that cited to us as having happened.

PROF SLOAN: I'm interested in - this is more a micro issue but it's also one that Robin is interested in - this issue of whether governance arrangements or governance of agencies can actually assist in this whole process. My feeling is that the agencies who probably do it better have industry reps and have effective governance arrangements. It kind of puts a brake on it at least. So you could compare say NRA with TGA. I mean, TGA has the industry consultative committee, but it's not the strong governance arrangements that NRA have. I wonder whether there's a kind of allegation of capture in that. If you go to page 14 - I liked your submission; I thought it was very clear and very well written, particularly for a narrow economist like me.

MRS OWENS: It had some diagrams in it.

PROF SLOAN: You talked about capture, which I think is a clear problem with 100 per cent cost recovery, and if you actually looked at the TGA submission they talk about "performance resource trade-offs negotiated with industry". I kind of think, "Whoa." But then you go on in the next one:

> As a general principle, there should be more business involvement in the management and the expenditure of the regulatory authorities.

That sounds a bit like capture, too. It might be worth sorting that out.

MS CURTIS: I think we were alluding to the fact that sometimes there can be a perception of capture.

PROF SLOAN: Yes.

MS CURTIS: And the governance of the agencies is really important because if it is appropriately constructed you do get industry representation on the boards. But by ensuring that business is involved in the way the money is spent or whatever, you do get a better result. You're going to get greater efficiency.

PROF SLOAN: Did you want to bring up your idea? You see, that's what I kind of think is the way through this thicket.

DR STEWARDSON: One suggestion we'd like your reaction to, which is aimed to try and give industry an effective voice in what is happening and yet to avoid the capture of the regulator by the people being regulated, is this: maybe one might set up something which you might call an efficiency audit committee which would be similar to the audit committee of the board of a company but, whereas the audit committee is just looking at mainly financial matters, this would be looking at costs, efficiency and so on; that it would be made up of, say, half of the industry being regulated and perhaps a quarter of the ultimate customers and a quarter of the regulators and maybe an independent chairman; that it would have some legislative right to get appropriate cost and operating data so that it could make a proper assessment of the efficiency with which the organisation was carrying out the regulatory task that government has imposed on it - not to challenge that, but to look at the efficiency with which it is carrying it out - and that it would report not to the chief executive of the agency to give him a copy but to whoever controls that person, which in many cases would be the minister of the relevant department - that is, to the person who has the authority to accept the recommendation of the efficiency audit committee and tell the agency to do something, but who also has the independence to reject the recommendation if he or she so wishes, so that you're not getting capture of the agency by this body that has substantial industry representation on it. That's a suggestion to try and get around this conflict between effective industry input but not industry capture. If you had any comments on that, we'd be pleased.

MR PATERSON: One of the issues that that raises for me is, if such a proposition were put forward to some agencies, they would then pass the cost of undertaking that efficiency audit onto the industry as well.

DR STEWARDSON: Yes. They do already with their consultative committees that are fairly ineffective.

MR PATERSON: You'd need to work out, I think, the parameters of undertaking such an audit. We see agencies where capture is evident or the perception of capture is profound. We see other agencies where industry involvement in the management of the agency and the control and use of the funds works very effectively. They aren't captured and you don't need to introduce a new process to avoid that capture. Certainly undertaking a regular audit of the efficiency of the regulatory regime ought to exist, in any event, whether there are industry representatives there or not, because we seem in most areas of government activity to constantly be building on the existing base rather than reviewing the existing base and removing that which needs to be

removed and replacing that which needs to be replaced, and the development of new regulation only where it's appropriate. I'd prefer to see that review of regulation being more comprehensive than just where there's a cost recovery arrangement in place. The National Audit Office undertakes many of those audits, and it may be possible for them to be more actively involved as an independent third party in that efficiency audit review process; rather than just having half of industry and the agency and some consumer representatives, to have somebody like the Audit Office which has a regular review process of agencies, to be an active participant in the process. But it certainly could overcome perceptions of capture. It could probably overcome real capture, unless it was the same industry representatives or similar industry representations that might have been captured by one group nominating people in terms of the audit review process.

PROF SLOAN: One of the issues - it's probably more a political economy issue than anything else - is that once an agency particularly becomes fully cost recovered, which as one of our participants points out, we're actually moving from cost recovery to full cost recovery - that's the new term - they get outside that radar screen of DOFA, even though in most cases the money is warehoused back through general revenue. But there's a political economy process - that they get to keep the revenue.

MS CURTIS: We actually made that point in our submission to you.

PROF SLOAN: I'm not sure we've completely pinned down the details, but it seems a lot of these agencies haven't been subject to the efficiency dividend process that so many other departments have been. This is the cost-padding/gold-plating phenomenon. Once you're outside that radar screen, there's nothing much to stop it.

MS CURTIS: There's not the same level of scrutiny, and there should be.

PROF SLOAN: Yes. It seems to me we have to think of a system which is either equivalent to being on the radar screen or putting them back on that radar screen.

MR PATERSON: If the money goes directly into general revenue, then is it cost recovery? It's just another tax, if it goes into general revenue. If it's just another tax, then is that tax being appropriately introduced? Does it have parliamentary scrutiny? Is it part of the general revenue base of government?

MRS OWENS: It may not be actually as you'd define a tax, a real tax. Just because it goes into general revenue doesn't mean to say it's a tax. But some of these things get recycled through the section 31 arrangements, so that it just goes straight back. It takes the pressure off them in the budget process and, as Judith said, they're off the radar screen in terms of closer scrutiny.

PROF SLOAN: That issue of tax and charge is quite an important one. My guess is that we're actually unearthing illegal cost recovery activities, as a matter of fact.

MR PATERSON: It raises some constitutional issues. The legislative framework in

which they're being introduced, are they money bills? Is there more than one issue being dealt with in a money bill that's being taken before the Senate? It does raise, I think, a series of issues that are not resolved at the present time.

PROF SLOAN: Yes. In one sense it sounded to me initially like quite a good thing, because if agencies are aware of the difference between a charge and a tax - and some agencies have said to us, "Oh, God, well, we don't want it to go into parliament and go through," and that puts a nice little break on the process.

MR PATERSON: "We don't want some external scrutiny of what we're doing."

PROF SLOAN: Well, "The minister wouldn't want to put it through parliament," etcetera. That was my a priori view. I think in practice it's very fudgy. It's very unclear what's happening with them. There are some agencies which clearly have passed tax legislation, like APRA and ASIC and the like, so they're behaving absolutely legally, but there seems to be a bit of a fudge going on with some others.

MR PATERSON: I think this is drawn out in our submission. ASIC is an agency that claims full cost recovery, but it recovers about 130 per cent of its costs.

DR STEWARDSON: APRA don't you mean?

MR PATERSON: No, ASIC.

MRS OWENS: No, ASIC, too, I think - both of them.

MR PATERSON: As I understand it.

MRS OWENS: Yes, and APRA, too.

MR PATERSON: They make a significant surplus.

MRS OWENS: ASIC gets some of its funds from APRA.

MS CURTIS: We've quoted the actual numbers in here. I think it's $339 million, from memory, that ASIC - - -

PROF SLOAN: What page?

MS CURTIS: Now you're testing me. It's in section 5, at about page 15. ASIC took charges revenue of $339 million and operating costs of $145.5 million and APRA $62.8 million and operating costs were $42.7 million.

DR STEWARDSON: Does that include the money that ASIC raises, though, on behalf of - you know, the registrations and things that it gets on behalf of the government. It's just simply a collecting agency.

MS CURTIS: Yes, it's total fees collected and charges. Those figures were taken out of the ASIC annual report.

MRS OWENS: Some of the money goes back to the states.

MS CURTIS: It does. There was a big deficit problem, but now they've collected a lot more and so they're going to be making a profit.

MRS OWENS: Can I just thank you for the examples you gave us in attachment 2. We like having examples. I think it may have been you that told us the windscreen example before. I was interested in the last one there, the Australian refinish industry - this is in relation to the low solvent paints -

> are currently mandated in both the US and European Union, but are not used in Australia due to the large cost barriers imposed by NICNAS.

Can we actually pin that down? Do we know that that is, indeed, the reason. I mean, this is one of the tricky questions: is it because of the cost barriers relating to the regulator and, if it is, is it the fees they charge or is it the broader compliance costs of having to comply with the regulator's requirements?

MS CURTIS: I'll clarify that with the Plastics and Chemicals Industry Association. They provided that example to me. But what aspect it particularly is, I couldn't say definitely to you, Helen.

MRS OWENS: I think they may have raised that one with us, as well. We've had a few examples from different groups now, which is very helpful for us. We like to put things in boxes, too. Judith doesn't, but we do.

PROF SLOAN: I'm becoming a bit of a convert to the box. Funnily enough my other a priori view on the difference between information and regulatory agencies is probably being borne out by the inquiry thus far, which is that the information agencies, by and large, have got their act together much more than the regulatory agencies and understand their core role, although perhaps the ABS is one which has gone off the rails a bit more. Some of the others, the smaller ones, I think have put in extremely good submissions and really understand the issues. So I was a bit disappointed that you didn't have more about the ABS. It may be something that we can follow up. I would have thought you've got quite a lot of complaints from your members, certainly about the costs of complying with the ABS which has, of course, a monopoly role, but also there must be quite a lot of businesses who then subsequently seek to access information from the ABS, only to be confronted by some pretty hefty cost barriers.

MR PATERSON: It certainly generates a significant degree of angst, particularly for those who feel put upon in terms of mandatory collection and then being charged for the results. There is a disconnect there in terms of mandatory collection

arrangements and then claiming cost recovery is an important part of that; that by and large the information developed is in the interests of the public broadly, and the government of the day and other regulatory agencies, as much as it is in the interests of market participants to gain some access to that information. We sought to present the submission by way of example - - -

PROF SLOAN: Yes. That was fine.

MR PATERSON: - - - not to enter into every one of those arrangements. But I think that the approach - - -

PROF SLOAN: But I would have thought your organisation itself might have some strong views about this. I mean I talked to Steve Coates about this.

MRS OWENS: Yes, I think we actually get the information - - -

MR PATERSON: And he's very actively involved in many of the internal structures of the ABS and puts those views forward vigorously.

MRS OWENS: I'd also like to thank you for having a go at a few principles for us as well. We've had a few submissions doing this, and I'd have to say that a lot of the principles that are popping up tend to be very consistent ones. I've been saying to others we'll definitely be taking those on board. Sometimes I think the principles can actually be - there's a bit of tension between some of them, and how you prioritise some of these things. If there's an anti-competitive effect, does that mean you don't have the cost recovery or you adapt the cost recovery arrangements in some way? These are very, very difficult issues that we need to think through. They all sound good until you actually think about trying to set up guidelines that are going to apply and relate to the principles.

MR PATERSON: I accept that tension and I accept that there will be some conflict between different parts of the principles or guidelines, however you develop them. Identifying that potential conflict and seeking to address it is a much better arrangement than not going through the process at all.

MRS OWENS: Indeed.

MR PATERSON: Whilst you may have to, on balance, take some public policy decisions between the anti-competitive effects and some of the other considerations, let that be a conscious decision.

MRS OWENS: I think one of the primary objectives, as economists would say, is to ensure that you've got an efficient system at the end of the day, but at the same time you usually have some sort of equity objective, principally looking at the impact on businesses, particularly small and medium businesses. You want something potentially that will reflect the costs of the activity but there's a tension there if those costs are so high that small and medium businesses can't afford to actually enter the

process or are deterred from doing so. So you get to the point of do you cross-subsidise or do you try and get a subsidy arrangement coming from outside through perhaps a community service obligation from government to deal with that issue. I think generally we were getting some views yesterday put to us that try to avoid any cross-subsidisation within the arrangements but, if there needs to be some equity issue addressed, you'd bring that in from outside.

MR PATERSON: Certainly we would support that proposition. Cross-subsidy arrangements within it will always be inequitable. They will disadvantage one group in a competitive marketplace to the advantage of another in that same marketplace. There are many examples where there are public policy decisions taken to have a different set of arrangements for small business than large - the simplified tax system which is to be introduced is but one example where special arrangements are made for a particular class of business and those arrangements differ from others, but once again they're conscious decisions taken publicly; they're not decisions hidden away inside agencies that aren't subject to parliamentary scrutiny and that aren't subject to the more open and transparent processes than we believe they should be.

MRS OWENS: A very important principle is transparency.

MR PATERSON: Absolutely. Any agency that wants to introduce a charge, that doesn't want public scrutiny of that process, can hardly argue that it's pursuing a genuine cost recovery arrangement. If they're not prepared to have somebody else look at their arrangement to test it against any sort of principles, it ought to be removed until such time as they are prepared to do so.

MRS OWENS: Thank you.

PROF SLOAN: That's fine, that's good.

MRS OWENS: Yes, it was a good submission, as Judy said. I think we all found it very clear, and thank you for coming.

MR PATERSON: Thanks for the opportunity. We wish you well in your endeavours.

MRS OWENS: Thank you. I think we will have just a short break and get morning tea.

MRS OWENS: The next participant this morning is the Consumers Health Forum. Welcome, and sorry for the little delay. Could you please give your name and your position with the Consumers Health Forum for the transcript.

MS HOPKINS: Thank you, I'm Helen Hopkins. I'm the senior policy adviser with the Consumers Health Forum.

MRS OWENS: Good, thank you, and I understand you would like to just make a few opening comments relating to your submission.

MS HOPKINS: Yes, Consumers Health Forum represents health consumers through a range of member organisations of other health consumer organisations, and medicines are often a key issue for health consumers so our submission focuses pretty specifically on cost recovery through the Therapeutic Goods Administration and some of the issues for consumers around medicines. We have done a lot of work on pharmaceuticals, on medicines, on regulatory policy areas, ranging from quite specific through to legislative reforms around complementary medicines and harmonisation of therapeutic devices. One of the biggest concerns that did come up for the forum was around the shift to 100 per cent cost recovery from industry by the TGA, which was first proposed back in 1996.

Probably consumers could recognise benefits of improving timely access to medicines through streamlining of the processes and accountability of the TGA. There's a certain view that the TGA could actually explore the safety of products kind of indefinitely and they would never make it to the Australian market, so there were benefits there for us, a certain cost advantage perceived in industry actually paying for the regulatory services provided, rather than having to come out of the public purse, but a number of concerns about how the TGA would be able to maintain its primary role of the protection of public health and safety under the influence of industry, and the industry perhaps being perceived as the paying customer in the cost recovery environment.

So in my submission I've actually raised, on behalf of Consumers Health Forum, a few examples of areas where we think that as the cost recovery process has unfolded, some of our earlier concerns perhaps have been recognised, particularly around consumer input to policy development, standard setting and decision-making processes which for us are important and we think for public accountability are important, but there's a certain lack of budget and lack of recognition in that cost recovery environment that this might be a process that needs to be paid for, one way or another.

Community access to information about medicines, which perhaps in the development of the cost recovery proposal was perceived to be being fulfilled more by the Pharmaceutical Benefits Branch in the quality use of medicines area, but where we would see the actual regulator holding the information and having a role, and there's a bit of a hole between branches - between the Therapeutic Goods Administration and the Pharmaceutical Benefits Branch, so that the information needs of consumers aren't

necessarily meant unless there's a specified way that they're going to be met; I guess also accountability to the community of TGA's independence from industry influence, where the TGA reporting and accountability process seems to be fairly much to how they spent the industry dollar, not to how they fulfilled what the community might have expected.

So perhaps just to sum up, I guess we saw the focus of the regulatory process of the TGA as being around protecting public safety, and that that should be paramount in any sort of structure for cost recovery, and that perhaps that's a little bit easy to slip through the cracks in a cost recovery process if that's not very clearly spelt out. We perhaps have some thoughts on how that could have been strengthened.

MRS OWENS: Good, thank you. I think we had a very interesting discussion this morning with the Therapeutic Goods Administration. I know you weren't there for that discussion, which was a shame, but I would refer you, Helen, to the transcript if you'd like to have a look.

MS HOPKINS: I'll read with interest.

MRS OWENS: You might give us some feedback on that at a later date, if you've got issues that you'd like to discuss with us. We did run through with the TGA some of the issues that had been raised by other participants in this inquiry - issues relating to the cost recovery arrangements, the consultation processes, the potential for certain medicines or devices not to be made available in Australia because of either the regulatory process, the cost of compliance or the specific fees that were being charged, and it's hard to uncouple those different factors.

In terms of consumers, I suppose there are the issues that you've raised - the broader issues about access to information and so on. I think we're interested particularly in this issue of cost recovery and at the moment industry is paying 100 per cent but it's our view that, to the extent that industry is paying that 100 per cent, eventually it gets passed on to the consumer. The other way of approaching this would be to either share the cost between industry and the consumer or between industry, consumer and the taxpayer through some sharing, as used to occur when it was fifty-fifty and then 75 per cent costs recovered.

Have you got a view about the approach you would prefer? You did make some comments in your opening remarks here about the fact that you do get timely access to drugs because the TGA can operate more effectively with their resources.

MS HOPKINS: Yes, I think a couple of comments I'd like to make: initially Consumers Health Forum did believe, and probably still believes, that the public interest sort of role of the TGA may be better served by funding through government. There have been a couple of backlashes almost on that view, in that - I think the other thing that has happened is that there is a much more streamlined regulatory process now. There's a lot of risk-based assessment where the industry can actually more or less self-assess a lot of the information that they put through to the TGA. They can

get to the market faster. It must be more cost-effective for them and perhaps those savings aren't actually being recognised as actually shifting the cost off industry for regulation to the post-market sort of surveillance and early warnings if things go wrong - to that sort of area.

So I think that we're a little bit disappointed perhaps that industry have taken the view that they pay for evaluation. They probably have saved money on evaluation because there is more accountability in the process, but they haven't perhaps recognised that that might mean that they have some public accountability responsibilities to pay for as well in the post-market process. I'm not 100 per cent clear whether they should pay for them or government should, but the disadvantage at the moment is that nobody thinks they should and that's really where we're left.

MRS OWENS: I think Terry Slater, the head of the TGA definitely thinks that industry should pay for that post-market surveillance and we talked about that this morning.

MS HOPKINS: It's a bit more than that, though. I think it's that public accountability sort of process of that stage. For example, post-market there's little recognition or willingness to pay for consumer input to what's going wrong, nor is there recognition that consumers might actually need feedback on what's going wrong and there's perhaps a little bit of hiding behind commercial-in-confidence if things start to go wrong, and those reports are kind of confidential between the TGA and the company, so a lot of that transparency is lost.

PROF SLOAN: I'm very pleased we've got your submission, because I think you're raising some important points, which really in a sense goes to the heart of the rationale for the regulation which was, after all, to protect the consumer.

MS HOPKINS: Exactly.

PROF SLOAN: What you're saying is that with this regime - you just gave an example of that - at least the perception of capture is very apparent and when they have arrangements where things are held confidentially between the TGA and particular companies, that doesn't help.

MS HOPKINS: Exactly.

PROF SLOAN: Certainly the perception side of things. It's sometimes hard for us to access the consumer and so your organisation is very helpful in that sense. I know you won't have read it - I don't think it's actually official, the TGA submission, it's just in draft form, but if I were sitting in your position, they've got here a section which says that Australia has a unique process of sector agreements between TGA and the medicines industry, so the consumer is nowhere to be seen in there, and each agreement sets out time frames, etcetera, and they are effectively performance contracts between the TGA and industry, "Industry can influence the content of these through a resources performance trade-off." I'm not quite sure what that actually

means, but I would have thought that sent a chill down the spine of someone who thought this was all for the benefit of the consumer and the idea that industry can influence the content of these performance contracts through a resources performance trade-off - I'm not sure what that means, Helen.

MS HOPKINS: One of the people who has helped me with this submission is our representative on the TGA industry consultative committee, where we actually have felt that tension in reality because I guess that's the only accountability process. Consumers had to lobby quite strongly to be involved. We have one representative, but it seems to be the role of that representative to constantly remind industry at least that the accountability process is really for overall strategic direction and big budget directions, not for nitpicking on particular line items, nor for, in fact, influencing what should be done in the public safety that a deal on a quicker sort of evaluation mustn't be done if it's not in the public interest.

DR STEWARDSON: The ironic thing is that we've had a lot of submissions from industry organisations, in effect saying that notwithstanding the existence of the industry consultative committee that basically the TGA isn't paying the slightest bit of attention to them, that they don't give them adequate information, they don't give it on time and when the consultative committee does make recommendations, they don't pay any attention to it. Do you have any response to that?

MS HOPKINS: I would have thought that some efforts had been made to give - for example, around the area of smaller companies needing information to actually fulfil the regulatory requirements and not be disadvantaged, I know that the TGA has spent quite a lot of time at least, if not money, on making a nice little package so that it would be very easy for a very small company to put in a submission. I guess it still costs - I don't feel qualified to judge whether the cost is high enough, but I think that the sort of feedback that you're getting perhaps is actually reflecting the sort of tension that I'm getting feedback on from the industry consultative committee as well, that industry might perceive that it should be able to have considerable influence on that committee more than they perhaps do have the right to have.

I'm not sure whether that's what you're getting at, but that is the feeling that we get from our feedback from the committee, not so much that what the committee advises isn't acted upon, but that the committee might in fact think it can advise on areas that it probably shouldn't, so that actually one of our thoughts around how the process should be more transparent is actually on having a very structured sort of way for that accountability process to occur against specified performance objectives that perhaps have been consulted and are open and, for example, we too would feel that we don't see too much reporting back on how the TGA has performed. We do have an interest in getting the products to the market. We do have an interest in them being available in Australia, but it's hard to know whether the TGA is doing the best job it could under the circumstances.

DR STEWARDSON: I think you were in the audience when I asked the previous people talking with us about the idea of an efficiency audit committee. Do you have

any comment on that?

MS HOPKINS: I listened with interest to your comments there. I think there probably is the need for an efficiency audit. I think there is a need for it to be different to the industry TGA sort of access, where there are really two vested interests from different sides. I was just a little bit concerned that the minister, as the fall-back for the way to go, might not be the best answer in this particular circumstance where the industry do, I think, feel that they have considerable influence because of the focus in the national medicines policy on a viable pharmaceutical industry and therefore a lot of support for exports for maintaining the industry here, which we too would support, but which the - PIP, is it - the industry investment scheme, to support industry, so I still see a bit of tension in that audit process. I don't have an answer for you, but I perhaps just highlight that.

PROF SLOAN: I think there's going to be probably - even Helen alluded to the potential tension in some of the guidelines; they're not going to be as easy to follow as one might think. But I just wondered - coming back to this, it seems to me that once you've got 100 per cent cost recovery by industry, it's almost inevitable that industry is going to take an awfully big interest in the costs.

MS HOPKINS: Exactly.

PROF SLOAN: And you can see their point of view, can't you? Whereas if you're saying, "Look, let's plump for less than 100 per cent because we're identifying these activities"- which is really what some of your guidelines are saying, "We're identifying activities which are in the nature of the public good and that includes things like the independent assessment and monitoring, enhancing confidence to consumers and stuff." We might add to those - we think probably policy advice is one of them; independent research perhaps is another one. If you actually have less than 100 per cent cost recovery, then you have a clearer view as to where the role of industry and consumer and other representatives fit in and I suppose the industry's proprietorial claim of wanting to oversee costs is diminished. I don't know whether you've got any comment about that.

MS HOPKINS: That was certainly the original view of the forum, that 100 per cent cost recovery was actually where the crunch came. It wasn't around 75 per cent cost recovery where there was still some perception that there was other money available for purposes that might not be where industry wanted to spend it, because I think that's the other thing that comes. You mentioned policy advice. There are certain areas where consumers are very welcome to provide policy advice and input and, in fact, that process will be facilitated, but there are other areas where it's not particularly in anybody's interest where it's not facilitated under a 100 per cent cost recovery sort of scenario and that, in fact, puts a bias on the whole policy input process.

DR STEWARDSON: Have you looked at the tentative arrangements for the gene technology regulator in terms of cost recovery, and do you have any comments on

that if you have?

MS HOPKINS: I don't feel that I can comment in depth. We have submitted on the gene technology regulations, but probably the cost recovery side I wouldn't feel that I could comment on now.

DR STEWARDSON: You mentioned in your opening statement that you thought that protecting public safety had perhaps slipped a bit through the attention span of the TGA and that you thought you had some suggestions of how that should be made more paramount. If they're relevant to our cost recovery thing, perhaps you might like to expand about that.

MS HOPKINS: I think "slipped through" is probably a little bit unkind. I think that the TGA does see that it's there to protect public safety, but I think that the problem is that that's actually not encapsulated in the sort of deal between industry and the TGA and in the cost recovery process and in the accountability process and I think the sort of areas I've perhaps touched on already. For example, around provision of information about medicines, industry prepares and TGA holds consumer information about medicines, written for consumers in plain English. That's information consumers have said they want to have. It's been around for a lot of years now. In the cost recovery environment, it probably isn't the role of the TGA to propagate that information, whereas I think that we actually do see that the TGA has a role in propagating information that will help people to use their medicines wisely and safely.

We see it as a major issue that that's actually been hived off to an advisory committee over in pharmaceutical benefits branch, which doesn't necessarily have the same sort of ability to perhaps hold a warehouse of information. I guess the same thing applies around adverse event reporting, consumers feeding in adverse events, and also feeding back to the public safety issues. I think I mentioned in my submission that perhaps consumers were the last to really find out about interactions between St John's Wort and various antidepressant medications and also in the HIV-AIDS area, around some of the treatments, and that's not right. The TGA has that information, which gets filtered out through the health professionals and finally you hear about it when it hits the newspapers.

I think, similarly, around the early adverse event reporting in Australia once the Cox 2 inhibitors for arthritis treatment came out. We now know that there were very very many adverse events reported, but the public didn't actually know this was happening, which would have actually been information that helped them in making their choices about whether they wanted to change to a new treatment which they were probably being told was incredibly safe and more effective, whereas the evidence that the TGA had showed that it probably wasn't more effective than anything much else and that the safety issues were very similar, except around one potential area, so I think that that's one area where we feel that there needs to be more focus in a cost recovery setting. I'm not sure how you get that into the framework, but if it's not in the framework, our experience is it doesn't happen.

DR STEWARDSON: Is this an effect, do you think, of cost recovery - and perhaps even 100 per cent cost recovery - that they're not making these announcements sort of to do with the capture point you made, or is there a possibility that there is a genuine difference of opinion between you and the TGA as to how most responsibly this sort of information has been got out; that rather than make a great big alarmist statement in the papers you tell the doctors and the health professionals in that way.

MS HOPKINS: That's a fair comment and that's probably part of the issue but I don't think it is all of the issue and I guess the main example I feel I can sort of draw on there is the one I have put in the submission where the TGA and consumers have kind of agreed that consumers perhaps have a right to have some input into the ADEC process, which would include knowing a little bit more about the efficacy and safety of new products going to the market, but this just doesn't get progressed and I think the direct reason for that not happening is that in a cost-recovery environment industry doesn't see it as its job to pay for that sort of input.

PROF SLOAN: You have articulated, I think, a strong reason why industry paying for post-market monitoring and surveillance - I mean, an allegation of capture there is a very, very serious one. It is really, I think, the most serious of all - that information about adverse reactions might be suppressed. I'm not suggesting that that happens but any perception that that's the case is, I would have thought, very damaging.

MS HOPKINS: But how would we actually know? I mean, that is the problem, isn't it?

PROF SLOAN: Yes.

MS HOPKINS: Maybe it isn't suppressed and maybe the TGA think they are acting in the best interests by sending it out, but how does the public actually know that?

PROF SLOAN: Yes, but it goes back to my analogy that if the Tax Department decides to audit my tax statements is it appropriate for me to pay for that?

MS HOPKINS: Yes.

PROF SLOAN: Most people would say, "Absolutely not," because I'd say, "Well, I think I'd go pretty easy on this if I were you," so there are kind of some in-principle issues we have to grapple with - you know, what are the kind of candidates of activity which are appropriate for cost recovery and what are not.

MS HOPKINS: Yes.

PROF SLOAN: Anyway, I thought your submission was very valuable to our proceedings.

MRS OWENS: Yes. As Judith said, I think it's always very helpful for us when we get input from consumers or consumer groups, because that's the hardest set of - I

don't like using the word - stakeholders to get to because there are some important consumer issues, not just in the TGA area but in other areas as well, which are beyond the consumer health forum interests, but I think in your case there is this other issue of just the impact these cost-recovery arrangements may be having in terms of access to particular products, whether consumers are indeed missing out on products that are available in other countries in other markets.

MS HOPKINS: Yes. This is actually a difficult one for us to answer. Can I just say one thing first because you just reminded me of it. I think the other thing on consumer input is that a lot of these areas are quite hard for consumers to consult on and to give input and I think that that actually puts even more onus on the organisations to make their processes very transparent and accessible, because this is hard for us to kind of build up sufficient consultation that we actually can have specific views on the regulatory processes themselves, but in answer to your question around access: this is an argument that industry frequently puts in the committee area where I work. You know, I have been involved in a few of the regulatory form type committee processes.

We do hear from consumers who feel they haven't been able to access something in Australia that is available overseas. I must say that mostly we hear about it at the level of the Pharmaceutical Benefits Advisory Committee that it's available but it's not reimbursed. I couldn't say that we have people knocking on our door saying, "This product is available overseas but the company won't submit it in Australia because it costs too much to have the registration," but we probably again have never actually sought specific information. The arguments I have heard from the industry perspective come up particularly around therapeutic devices and around complementary medicines where perhaps the industry groups, the companies, are smaller and see the barrier as higher.

DR STEWARDSON: You would have to be a particularly well-informed consumer to know of those sort of things.

MS HOPKINS: Exactly.

PROF SLOAN: You have to travel overseas. I get terrible motion sickness and there is a non-prescription medication available in the UK that is not available here, and my guess is that they thought, "Small market, too costly, don't bother." So we just bring piles back from the UK.

MRS OWENS: You probably can get it over the Internet. This is another factor now that even though some of these things may not go through the processes here in Australia, the TGA processes, we now can just log on and people can just post them from America or the UK. So there are ways around these barriers.

MS HOPKINS: Yes. I think perhaps the other problem is that many people aren't aware of those ways. They might well be aware of the Internet these days but, for example, I believe it's possible to get orphan drugs or named patient supplies if you do

it as a personal import, but I don't think that Mr and Mrs Average, let alone their doctors, would know that that was a possibility, which is perhaps another transparency sort of issue, yes.

DR STEWARDSON: Do you have any comment just quickly on risk? While the TGA didn't really talk very much about risk to it of being sued for an insufficient study, certainly litigious developments in America would make one think that this is something that perhaps might be in the back of their minds. Is the concern for the regulatory body assessing safety to ensure that it ties down every last possibility because of the possibility of litigation, one that your organisation is involved with?

MS HOPKINS: I think our organisation has perhaps taken a slightly different view to that, in that in our consultations - and this extends to therapeutic goods - if people know the risk and know that they're taking it and have information about alternatives, they are often prepared to take a risk, to take an informed risk. This came up - we did some consultations around complementary medicines a couple of years ago now, but I think many people who attended our workshop didn't actually know the extent to which medicines - the over the counter and complementary medicines - were being self-assessed.

They have a perception that in Australia everything we are going to purchase is going to be safe and heavily evaluated by the TGA. But their concern on finding out that this wasn't in fact what was happening, was not so much that there wasn't the sort of evaluation for safety down to the nth degree, but that they actually didn't know what happened and they found it very hard to get information about the things that they were thinking about whether to use or not. Which is, I guess, another reason why I was arguing previously that the TGA probably does have an information role, if only to cover itself in those sort of circumstances.

MRS OWENS: That's been very helpful for us, Helen. Thank you very much.

MS HOPKINS: Thank you for the opportunity.

MRS OWENS: We'll just break for one minute and then call our next participants.

MRS OWENS: We will now resume with the Australian Competition and Consumer Commission. Welcome. Could you each please give your name and your position with the ACCC for the transcript.

MR CASSIDY: Brian Cassidy, chief executive officer.

MS NEUMANN: Gail Neumann, director, corporate development section.

MRS OWENS: Thank you, and thank you for the submission. I understand, Brian, you would just like to make a brief opening statement.

MR CASSIDY: Thank you, yes, a very brief one. Basically the commission is perhaps in an unusual position in terms of the particular subject that you're looking at because of the variety of the commission's functions. We undertake activities which I suppose range from one end of what you might call the cost recovery spectrum to the other in the sense that some of our activities and functions are purely of a public policy sort of nature. I think in the normal way of thinking about these things you wouldn't envisage they're the sort of things that should be cost recovered; in particular I've got in mind the straight compliance enforcement activities that we undertake in relation to the Trade Practices Act.

At the other end of the spectrum are, if you like, some of our regulatory activities which are very commercial in nature and indeed, some of them could very well be undertaken through private sector process rather than being undertaken by the commission. They are probably activities which you would normally think of as being properly cost recovered from the beneficiaries. So in a sense the commission's in a position of having quite a range of activities and, in a sense, what the commission or more rightly the government needs to think about in relation to the commission, is just what of our activities should be charged for and which ones shouldn't.

I say the government because under our legislation we have very little scope off our own bat, so to speak, for imposing charges and fees. It's really only in what you might call the more minor area of direct charges for publications that we have the discretion. Other fees and charges are either covered in regulations under particularly the Trade Practices Act, covered in particular sections of the Trade Practices Act, or the Price Surveillance Act or, for that matter, other pieces of legislation such as the Telecommunications Act, or would need to be provided for in some separate piece of legislation.

I suppose the other comment I'd make - and again this is something which is, if you like, the direct responsibility of government and of the portfolio department, but there has been a bit of history particularly in the area of gas, of seeking to cost recover some of our regulatory activities. That has run into several practical implementation problems, if I can put it that way, most of which relate to, if you like, the constitutional laws as currently interpreted.

Indeed, the nature of those regimes, given they apply in some states but not in

others, and that sort of - if you like that general legal problem is something which I think pervades a number of the charges which we currently have for various of our activities either in the sense that we don't have them at all or, where we have them, we tend towards the lower end of the spectrum for the possible range of charges simply to avoid any accusation or legal action that our charges are excessive and therefore could be deigned to be a tax rather than a charge or a levy. I think I might stop there. Gail and I are obviously quite happy to answer questions as best we can. As I say, some of the policy issues are really in a way more issues for government than for the portfolio department, but we're quite happy to contribute where we can.

MRS OWENS: Thank you for that and, as you know, we have specific terms of reference relating to the Trade Practices Act. I have to say that we haven't had that many submissions or participants at these hearings that have wished to discuss these charges. I don't know whether that's a good thing or a bad thing, but it hasn't really loomed as a major issue in the context of this inquiry to date; that's not to say it won't.

MR CASSIDY: No, maybe that's because, as I say, our charges tend towards the lower end of the spectrum, and in particular some of the charges that get a lot of attention for some of the overseas competition side is, as I say, particularly in relation to their compulsory pre-merger notification processes, which is one that often gets a fair deal of mention. We don't have compulsory pre-merger notification, so perhaps there's not the same level of contention, if you like, about our charges as there is in some other jurisdictions.

DR STEWARDSON: Could I ask you a few questions first of all just to clear up the factual position and get that clear in my mind and then perhaps move on to some questions to do with policy and that sort of thing. First of all, you say that of the relatively small amount of your total budget that you cost recover or that you recover roughly half goes to consolidated revenue fund and half is retained by the ACCC. What determines whether funds that have been cost recovered go to the consolidated revenue fund or in some sense remain with the ACCC, and what does that actually mean when you say it remains with the ACCC?

MR CASSIDY: This is the sort of question I might look to Gail to answer I think.

MS NEUMANN: Usually what is in the legislation, in the regulations, goes to consolidated revenue, except for the amounts that we have some discretion about; for instance, the publication-type work and some of the training and seminars and so forth, and that also is the same funding that we recover under the section 31 account of the Financial Management Act.

DR STEWARDSON: The discretionary part.

MS NEUMANN: Yes.

DR STEWARDSON: So in the case of that section 31 stuff when you say you keep it, is it really part of your overall budget and it's just the specially annotated bit within

your budget and when you get it DOFA says, "Ah, good, you've got that."

MS NEUMANN: Basically that's the case. It's just recovering some of the costs of those simple functions like - - -

DR STEWARDSON: But to the extent that you have anticipated recovering that, it has been part of your total budget.

MS NEUMANN: It's part of the budget, yes.

DR STEWARDSON: Okay. Now, can I just see if I've understood your charging areas correctly, please, and correct me if I'm wrong. As I understand it you can sort of think of about five or six of your areas - one is that you charge fees for certain specific things, and you've put them in a table for us - fees for arbitration, where you get full cost recovery; fees for application for authorisation - for example, I think for mergers, correct?

MS NEUMANN: Mm.

DR STEWARDSON: And you cost recover those to the extent of the least cost case, and then fees for notification, which are very small fees.

MS NEUMANN: Yes, it is.

DR STEWARDSON: So that's sort of category 1 of your fees. Category 2, a lot of little things - publications, costs of copying pages of documents and things, where you've got relatively small amounts of money but quite an elaborate policy document you gave us. The third category is your telecommunications regulatory function, where your costs are met by a levy on the carriers, and I'd like to come back to that one in a minute. The fourth one I think is the regulator of airports, your function as a regulator of airports, where you recover your costs by an extra levy on the AFTA excise, an extra bit on AFTA, and I'd like to come back to that.

Then the fifth category is your electricity and gas transmission regulation, where I think you implied perhaps that logically it would be sensible to recover, at least for consistency, but that you can't because of the fact that it's only for some states and you can't discriminate between states, so you don't recover there, and then there's all the rest, which is, I guess, your assessment of possible breaches of collusion about prices; your monitoring consumer issues; presumably your monitoring for breaches of putting up prices more than people should for the GST and all that sort of thing, and your prosecutions under that, all of which must be a very, very substantial proportion of your total workload, and none of that is charged for.

MS NEUMANN: That's right.

DR STEWARDSON: Now, have I understood correctly and covered the categories correctly, or have I missed some out?

MS NEUMANN: I think that's a fair categorisation of the type of work we do.

DR STEWARDSON: Now, can we look at the telecommunications one. Can you just very briefly remind us of precisely what you do with your regulation of telecommunications, because there's an implication in your document that the carriers are paying for it but that they're only one part of the industry that are being regulated. Am I reading too much into your document there?

MR CASSIDY: Yes, I think there's an element of truth in that. Our regulation of telecommunications basically comes under Parts VII(B) and XI(C) of the Trade Practices Act and it's supported by certain provisions in the Telecommunications Act. Basically XI(B) is a series of, if you like, behavioural provisions which supplement the general competition provisions in Part IV of the act. If you like, the view has been taken by the government, and, as you know, this is something which is subject to a separate inquiry by the commission at the moment - - -

MRS OWENS: Indeed.

MR CASSIDY: But the view has been taken by the government, at least in the early stages of deregulation of telecommunications, that there was a need for some special competition provisions in order to foster and encourage competition within the telecommunications sector, and that's really what's in Part XI(B), and in Part XI(C) are access provisions which relate to the telecommunications industry, and again while there's a general access regime in Part III(A) of the act the view has been taken, not only here but overseas, that because of the nature of telecommunications and, you know, the fact that if you make a phone call in Sydney to someone in Perth it's actually your call - if it starts in Sydney, it's got to end up in Perth - unlike other things like electricity, for argument's sake, where if you purchase electricity from the nearest retailer the retailer could in fact get their electricity from a generator that's some considerable distance away, but physically the electricity you actually consume probably comes from the nearest generator.

So in telecommunications, because of the need for "any-to-any" connectivity, so-called, there are special provisions in relation to access to the telecommunications network, and that's what's in XI(C), and it's the administration provisions in Parts XI(B) and XI(C) that we are basically charging for. The charge is levied on the carriers I suppose partly because in a sense they're the main players in the industry, and if you look at the definition of carriers that's used in the legislation it's a fairly encompassing sort of definition. You only need to have a fairly minimal network or part of a network to fall within that carrier definition.

But it is basically, if you like, the carriers who are the subject of our regulatory activities, and to the extent that there are other, if you like, beneficiaries in the telecommunications industry from our regulatory activities, I suppose a view has been taken that the carriers will carry or bear some of that charge themselves, and some of it will be passed on particularly to others in the industry who are say accessing their

networks or whatever. So that although we couldn't begin to tell you what the final incidence of the charge ends up being, I suppose the view has been that the carriers will end up bearing all that incidence, but they would pass some of it on so that the charge actually gets spread through the industry.

DR STEWARDSON: Could we move to a similar sort of thing then with the airports and your role as a regulator of the airports, where there has been this recent addition to the AFTA excise paid by the domestic airlines and the regional airlines to pay for your regulation of the airports. We have had comment from some of the airlines that they feel that since the regulation is of the airports why on earth are they paying for the cost of it. Do you have any comment on that?

MR CASSIDY: I'm not quite sure whether Gail does or not. That's a bit difficult for us in the sense that the decision was made by the government that that would be cost recovered, as I recall. It was the Department of Transport that actually decided how that would be cost recovered. I suppose in a way you could make the same sort of observation that I made in relation to telecommunications, that while the immediate charge is on the airlines they wouldn't end up bearing the full incidence of that; some of it would certainly get passed on to their customers.

MRS OWENS: And also I think wouldn't it be the case that the airlines would become major beneficiaries of lower aeronautical service prices?

MR CASSIDY: Yes, I suppose if you looked at it in terms of who are the most direct beneficiaries of our activities in relation to airports, it would be the airlines, because a lot of what we do, particularly the way the price-capping arrangements are set up for airports, the so-called aeronautical-related charges, which is why they're in the price cap, are really basically the charges, if you like, which are paid by the airlines in terms of landing fees and so forth, because that's where the potential monopoly power of the airports rests. When you get into things like charges for retail rents, say in the airports, they're not within the price cap because they're basically viewed as being a contestable service. So you're right, in that sense the major direct beneficiary of our regulatory activities would be the airlines.

DR STEWARDSON: What is that charge recovered under, that extra thing on the avter, and your power to charge? Is it the PSA or the TPA or some other regulation?

MR CASSIDY: I suspect it's under the Airports Act. Most of what we do in airports is actually enshrined in the Airports Act. It's not sort of under a head of power that's in the Trade Practices Act or the Prices Surveillance Act, although it hooks into the Prices Surveillance Act so far as the price cap is concerned, but a lot of it is actually enshrined in the Airports Act, so I would think that's probably where the charge is enshrined as well.

DR STEWARDSON: Before we move on to more general things - - -

MRS OWENS: No, I don't want to move on.

DR STEWARDSON: Do you have something else?

MRS OWENS: Yes, I do. I don't want to move on to more general things yet. I haven't finished with this one. I know you said that this was a government decision, Brian, and maybe the Department of Transport had some say in it, but do you understand or have you any knowledge as to why they decided to do it this way and not just directly charge the airports? Was it tied up with the privatisation process, for example?

MR CASSIDY: I suppose there is an issue of exactly what and how you charge the airports. This doesn't make it right but when you've got an existing levy or charge, it's always easier to add something onto that. I'm not aware that there's any sort of direct charge to airports at the moment, so it may have been simply a case of - in terms of ease of being able to implement it - - -

MRS OWENS: Sorry, you said it was charged under the Airports Act but it's actually charged to airlines, so it couldn't have been charged under an airports act.

MR CASSIDY: No. In fact I was thinking of that as I said it. It may in fact be under the legislation - although the reason I was hesitating, I was going to say it may be under the general excise legislation, but whether that provides for this sort of thing or not I'm not quite sure.

MRS OWENS: I suppose we'll have to follow this one through. It's probably hard to nut out in a public hearing.

MR CASSIDY: I'm afraid it's really something you'd have to ask Transport.

PROF SLOAN: I wonder, though, whether this is kind of another example of - one of my theories at the moment is there's kind of the Mount Everest phenomenon of cost recovery; that if the industry is identifiable enough and big and ugly, then you kind of impose cost recovery. Your activities seem to suggest that you've tried with the gas and electricity transmission industry, which was identifiable.

MR CASSIDY: Yes, I can see what you're saying.

PROF SLOAN: As an economist - I mean, the consumers are bearing the cost of these things.

MR CASSIDY: Well, I think it's - - -

PROF SLOAN: Under plausible scenarios, yes.

MR CASSIDY: I was going to say I think it's probably an interesting sort of issue to debate as to whether it all gets passed on to the consumer or not. But you're right, and I say this generally, not just in relation to the commission: there's always a risk of

taking an approach of saying, "There's someone we can charge, so we should charge them." Or, "They can afford to pay, so they should pay."

PROF SLOAN: Whereas, apart from those industry-specific regulatory activities, you've got a kind of rather passing parade of customers and you probably think, "Well, actually we're here to promote competition and consumer benefits."

MR CASSIDY: That's true. I suppose the comment I'd make is that when you look across the range of our existing charges - say, if you look at the telecommunications area, for argument's sake - because of what are referred to as a fairly wide encompassing definition of what's a carrier, you will get some relatively small new entrants who would be paying some contribution towards that overall cost recovery. Now, admittedly the way that's done is that it's the major carriers who end up paying most, but we tend not to - as far as I'm aware, both in terms of what we do and also in terms of what government has decided, I don't know that it's been terribly much driven by, "Well, you know, there's someone big; we ought to charge them something." I think it has been more an approach of what should be charged for and what shouldn't. But you're right, I wouldn't want to debate the general risk, if you like.

PROF SLOAN: It's a good point, though. It's a strong point made by Mark Paterson of the ACCI today, which is we can't ever lose sight of the regulatory activity - why the regulatory activity is being undertaken.

MR CASSIDY: Indeed.

PROF SLOAN: That must ultimately inform you about who should pay for the regulatory activity.

MR CASSIDY: That's right, and also I think there's a real risk, particularly if you have a situation where, say, regulators can be deciding their own charges - just what discipline there is in that process.

DR STEWARDSON: Can we take that point up and can we move on now to some more general questions. Given that you've indicated to us that in fact your fee arrangements have been imposed on you, to an extent, piecemeal, but given that you and we are now having to look at these things, what do you see as the rationale for charging in the various areas within all of your area? What's the rationale for charging some things and not for other things, and indeed for charging full cost recovery for some and least-case cost recovery for others, and a very nominal amount for others?

MR CASSIDY: I suppose the general rationale we would think should be used is a question of whether it's a private benefit or a public benefit that our activity is generating. That's in my opening comments where I refer to a range of activities that the commission undertakes. Clearly there are some which are basically public benefit activities - you know, enforcement of law - where I think we would certainly take the view that it wouldn't be appropriate to be charging individual parties for those sorts of

activities. But then there are a range of activities which I think it could be argued do generate, to a greater or lesser extent, a degree of private benefit.

In saying that, we do, I suppose, in the areas we have discretion on - which, as I say, is a fairly small sort of area; you're really talking about publications, for argument's sake. We do discriminate there because some of our publications, while you could argue that someone getting a publication is in a sense getting a benefit, getting information, whatever - with some of our publications it would be what you might call the more educative sort of publications. We actually take the view that it's in the public interest for those publications to be out there, to be explaining to people, say, what the act says, what's required. So in our decisions about what we charge for our publications we do, if you like, differentiate - again, I suppose, on the same sort of criteria - as to is the publication largely generating a private benefit or is it sort of hooked into what we regard as some of our public benefit-type activities.

I could probably anticipate your next question. If you start asking about some of the individual charges, I suspect we'll probably start scratching around a bit to explain exactly how this one is differentiated from this one on the basis of public and private benefit.

DR STEWARDSON: No, I wasn't going to ask that.

MR CASSIDY: But I think that's the basic principle. A number of our charges, as I said, are deliberately at the lower end of the spectrum. I suppose one of the problems we've had with charges, both those in our own discretion but also those that are enshrined in legislation or regulation, is that the actual appropriate level of the charge really does vary. If you take something like authorisations, for argument's sake, where we have a standard fee for lodging an authorisation application, some authorisations are reasonably straightforward in terms of the costs involved for the commission would be fairly minimal; some can be very complex and would involve quite a lot of work and expense, but we've tended in that sort of situation to err towards a charge which is at the lower end of the spectrum, so we don't end up potentially overcharging people.

DR STEWARDSON: Okay, that really was sort of where I did one to come to.

MR CASSIDY: Yes, okay.

DR STEWARDSON: The next question: are you concerned that some of your fee arrangements do or possibly could, if you weren't very careful, impact on competition? Is it something you have to be particularly sensitive to?

MR CASSIDY: Yes.

DR STEWARDSON: Do any of them restrict access to activities under the TPA - deter people?

MR CASSIDY: I suspect our general feeling would be that, if anything, our charges are probably too low rather than too high, for that sort of reason I alluded to of erring on the side of charging at the lower end. Whether that has competitive effects in terms of, in the proportionate sense, making it easier for a larger firm, say, to approach us for authorisation than it is for a smaller firm, I think that's a potential issue. I suppose we haven't been able to observe, and we certainly haven't - as far as I'm aware - had many people put to us a proposition that, "Look, we would have applied for authorisation for this or that, or we would have notified this or that," as the case may be, "except that we couldn't afford the charge" - normally the explanation is more along the lines of, "We didn't realise we had to" - you know what I mean?

DR STEWARDSON: Yes.

MR CASSIDY: As I say, we're certainly not aware that there has been much in the way of a distorting effect from our current level of charges.

DR STEWARDSON: You've expressed quite a bit of concern about not letting your charges slip over inadvertently into over-recovery for a particular item and thereby perhaps becoming a tax. You've also referred to the High Court decision that appears to allow a certain amount of flexibility with that. What do you do to actually ensure that you're not slipping over into the tax category?

MS NEUMANN: For those items that are regulated we haven't any opportunity, but those items where we can have some discretion in charging, we've used a model that KPMG has developed for us. That's only been in recent times. Prior to that we've made no real increases in our prices of anything at all, and subsequent to that we haven't really done so as well. Those are things like purchase of a publication or the hire of a room venue or something like that.

MR CASSIDY: In discussing the other charges, if you like, with government over the years I think our basic approach has been a fairly crude one of looking at a range of costs that we might incur on a particular activity and then sort of pitching towards the lower end. There has been thought given from time to time to whether we should have some sort of discretionary arrangement of perhaps setting a maximum charge and then, say, giving the commission the discretion to be able to, in various cases, decide on a lesser charge. That's something the commission hasn't been all that keen on, I've got to say, because in these days of, I suppose, administrative appeal procedures and so forth, and given of course the nature of our work, we're often dealing with people who are fairly litigiously minded, I suppose partly because we're litigiously minded and that's the reason why we're dealing with them. We didn't particularly want to find ourselves in the situation where we were putting a fair deal of time and resources into defending the discount with regard to this person, this company and why it wasn't larger or why this company didn't get the same discount as this company did.

MRS OWENS: It could be a minefield, couldn't it?

MR CASSIDY: Yes, that's something which the commission has I think traditionally tried to avoid.

DR STEWARDSON: Notwithstanding that you're a bit litigiously minded, in your own words, you do - - -

MR CASSIDY: In some of these cases we are, yes.

DR STEWARDSON: - - - also try to consult with people who are coming to you and one of the down sides of consulting possibly is that you may tend to be used a bit as a free source of legal advice which would appear to be very much towards the private good end of things. How do you protect yourself - if that's the right term - from that problem?

MR CASSIDY: Yes, that is a difficult issue for us. It happens not infrequently that we'll have something presented to us by way of an authorisation application or a merger proposal or whatever, which really is incomplete and doesn't address the sort of criteria that needs to be addressed under the act. Quite often we will - in fact, normally because of that sort of problem you say to the parties, "Look, you just haven't done this, this and this. Really, it's in your interests to go away and rectify those things." So in a sense we'll put the ball back to them to go away and so some more work.

However, there are occasions where because of the nature of the applicant there are particular circumstances where we will, in a sense, try and remedy or work with the applicant to try and remedy the shortcomings in their application. It's really something we make a call on from case to case. But our basic approach is that we get something which - either through inadvertence or perhaps through someone trying to free ride on our resources - if we get something that's just not complete and not adequate, our normal approach is to basically give it back to the parties and say, "Look, you really should do some more work on this." Those sort of situations where we'd actually sit down with the parties and try and help them through it tend to be the exception, yes.

MRS OWENS: Can I just come to the section in your submission relating to fees under part 3(a) on page 5. We've been talking authorisations before and you say here that the ACCC can't charge a fee for conducting a declaration inquiry, part 11(c) only, or the assessment of an undertaking. You're basically arguing that it wouldn't be appropriate to have a fee to assess an undertaking because you don't want to actually stop people from coming along and trying to do this. What's the difference between that and the authorisation logic?

MR CASSIDY: I think probably what we're saying here is that with the part 3(c) access regimes there are, if you like, various ways into it - you know, through declaration, through undertaking, through getting an access regime ticked as being an effective regime. It's not only, in a sense, the commission that's involved in those

various parts; the National Competition Council is as well. What particularly worries us in relation to charging for these various activities would be to have a charge for one particular way of achieving access, but not having a charge on something else, or setting the charges independently because, in some cases depending on whose perspective you're looking at from out in the private sector - in some cases these different things can be very much alternatives.

So I think what worries us there is not so much to say, "Look, this particular aspect of the access regime wouldn't be appropriate to charge for at all," it's really that there are several different but interrelated activities under the part 3(a) access regime. If we were to have charges on those you'd really need to do it across the board.

DR STEWARDSON: It's reassuring to see you're being affected by competition.

MR CASSIDY: Yes, I suppose it's part of the competition rules. If you like, the different ways into part 3(a) were really intended to cater for different situations: the facility owner, the person seeking access to an existing facility, the person wanting to - or for that matter the government wanting to establish an access regime. So while they have sort of conceptually got their own particular purposes - - -

MRS OWENS: Yes, and there could be private benefits involved.

MR CASSIDY: Yes.

MRS OWENS: But you're worried about the distortions.

MR CASSIDY: But nonetheless there are interrelationships between the two. For argument's sake, if you were an owner or potential owner of a facility that might be subject to access, you might think about coming along and giving the commission an access undertaking in order to take care of access for that facility, but if there was a not insignificant charge for doing that, but the declaration route where - rather than you, the person who might want to get access to the facility has to approach the NCC; if that was in a sense sitting there, say, with no fee on it or a fee which was out of whack with the charge for an undertaking, you as a facility owner might think to yourself, "I won't go to this undertaking route, I'll sort of sit tight and see what happens through the declaration route." Yes, so that's our worry.

MRS OWENS: Presumably it's cheaper to go the undertaking route. It's cheaper for you if they go the undertaking route, rather than the declaration route. You just don't want to distort the incentives to choose one route versus the other.

MR CASSIDY: We're really worried about distorting the incentives. I think which one is preferable would really vary according to whether you are a facility owner or a potential facility user. I think the choice between those is really one where you couldn't say a priori, "Hey, this is better than this." Really it depends on what position you're in. Our worry is more one of starting to distort those choices if you have charges for some aspects of part 3(a) and not others. In a sense, if I might elaborate a

little, that is where it starts to get into some difficult issues, because the undertakings route is really something for facility owners, where you might sort of say, well, there could be a real benefit for them in being able to establish what their access arrangement is going to be, not being subject to uncertainty and so on and so forth. So you might say, well, that's something where you might conceptually have a reasonable charge which covers a reasonable proportion of the commission's costs.

When you look at the declaration route that's more geared to someone who sees a facility that they would like access to, and they believe access would enhance competition.

MRS OWENS: Like Robe River.

MR CASSIDY: Yes, that sort of application. Again, obviously, there is a benefit to them in obtaining access. It's obviously cheaper for them to obtain access rather than have to build their own facility. How you weigh those two private benefits, if you like, in deciding what an appropriate level to charge is, I'm not quite sure. There may be sort of a bit of an a priori that perhaps the undertaking process generates a larger private benefit than an equivalent sort of declaration - a successful declaration application would. But there are some niceties there in terms of having - - -

MRS OWENS: I'll have to think about that one actually. I think it could go the other way as well.

MR CASSIDY: Yes, it could. As I say, it's not immediately - having sort of got to a position of saying, well, we don't want to distort things here, as I say, you'd need to have a charge on various things under part 3(a). I don't think it's immediately obvious that a uniform charge is necessarily the optimum outcome. It could be but, as I say, I think you could make varying arguments there.

MRS OWENS: Coming back to the authorisation issue, this may be a flippant question, but I presume that the fee for authorisation wasn't acting as a deterrent to the surgeons going through this process. Or was it the orthopaedic surgeons?

MR CASSIDY: I'd have to be honest and say that the surgeons I think did raise with the government the issue of who was going to pay the cost of authorisation, including the fee, I assume. But whether it was a genuine - in terms of their motivation, if you like, and their reluctance to seek authorisation - - -

MRS OWENS: There were other factors.

MR CASSIDY: Yes, I don't think I could honestly say to you that the charge for authorisation was the main reason why the college was reluctant to seek authorisation. There were more fundamental issues than the charge involved.

MRS OWENS: So how did you resolve the issue of who should pay? I think it's pretty obvious that they have to pay - - -

MR CASSIDY: I think that was resolved between the government and the college. We didn't get involved in it. We just knew it was going on.

MRS OWENS: I mean, there isn't any provision for the government to step in and pay somebody else's fees, is there?

MR CASSIDY: Not under our provisions, no.

MRS OWENS: No. I don't think it's really an issue.

MR CASSIDY: I don't know whether the college thought they'd found a way of it being done or not. I don't know whether they even turned their mind to that, or whether they just thought it would be a nice thing for the government to do.

MRS OWENS: Maybe this comes back to the equity problem and maybe we have to think about criteria for paying fees and whether ability to pay is one of them. I don't know whether ability to pay would be a factor in this case.

MR CASSIDY: No, that's right.

PROF SLOAN: There's an irony there because the patients would pay ultimately.

MR CASSIDY: Actually that probably gets into a much wider debate about the way in which - - -

PROF SLOAN: So the patients are paying for an authorisation of - - -

MR CASSIDY: The way in which medical fees are set and so forth as to whether the patient does end up paying or not.

MRS OWENS: It could be another part of government that pays a contribution.

MR CASSIDY: Yes, I suspect in reality - yes, if you tracked these things through you'd probably find the government ends up paying a certain amount of fee, yes. Whether it's Commonwealth government or not is another issue, but - yes. I was going to say the one area which does, I suppose, worry us a bit from time to time in relation to fees and, if you like, equity or quasi equity issues is in the area of notifications, where notifications under section 47 - it's one of those difficult sort of sections of the act where some of the activity covered by section 47, exclusive dealing, certainly is anti-competitive. Some of it you could argue actually delivers a benefit to the consumer. For example, the arrangements which are becoming common between grocery stores and petrol retailers where you do your shopping at a particular grocery store and you get something which allows you to get a discount on your petrol.

Strictly speaking, that's third-line forcing, which is prohibited by section 47, but

which can be given immunity if someone comes in and notifies the behaviour, because then that notification grants immunity unless the commission decides to revoke the notification, but that's a particular area where, in terms of a fee for a notification and that sort of public-private benefit issue I was touching on earlier, I think some of that notification stuff gets pretty marginal as to whether a uniform fee is appropriate. It's one of those difficult areas where it's not possible, even in terms of the particular type of exclusive dealing, to say, "Well, this one is obviously the sort of thing we should be having some sort of charge for," because it's something which would normally be contrary to the act and the spirit of the act and where, if a notification stands, there's a lot of private benefit.

Whereas this one is in the other category - say it was third-line forcing, for argument's sake, there's that form of third-line forcing which is, if you like, almost consumer-friendly, but there are other forms of third-line forcing which can be fairly nasty and where probably the commission wouldn't allow a notification to stand, so that is a fairly difficult area of charging.

MRS OWENS: But you haven't got the flexibility at the moment there?

MR CASSIDY: No, those charges are enshrined in regulation.

MS NEUMANN: There's no discretion.

MR CASSIDY: We've got no discretion, but there again, a possible discretion gets us back to that issue I referred to earlier of people then perhaps feeling unhappy about us having waived a fee in this case, but not in that case or reduced a fee in this case, but not in that case.

PROF SLOAN: Doing deals with industry.

MR CASSIDY: Yes, or even just treating some more favourably than others.

MRS OWENS: I think we've finished. I think Robin has gone through his list of questions, so thanks very much both of you for coming and we'll just break for a minute and we'll have the changing of the guard.

MRS OWENS: The next participant this afternoon is the Civil Aviation Safety Authority. Welcome to the commission's hearings. Would you each like to give your name and your position with CASA for the transcript.

MR COMER: My name is Ray Comer. I'm the executive manager, corporate services. I look after all of the corporate aspects of CASA.

MS BICKFORD: Sue-Ellen Bickford, executive manager, strategy and development.

MR ELDER: Rob Elder, I'm executive manager responsible to government, industry and international relations in CASA.

MR COLLINS: Rob Collins, acting assistant director, regulatory services division.

MR THOMPSON: Julian Thompson, general manager, strategic development.

MRS OWENS: Thank you for the submission, which I think we got yesterday or the day before.

MR COMER: Pretty late.

MRS OWENS: That's fine, it's just that we got a lot for today late, so I'm afraid probably if some of our questions don't seem quite spot-on, you'll realise it's because we were reading them at 1 o'clock in the morning, but we'll do our best. Thank you very much for coming and I understand, Ray, you'd like to make a opening statement.

MR COMER: Yes. I think the context that we'd like to put to you is that as far as CASA is concerned, as we indicated in our paper, we have some primary functions. We set standards, we secure compliance against those standards and conduct surveillance; we issue certificates, licences and permits, which is more like our regulatory services-type function; and we also encourage acceptance of industry of their role; and we promote safety. So when one is looking at cost recovery, that cost recovery should be looked at in terms of those elements, because as you know, CASA is a fully-funded authority through government appropriations and I think what we'd like to do during the process of this discussion is explore perhaps some of the detail behind the beneficiary model, which is one of the underpinnings of our funding strategy and to talk about where CASA is now going in terms of its regulatory services, particularly which attract charges, but also to put that in the context of the fact that CASA is currently rewriting all of its standards, so we have a regulatory reform plan and that plan, the objective of that is by September 2002 to have rewritten all of our aviation standards and that work in itself has an impact on regulatory services.

We thought perhaps during the course of this discussion there are a number of primary elements that we should discuss with you so there's a full understanding of those. In our paper we also tried to trace the history of cost recovery in CASA. It's

an interesting history in itself. If you go back into the 1950s, when it was basically all government-funded, and you go right through a model down to the 1990s, where the government set up a funding strategy primarily based on what has been called the "Anderson model", which is the beneficiary model, so it has extended itself through a process where government has fully paid for everything without accepting fees to a point now where there is this beneficiary model, which acknowledges three primary beneficiaries, so we felt that perhaps that may be of interest to the commission if we elaborate on that for you.

MRS OWENS: Thank you. I know you've given us a number of attachments, which we don't have in front of us. We've just got the smaller main body of the submission at the moment, up to page 6, but actually the submission just ran through a little bit of that history as well, which I found very interesting. I think it may be worth just exploring further this beneficiary model and how it works and the underlying rationale for how you decide who pays for what and I should say that we have had some parts of the airline industry talking to us. We had Ansett here yesterday and we've had the regional airlines, and this afternoon we've got Qantas and some of their submissions and some of our discussions have revolved around the arrangements with CASA and the fee arrangements and there's been some concern about the equity of those arrangements with the larger players cross-subsidising the smaller players. I'm sure you've heard those arguments, but maybe we start with the beneficiary model, that might be a good place to start.

MR COMER: In that context, the government was particularly helped by initially the Bosch report and then the Anderson model and the Anderson model really identified the three beneficiaries as being the travelling public, the general public and the industry and it put some intellectual rigour, if you like, behind the funding strategy by being able to assign responsibility to the industry, to the general public and to the travelling public. The general public one, the background to that from the reading of these studies would indicate that it was accepted that government should reimburse CASA for the costs of developing standards and doing parts of surveillance. Therefore, there was a taxpayer component, if you like, which is what we call our "fixed appropriation", which only varies by about 1 or 2 per cent a year, so that was the government's contribution on behalf of the taxpayer.

PROF SLOAN: So that's about 34 and a half million dollars in 2000 - - -

MR COMER: That's right, which is about 38 per cent of our total funding. There was then the component in the Anderson model which looked at the travelling public in the industry and it was underpinned by a very extensive safety case, which concluded that industry, without any impediment to safety had the capacity to pay to a certain level in relation to its contribution, so what ended up in that Anderson model was there was a component which added up to 60 per cent and they assigned a 30 per cent contribution to the travelling public and a 30 per cent contribution to industry, so there was clearly within the contribution to industry a form of tax, if you like, noting that both of those components are collected through excise. Then the final element of our funding, which is our regulatory service fees, which is a fairly

small element, is actually about 3 per cent of our total budget, so if you collectively add the travelling public component, which has got an industry component with it, plus the regulatory services component, you get the balance of 62 per cent to make up, in terms of this current financial year, our total funding.

PROF SLOAN: But how do you quarantine that to industry? I mean they'd just pass that on the to travelling public, wouldn't they?

MR COMER: Through excise, yes. It is a general collection through excise.

PROF SLOAN: That's right, but you said like nominally half the travelling public and half the industry. I'm saying they will just pass it on entirely to the travelling public, won't they?

MR COMER: The excise is made up of two components, which is avgas and avter and avter is the big user, big fuel consumer, and that attracts most of our revenue. Avgas, which is mainly in the general aviation area, the piston-driven-type aircraft, attracts probably less than 5 per cent, so there is a bit of a balancing there, but CASA acknowledges that within that funding strategy, there is cross-subsidisation between sectors of the industry, that's inevitable that that occurs under that model.

PROF SLOAN: No, all I'm saying is that you collect the money through the excise tax, that's paid by the operators, but they then will pass it on to the customers.

MS BICKFORD: As a business, it's just one of their costs, so they've got to recover it in their revenue line.

PROF SLOAN: Why, in a sense, is there any meaning to the 30 per cent, 30 per cent. That's just a notional thing, is it?

MR COMER: That is a notional split, yes, and it conceded that industry had a certain capacity to pay. Without there being a problem with a safety case. it was a risk analysis. If I can just go on to talk about the chargeable-fees component, if you look at the history of this, you go back into the CAA days and virtually all services attracted a fee. In 1994, the then CAA board reduced that substantially. We haven't tracked back to find the precise reasons behind that, but that's the reality, that they reduced the chargeable fee significantly. That amended schedule, of which there are about 50 different service fees, was then taken into our fees regulations in 1995 and that has continued through to the current date, so the regulatory service fees revenue component of our budget is only about 3 per cent.

You might recall, too, that in our paper we commented on the fact that there was in 1998 a discussion paper provided to industry in which we tried to generate a more equitable charging system for fees. That finally didn't proceed and it led ultimately to the government increasing excise in May 1999, but it is still very much a model that CASA has in its mind as we go through the regulatory reform plan and we develop our regulatory services strategy. So that type of program is one that we will

be relooking at and, in due course, providing advice to government on perhaps the best way forward, with a number of options - you retain the existing schedule, you increase the schedule, you increase the range of the services.

It's ain interesting point to reflect on in the sense that you can go to two spectrums in this argument: you can go to one spectrum which says, "A regulator should only be a regulator; it shouldn't worry about anything else." You can go to the other end of that and say, "For every requested service you should set a fee." CASA is somewhere in the middle of that spectrum right as we speak, but as we complete the regulatory reform plan there is clearly a mandate upon us in our advisory role to government to resolve which way that will proceed for the future.

PROF SLOAN: It's quite a trivial sum of money you're collecting from the fees. I would have thought there were quite high compliance costs in even collecting them, because that's a gross figure, isn't it?

MR COMER: Yes.

PROF SLOAN: That's not a net figure.

MR COMER: It's a gross figure and, if you look at various models, conceivably that could grow to 5 million, 10 million, whatever the figure is. It will never ever be more than, say, 20 per cent of CASA's budget. I couldn't even imagine that in the widest possible use of the user-pay principle.

PROF SLOAN: Are these things all mandatory? We've heard cases where if you set the fees too high you actually undermine the regulation. People avoid the need to get an air operator certificate if you charge it too high.

MR COMER: That's right. Our fees at the present time certainly do not cover anywhere near full cost recovery and I don't believe that CASA has a particular mind towards taking that to full cost recovery. We're very conscious of the safety case. The Anderson model, as I mentioned previously, indicated that that capacity of industry to pay, particularly bearing in mind the GA side of the industry, is probably 50 per cent or thereabouts. To go to full cost recovery - we are very conscious that that would have a major impact on the general aviation area.

DR STEWARDSON: That seems to be a particular problem in the whole aviation area, the inability of the GA area - perhaps, to an extent, the regional airlines - but particularly the GA area to pay for the service or the regulation - or the towers, in the case of towers - and so on. The people who are doing the cross-subsidising aren't happy with it. What alternatives have you explored?

MR COMER: The ultimate answer to that is clearly one for government. We can provide advice to them. We accept at the moment that there is cross-subsidisation. There are arguments which you can mount perhaps which suggest that major airlines should contribute to the wellbeing of the general aviation area, but it is a vexed issue,

we acknowledge that, and we see that ultimately as a decision for government to make. When the excise rate was increased in May 1999 - and we have given you an attachment for this - the government did a RIS, regulatory impact statement, where they looked at the impact of increasing excise and looked at other options like ticket tax, registration fees, those sorts of things. At that particular point in time the government chose to increase excise as the means of providing additional funding for CASA. It's not within our powers to address the issue of cross-subsidisation.

DR STEWARDSON: It's not within your powers to remedy it, certainly.

MR COMER: Yes.

DR STEWARDSON: But presumably an alternative is for there to be some sort of CSO about those sorts of things.

MR COMER: I think that is right. There could be elements within our total cost fabric, if you like, which perhaps should be attributed to CSO. A CSO is probably similar to the general public contribution we get currently for developing standards. That's an acknowledged CSO, if you like - our community service obligation - so that in developing standards it's a taxpayer burden. So that's just shifting those elements, isn't it?

DR STEWARDSON: There seems to be an awful lot of difference between different industries and different regulatory bodies as to how to address that situation where you've got a group of people who are deemed to need a service but can't afford to pay for it. There seems to be precious little inconsistency as to whether you say, "Well, the community will pay for it or the people will pay for it, and if they can't pay for it they don't get it and bad luck," or that it's cross-subsidised by some near relatives.

MR COMER: I think in the broader community argument cross-subsidisation is accepted in certain infrastructure areas. Aviation currently is one of those, in the sense that we've got regional airlines, as you rightfully say, small country areas that would find it very difficult if they were subject to a full suite of regulatory charges, so that must be in the government's mind when they address this issue.

MR ELDER: I think it's also important to recognise that we're only part of that service cost for industry. You have Airservices Australia, you have the various airports around Australia, so we're only a small component of the industry's cost.

MRS OWENS: Although the industry submissions have raised this as one element and, to be fair to you, they actually have put it in the context of all those other costs that they are incurring, they're not just focusing on this issue. The idea of doing a ticket tax was actually raised. It's been resurrected in the Qantas submission that we'll be talking to them about this afternoon. I'd like to understand a little bit more as to why that idea was rejected. You said there was a regulatory impact statement, so presumably there were some arguments in that RIS about the pros and cons of that

particular approach.

MR COMER: Not very extensive. I think you'd need to ask Peter Harris of DOTARS to perhaps elaborate on that.

MRS OWENS: We've missed our opportunity there because we've already spoken to him but we can go back to him.

MR COMER: I think that would be appropriate because the government, as you know, has looked at a number of options and I don't fully understand all the ticket tax arguments from the CASA point of view, so I think it would be best to deal with them.

MRS OWENS: What were your arguments? Did you put this up as a particular option?

MS BICKFORD: No, it was the government.

MRS OWENS: It was the government. Did you have a view on this as a proposal?

MR COMER: We were not asked for a view, as far as I'm aware. It is very much a hands - you know, back from us, in terms of how that policy gets developed.

MRS OWENS: Have you got a view?

MR COMER: From a regulator point of view and as a corporate person, excise is a very simple easy way to do things. We can't stand behind it and defend it solely for that reason, I accept that, but certainly administratively it has got very little cost attached to it as far as we're concerned, whereas if you had 500 regulatory service charges and you had a whole administrative system to underpin that, it would certainly add to your cost structure.

MR ELDER: One of the difficulties with passenger head tax is that it still doesn't address people who don't carry passengers; for example, charter operators who wouldn't record, in the same way the airlines do, the number of people they carry. You've still got to address that end of the market that in some way has got to pay its way.

MRS OWENS: There was this other option to have aircraft registration fees, so I suppose that picks that up, but then you probably need a bit of both and then you end up, as you say - potentially you could end up with a very complex system with high administrative costs.

MR ELDER: Yes.

MR COMER: If you compare it to the New Zealand model, our understanding is that New Zealand have gone the other way, where basically nearly all of their revenue

comes from fees charged to industry on a discrete basis for particular services, and they have the CSO-type segments of their funding as well, so you get many models of it as you go round the international scene.

MRS OWENS: No, we haven't really looked at this issue in relation to New Zealand, so perhaps we should have a look at their arrangements as well.

MR ELDER: I think it's a useful benchmark because we're more or less at the other end of that spectrum.

DR STEWARDSON: Are you looking at the efficacy of what you do in respect of your activities where there is cross-subsidy?

MR COMER: Could you elaborate on that?

DR STEWARDSON: To see if there are costs - if there's going to be cross-subsidy, or for that matter a CSO, if there is a service that's in some way regulatory oversight that's being applied to people who can't afford to pay for it? Are you reviewing whether what you do is being done as efficiently and cheaply as possibly?

MR COMER: We have over the last two years done what we call a functional resource analysis of all of our business processes in the operational area - 70 per cent of them probably - so, yes, we are very mindful of the fact that we've got to be very effective and efficient in our systems and that we have a major program of work before our board to address those sorts of issues. We went through a detailed analysis where we looked at why we do, how we do, should we do it, what value does it add? There's been a very extensive analysis, both a functional analysis and a resource analysis, of all of those operational activities.

We are proposing to extend that to cover all of our processes but, at the present time, we've covered most of our main operational processes and, in the regulatory services side of it, they will be significantly impacted by those improved procedures and processes. It is too fine to be able to say, "Well, have you looked at them in relation to where you might perceive there to be cross-subsidisation?" We've looked at it on a holistic basis.

MRS OWENS: This regulatory reform plan that you refer to and you've referred to in your submission that is going to be completed by 2002 - that seems quite a long way away but - - -

MR COMER: That's the development of them, yes. The implementation will go much beyond that period.

MRS OWENS: You say that the regulations become obsolete. I presume that that's sort of an automatic cut-off, is it?

MR COMER: They will become obsolete for a number of reasons but the mere fact

that we are changing our processes as a result of rewriting these regulations - terminology will change, they will just become obsolete by natural process, if you like, rather than there being a sunset in the regulations themselves.

MR ELDER: There will have to be a transition phase in many of them because you can't stop on one day and start on the next with new arrangements, so there will be in some cases quite lengthy transition arrangements.

MRS OWENS: Potentially at that time there is the scope - if you needed to increase the range of fees, presumably you could do that.

MR COMER: That's the thrust of our submission. We will be looking at that as we are unravelling the plan and developing the plan.

MRS OWENS: Have you thought through what areas you're not charging for now that you could charge for?

MR COMER: That work has already been done, to a large extent, within what we call the AMECS project, the more equitable charging system project. That work still remains valid and will become a factor in what we're now doing, so we do have a listing of those services potentially for which fees could be charged. That will now be put under the microscope in terms of how the new standards are being drafted and then we can move on from that point. Our board considered some of the cost recovery issues at their last meeting and that is an ongoing matter for us in terms of developing strategy in consultation with our board.

MRS OWENS: You said earlier that you don't think those fees will ever get up more than 20 per cent. It's not going to go to a New Zealand - - -

MR COMER: It would be unwise to be too definitive at this stage until the board really comes up with a clear policy on which way it wishes to proceed. I think it's unlikely, but nonetheless that decision hasn't yet been taken.

MR ELDER: I think as a general principle we would look at every one of our regulatory service activities to determine whether or not it should attract a fee if we are seeking to minimise cross-subsidisation.

PROF SLOAN: You are a statutory authority.

MR COMER: Yes.

PROF SLOAN: Yes, and so you have a board. We are interested in this issue of whether governance is a process which assists transparency and accountability and the like. Your board, of course, has not been without some controversy, but - - -

MR COMER: Yes, that's so.

MR ELDER: Not only do we have a board but we have a charter letter from the minister which specifically requires us to put transparency as a major part of our financial funding and charging arrangements. Part of that exercise is that we have been consulting with an organisation set up by the board and the minister which is called the aviation safety forum, which is a group of interested people who meet quarterly and provide high level advice, strategic advice, if you will, to the board about issues and they will be part of this review of our funding and any regulatory services. That's part of the process of trying to make our funding and budget process more transparent to industry.

PROF SLOAN: It says here that you've been a good little money-earner though, and you've been making a surplus.

MR COMER: We have in the last two years for a number of reasons, but the two principal ones are that we've been going through an organisational restructure and there have been some time lags between recruitment - people finishing and people being recruited - new people. In addition to that there was an increase, as you're probably aware, in aviation fuel consumption and that has led to an increase in excise revenue for CASA. It is part of our strategy, as we've announced before the Senate committee, to be using any accumulated reserves to fund our business improvement program.

PROF SLOAN: In a kind of investment sense?

MR COMER: That's right, yes. That business improvement program is currently before our board for consideration.

PROF SLOAN: So you're able to keep those funds; you don't have to return them to the - - -

MR COMER: It's an interesting issue. If CASA proceeded to appoint where it had no use for those funds clearly there would be those in DOFA who would be very interested in that.

PROF SLOAN: I bet there would be.

MR COMER: But the strategy we've adopted - and it's a very deliberate one - is that we know we need new IT infrastructure, we know we need new systems so we've put submissions to government to validate that process and to show that we have a very useful means for those funds, if you like. Now, in the pure process any agency such as ourselves - if you are looking at an operating deficit in a particular year you need to get the Minister for Finance's approval for that. If you go into deficit to be able to use some of your carry forward funds, that process requires you to go through some fairly formal approval steps.

DR STEWARDSON: Coming back to your board and the committee advising on safety that you mentioned, was it a very specific, considered decision that that

committee would report to your board rather than to your management?

MR ELDER: I think it was possibly a recognition both at government level and at board level that they needed a high level, strategic group from industry who could provide the board particularly and the director with some third party information. I mean, CASA clearly doesn't have all the wisdom on everything belonging to safety regulation, and it was thought that it would be useful if the board could have this group giving us independent advice.

PROF SLOAN: That's a better model than industry dominating the board? Presumably industry is only part of the board, isn't it?

MR ELDER: I think it's more to get a range of industry views, because this group is made up not of people who represent certain sectors of the industry or vested interests; they represent - they're there because of their own ability; they've developed expertise and experience in the industry and they are able to give their individual expert advice on a range of issues. To date we've had four meetings and we've found them to be very effective in that regard.

DR STEWARDSON: Do you have specific board members who are appointed from the industry?

MR ELDER: Yes, we do. We have - I'm just trying to think of our industry people.

MR COMER: We had certainly - one was an industry person, but there is no ratio put into the legislation which guides us on that and the minister will appoint as he sees fit, one would assume.

MR ELDER: And of course our director who sits on the board is specifically from industry. He was a former airline pilot with Cathay.

PROF SLOAN: Governance is a kind of issue for all sorts of reasons. It seems to me that having industry input is a good thing, but industry dominance kind of - you wonder whether the regulator has then actually been captured by those they're trying to regulate. You've got to drive some balance, don't you?

MR COMER: That's why, in setting up the aviation safety forum, it was an advisory role. It didn't have a power of veto or a power of decision-making.

MS BICKFORD: It also has consumer representatives on that forum as well, so it isn't just aviation industry.

MR ELDER: I think we welcome the healthy tension that we have with industry because, as we said before, we don't have all the knowledge and it's good to have that input before we make decisions rather than afterwards and then argue about it when it's set in concrete. I think it's always good to have industry's views very early in the piece. If you get some ownership of what you are doing it's going to make it a lot

easier to administer or implement.

DR STEWARDSON: The brief mention you made, though, of consumers is an interesting one because before you came into the hearing room, two people ago, we had a representative of consumers of health goods and while we had had a lot of criticism from industry about the Therapeutic Goods Administration, this was the first person we'd had making a submission from the point of view of the consumer and, in effect, she was saying, "Well, hey, we are what it is all about and why doesn't someone pay a bit of attention to us?" I guess the same question could be asked to you. I mean, the consumer - the travelling public - and perhaps to an extent the general public, but mainly the travelling public is what you're all about. What do you do to take them into your councils?

MR ELDER: Not just in terms of charging and so forth, but overall in developing our new regulations or new standards, we have a very wide consultative process, so that it is open to the general public at any level to contribute to the development of new rules. We're not just looking to industry for input, we're looking much more broadly than that, and we have a very extensive way of making it available so that people do - the public generally do know that that is going on. We advertise in the press. We do things through the Internet - a very well developed Internet site - so that the public can have an input to the process.

DR STEWARDSON: Do you get much feedback from them?

MR ELDER: On some issues we get a great deal of feedback. A lot of issues are technical to the point where it would be difficult for the layperson to make any meaningful comment, but on a large number of issues where they do have a view, yes, we do get input.

MRS OWENS: Thank you. I think you will be interested to know, before we close, that Ansett said in its submission the last thing AHL - which is Ansett Holding Ltd - wants to see is an underfunded regulator. So they actually put that into their submission.

MR COMER: An underfunded regulator?

MRS OWENS: Yes, so I thought you might be pleased to know that. I was wondering if any of your colleagues would like to say anything before we finish? Is there anything else you'd like to add?

MR THOMPSON: There were a couple of minor issues - because I was here earlier and I noticed that you, doctor, were asking about international airlines, I think, a little. Just from a safety point of view, every international airline coming into Australia is under its own regulatory regime from its own sovereign state; therefore work that we do on their behalf or work we do sort of against that airline is real, a knock-for-knock basis, with other regulatory authorities.

PROF SLOAN: So it's like the mail service.

MR THOMPSON: Yes. I know you raised that one.

DR STEWARDSON: Yes.

MRS OWENS: Thank you for that. Thank you very much for all coming. We will now break and we will be resuming at 1.30 with Qantas.

(Luncheon adjournment)

MRS OWENS: We will now resume. The next participant this afternoon is Qantas. Could you each please give your name and position with Qantas for the transcript.

MR PEMBERTON: Chris Pemberton, general manager, business development, Qantas.

MR FORSYTH: David Forsyth, executive general manager, aircraft operations.

MR LONG: Trevor Long, manager, group facilitation.

MR BYSOUTH: Peter Bysouth, manager, aviation charges.

MR CALLAGHAN: David Callaghan, manager, government affairs.

MRS OWENS: Good, thank you. Thank you for once again participating in a Productivity Commission inquiry. I think we had a very productive relationship with Qantas in our international air services agreement inquiry. We're very grateful that once again you've taken the trouble to come along, write a submission and talk to us about this very, very important issue, and I think probably a very costly issue for Qantas. David, you would like to make a few opening remarks, so maybe I'll hand over to you at this stage.

MR FORSYTH: Good, thank you very much. Firstly, thank you for the opportunity to appear. We always welcome opportunities to appear before the commission and we're glad to be here this afternoon. As you can probably see from our paper, there are a number of specific areas of interest within Qantas, being a large organisation, and these areas have been raised and put in our paper and we hope that they'll all be given due consideration in the course of the inquiry.

We've attempted to focus on cost recovery principles which we believe are of fundamental importance of the company. In our view cost recovery should always be appropriately targeted and based on fairness, transparency and efficiency and so we've approached each of the subjects with these principles in mind. The paper lists, in descending order of magnitude, where Qantas pays charges to government agencies and where we believe there are elements which don't necessarily fit with the principles that we've got in mind. In all cases Qantas is happy to pay its fair share of the charges imposed by the various authorities, and it's only where we believe a particular charging regime embodies questionable elements that we've noted our concerns.

Charges for the Civil Aviation Safety Authority are a case in point. We're the first to encourage full and comprehensive safety oversight of the aviation industry, and we've supported that in other forums, but we wish to see funding of the oversight done in a way that fairly spreads the burden amongst the beneficiaries of that oversight. At the moment that doesn't appear to us to be the case. We mentioned in the submission that hands-on oversight has actually decreased, using CASA's own figures, due to the different approach being used in recent times, such as systemic auditing approaches. An example is the reduction in in-flight surveillance inspections

conducted by the Civil Aviation Safety Authority on all Australian airlines.

On 29 November, in response to a House of Representatives question on notice, the Minister for Transport and Regional Services provided details of the number of such inspections carried out over the past three years. Inspections on Qantas services had declined from 155 in the 1998-99 year, to only 15 in the 1999-2000 year. For Ansett and the major regional airlines a similar, or even steeper reduction in inspections, was revealed. This change must surely have resulted in considerable cost savings to the Civil Aviation Safety Authority. However, this is not passed on because the CASA funding remains tied to a fuel levy which sees Qantas paying out greater amounts for use by CASA as our business grows. These costs which we believe are disproportionate are, of course, passed on to passengers through higher fares. As pointed out in our submission we would welcome a different approach whereby each passenger pays a safety levy which would provide transparency through collection as a separate amount and be properly identified for what it is rather than being buried in the cost structure of the airlines.

Earlier this week Airservices Australia took us pleasantly by surprise by announcing a 12 per cent reduction in en route navigation charges for the balance of the financial year and an ongoing 6 per cent reduction for the following year. Obviously this was most welcome. Airservices advise that the reductions were possible because of efficiencies gained through the implementation of the new Australian advanced air traffic system, or TATS, and cost containment, which resulted from a business transformation program. However, we think another contributor to that was the much higher than expected growth in domestic airline movements, mainly through the new entrants that have come into the domestic aviation field. Although that was acknowledged in the Airservices Australia press release, it is - we think - a more significant factor in the ability to drive the reductions than the other points mentioned. Without reductions this increased activity may well have resulted in a significant over-recovery of charges.

In spite of this welcome change promulgated by Airservices, it has not changed our concerns, or the concerns raised in our submission about the cross-subsidisation of general aviation airport control towers and other segments of the industry from the big end of town. Qantas has also, in its submission, raised the issue of proposed increases in aeronautical charges at Sydney Airport, which we see as an exercise in monopoly power by a government-owned entity being prepared for privatisation. This would clearly seem to be outside the national competition guidelines and is a matter which the ACCC is now taking a close interest in.

If the proposed increases were fully implemented, around a million dollars per week would be added to Qantas' costs. This is a considerable impost at just one airport on our network. Should the rationale for the increases be accepted we fear a flow-on effect as other privatised airports in Australia move outside their current CPI minus X aeronautical charging constraints. We hope the commission believes this matter lies within the terms of reference and we're happy to provide more information should you so require. At this point we'd be happy to take any questions you wish

about our paper, or even outside the paper, if you wish. Thank you.

MRS OWENS: Thank you very much, David. I think you've raised a number of issues, some of which we've discussed before with other participants from your industry. We've talked to BARA, we've talked to the regional airlines, we've talked to Ansett and this morning we talked to CASA, but I think you've raised one or two new things there and we may go over some of the other ground we've gone over with some of the others as well. I have to say there is a high degree of consistency between what you and Ansett are saying which I don't think would surprise you. It probably doesn't surprise Ansett either because you do have some common interests in all these issues and I think you're both allocating a very large amount of money to paying all these various charges, as well as the fuel levy.

I think one of the interesting things which you've suggested which isn't in the other submissions, is the idea of doing this passenger - a ticket tax. I'm just trying to find where you raised it. What page was that on? Page 8, yes. Under a funding alternative a safety levy on tickets to try and get a more - I suppose your idea is to get a more equitable pricing arrangement going. Apparently this idea of a passenger ticket tax has been raised a couple of years ago and, at that stage, was rejected. We asked CASA this morning if they had any understanding of what the arguments were in favour of this particular proposal - and we might ask you the same question - what was it about that particular proposal that meant it was rejected at that time? Was it a timing issue? I think the decision was just to stick with the fuel levy and maintain - increase that. Whether it was just a function of this happening two years ago and whether this is something that potentially could be reconsidered now, or whether there was some more significant problem with the idea - in terms of your proposal here, you've argued that it would provide a more equitable charging regime, saying it removes the cross-subsidy and could be - I don't know what you mean by "could be strictly hypothecated" - maybe you could clarify that.

MR FORSYTH: Yes.

MRS OWENS: And "links costs directly to the charges" and so on, and it's transparent. I'm still thinking through the impact that may have on passengers, particular airlines, particularly the smaller ones - whether it creates other problems. Can you recall what the problem was last time? Has anybody got any recollection of that?

MR FORSYTH: What I might do is just give you a general view of it and then I might hand over to one of my colleagues here to expand on it. We've had discussions recently with the department about this and it was raised and discussed as a means of funding CASA I think back prior to the position of the fuel levy, as I recollect. Qantas were very much in favour of it because it provided transparency to the paying public, particularly at that time prior to new entrants where there was a lot of questioning of air fares and a large percentage of passenger airfares in Australia actually go in charges and fees and so on and so forth, which are not transparent to the paying public.

Some of the discussion at the time was to do with exactly what CASA's charter was and we've enunciated in here what we've seen from the CASA annual report is their charter, but they have a number of responsibilities which I'm sure they've told you about, primarily to the fare-paying passenger, but also to the safety of people on the ground. So they have to cover all aspects of the industry, which covers not only RPT movements, but charter operators, people in Warburg-type aeroplanes, people in agricultural aircraft - quite a manner of things which they cover - and there's a fair amount of CASA's effort that has to go into looking at each organisation, so some of it is like a flag fall and some of it is in the general public interest outside the aviation sector, and some of it is to do with volume.

Our argument at the moment is - and back in those times was - that the collection was based purely on volume and that there was not allocated a charge to issuing licences. I think one of the statistics presented was that it's actually cheaper to register some aircraft than it is to register a car. Some of these things seem to us incongruous and when we look at the way the New Zealand Civil Aviation Authority recovers its charges, it seems to us to be a far more equitable manner and spread more evenly across relatively the activities that go on in aviation.

My recollection is - and Chris will say this in a second I suspect - the reason it did not get up last time was lack of general support across the other airlines involved. Qantas was pushing this fairly hard. My understanding was there was also a school of thought in the department that it had its attractions but there wasn't a lot of support from other industry players. Do you want to expand on any of that?

MR PEMBERTON: Yes. That was certainly one of the issues associated with the passenger charge at the time. Perhaps if we just step back, just before the passenger charge, what we have to acknowledge first off was the position - back in 1997, I think, which is when the original CASA paper - there was an NPRN that came out on a more equitable charging system. The idea or the concept then was to introduce a more equitable charging scheme where fee for service was introduced - in other words, the people that required the service paid a fee - and then, after consideration of in essence community service obligations, if you like, government requirements for the social equity safety issues, that a passenger service charge would then be put in place to deliver the required funding for CASA.

I think a number of people had some issues around the incentives and perhaps concern over a charge on a ticket and how that would be actually physically managed. I think there were also some concerns at the time about charter operations and how you deal with charter operations. I think at the time they weren't required to have, if you like, a passenger manifest. On those charter operations, how do you then recover a passenger service fee if there is no actual passenger manifest, if you like? There were those issues to get over. There was also debate at the time as to whether it should apply to international carriers based on some of the services that international carriers receive from CASA. However, there were issues associated with the bilaterals around that particular issue that had to be considered. I think they were

some of the issues, certainly at the time. But I think in essence, our approach was always to bring transparency and accountability into this sort of structure. At the moment it is, if you like, buried within the existing fare structure and when there is a mechanism and it's directly identified on the ticket for a particular service, there is a more direct link.

DR STEWARDSON: I don't understand how it would remove the cross-subsidy. Unless you were going to make people flying in the GA aircraft pay very substantial amounts, wouldn't the passengers on your flights still be cross-subsidising the GA area?

MR PEMBERTON: I think perhaps the link that was lost here is the link between a more equitable charging mechanism which was moving to seek recovery from other areas. I think that was the cross-subsidy which we were really trying to get to, which was saying, "In essence at the moment major fuel users and subsidise the operations at Bankstown or wherever the particular airport may be," so really in essence what we're talking about is linked with a more equitable charging mechanism, where a fee for service was introduced, linked in with a passenger service charge - that was the package. I think you can't look at it in isolation.

MRS OWENS: And presumably a registration charge, because you've got all the planes that don't actually carry passengers, so you'd need to have some other mechanism for those planes.

MR PEMBERTON: Yes, and that was also considered as well with international aircraft. It was a particular issue at the time, as I remember.

DR STEWARDSON: Is it realistic to think about reallocating the costs for the small airports? We're talking about Airservices here as well, I guess, as CASA, but is it realistic to think of reallocating the costs of the towers, the navigational aids that really only relate to GA-type air traffic - and whatever CASA does in respect of them, so that they bear that area, whether it's paid by a ticket or whatever, but that area actually pays the costs of all of that for their sector? Up until now, everybody has been saying to us, "This would be such an enormous cost for the little GA sector that it's impossible for them to pay and therefore we've got to look for someone else to pay for it."

MR FORSYTH: I might start to comment on that, if that's all right. A number of those tower charges refer to Airservices charges. I can give you examples. There have been discussions between ourselves, the industry and Airservices over a number of towers - Camden springs to mind, Coffs Harbour, and there are a number of others - where the cost of running a tower might be a couple of million dollars a year and they have done some analysis which has determined that that tower is no longer required from a safety point of view; it's a vestige of history, but it's there. Airservices has given undertakings, which they've delivered some of in recent times, to reduce charges and become more efficient. They have proposed that they would close some of these towers.

What that means is that there is potential unemployment to some degree or less employment because of that and it may also be that a local flying school or someone like that may no longer have a tower to talk to when they're training pilots. The difficulty we have with it is that we continue, via the revenue collection, to subsidise those towers and we don't even use them and we think it's that blatant.

DR STEWARDSON: I understand the argument for looking and seeing whether these things are really necessary and, if they're not really necessary, then it seems very sensible to get rid of them. But I had the impression that even once you'd done that, there was still going to be a cost from the towers that are thought to be necessary and there was still going to be a cost which the sector of the industry using them was thought not to be able to bear. Is that correct?

MR FORSYTH: It could well be so, yes, and that brings us back to the earlier discussion as to how you initially break up an inequitable charging system, things that should be recovered, so the cost of producing a licence, the cost of registering aircraft and so on, should be recovered at the full cost of doing that and the administration of that. Secondly, there are issues to do with social responsibilities and towers may well fall into that category. It may well be that at a particular rural airport, you want a particular type of navigation aid or even a tower and if the industry flying in and out of there cannot support that financially, but it's determined by the government or the aviation safety authority that it is required, then it should be funded as part of the government's funding of the social conscience part or the social responsibility part, rather than taking it from the RPT passengers, who may not even be flying in and out of there. Do you want to add to that?

MR PEMBERTON: No, I think that was one of the issues central to location-specific pricing - when you move away from a network-type arrangement. It forced a focus, if you like, on the costs and revenue streams at particular ports, provided a direct link between the activity at that particular airport and the revenue that it received. It also forced a review, if you like, of all parties, whether it be the users or the provider of the service to say, "Is this efficient? Does, for example, CASA need to review how it could provide what is efficient and safe to provide the service?" I think the air-ground operator is an example perhaps of CASA's new thinking on the issue. I think to some degree it has forced a focus on the efficient supply of a service, so there are certainly some good benefits that have resulted.

DR STEWARDSON: I can understand very well why your section of the industry wouldn't like cross-subsidising these other bits, most of which you don't use. That's very understandable, but I guess one could understand the reluctance of the taxpayer to pay for it as well, so there is a problem there, isn't there?

MRS OWENS: Can I just come back to the ticket tax. We hadn't quite finished exploring that. You actually say in your discussion of this that the ultimate beneficiaries of the stringent government safety regulation are not airlines or aircraft operators, but rather the travelling public and the wider community. I don't know

whether that's strictly correct, because I would have presumed that it is to the airlines' benefit to reduce the potential for unsafe conditions. You have to protect your workers flying the craft or working on those aircraft. You have to protect yourself from possibly massive insurance claims if something goes wrong. I would have thought that you have some interest in also ensuring the safety of the skies, not just the travelling public and the community at large. Have I got something wrong there?

MR FORSYTH: No, you're absolutely 100 per cent correct. We have a massive interest in ensuring the safety of our aircraft and our passengers, in particular, and also our staff and we've said that right up-front, that our main aim is to ensure that we fly safely, we don't hurt people or damage property or anything. We encourage a properly funded safety authority to oversee us and other parts of the aviation industry. One of the debates that goes on regularly within the industry is that tension between us wanting small operators, for example, to carry transponders on board aircraft when that is a financial imposition to them. Our argument is always that that is the job of the regulator - to decide when those sorts of safety issues need to be mandated and that's what they're there for, to regulate those things.

Some of the discussions we've had are that the small GA operators say, "We can't afford to put a $2000 transponder in all our aeroplanes, so you - the airlines - should pay for it because you want it." Then we look at other ways of maybe ensuring that those people don't come into conflict with our aircraft, such as having corridors of airspace for RPT aircraft to fly through, where the other types of aircraft keep out of it or where, at certain times, there is a particular type of radio operation to ensure our aircraft remain safe. Our number 1 priority is safety. Our argument here is there has to be some accountability about how that is done and, other than the flag fall path that I talked about, which is the government's responsibility for regulation and for ensuring the safety of the paying public, the people on the ground, the people in the aircraft - that to recover all of that from RPT passengers is not an equitable way of doing it. There is some base responsibility there which everybody needs to contribute to. Aircraft don't just fly passengers around; they fly freight, they fly mail, they fly newspapers. All taxpayers have a vested interest in making sure that the infrastructure in a a country the size of Australia works efficiently and that it is safe.

MRS OWENS: It's also appropriate then for the airlines to contribute as well. If you had a registration system you would be contributing through that system. Probably that ultimately gets passed on to the consumer as well through higher prices in particular.

PROF SLOAN: It all does really, doesn't it?

MR FORSYTH: It depends on how competitive you are, whether it gets passed on or it's reduced profits.

MR PEMBERTON: There are a number of mechanisms, for example, of how Qantas would pay for a safety oversight. One is the fee for service, which was

proposed some years ago. The other is some sort of licence fee mixed in with that. There are a number of ultimate solutions and models.

DR STEWARDSON: There are some people who would argue - and we had one in a totally different industry from yours this morning that argued that because an industry exists, never mind that it does a lot of good things, if it also creates some potential problems that need to be regulated, then as a condition of its existence it should pay for all of that. I guess you wouldn't agree with that.

MR FORSYTH: No, we pretty much follow the user pays, location-specific pricing way of doing things. One of the reasons that we push for that is that we have to look at each route we fly to determine whether it's profitable for us or not. These days we're not in business to provide a public service; we're in business to provide a return. If a route is not profitable we will pull off it. The disaggregation of charges enables us to fairly apportion those to the route where the cost is incurred. Things like registering aircraft, getting pilots' licenses and so on obviously are a base cost, part of the fixed element, and we're prepared to pay for those to get those done correctly, providing there's some visibility and transparency.

Airservices have worked fairly well with us in terms of transparency in recent times to give us some location-specific pricing. We still need to disaggregate en route costs but they're working on that with us, and that will enable us to apportion those charges correctly, route by route. Then it will be up to us to decide whether we can afford to continue to provide the service at the fares we do or whether we don't.

I don't know what the other industry was but if we, as an industry, cause problems such as pollution, for example - I mean, all aircraft produce pollutants - then there are government mechanisms to recover those, whatever, which a government sees fit, which would be applied like a noise levy at Sydney Airport, which is one mentioned in our paper, so those mechanisms are open to the government. I guess our main philosophy is we want location-specific pricing, transparency and the ability to disaggregate costs to the area in which they are incurred and the area in which the revenue is recovered.

MRS OWENS: Do you want to ask a question?

PROF SLOAN: No. I was just going to say they understand the Mount Everest theory of cost recovery. You're big and ugly enough to charge.

MR FORSYTH: Yes, we understand that one well. We just happen to be the biggest and the ugliest.

MRS OWENS: Another really interesting one is the meteorological charges. What I think we hadn't understood when we talked to the Bureau of Meteorology a week or two back was exactly how the charges actually got imposed on the airlines themselves. We thought that the approach they took to actually pricing their product was quite a reasonable approach. They base it really on the incremental costs of

providing the services to you, and I think they use a similar sort of approach with defence. But what we haven't fully comprehended - that this all filters down through Airservices Australia and that you end up paying on the basis of the weight and distance components, which I think ends up having sort of rather peculiar results. You've raised this issue in your submission. I don't know whether you want to say more about that.

MR FORSYTH: I think it's probably a pretty good example of whether the aeroplane carries 10 passengers for 400 passengers, you still need a met forecast and I think that's probably a perfect example; the requirement is the same, no matter what the size of the aeroplane is. I suppose you could put an argument to say that you've got more interest in making sure the weather forecast is accurate if you've got 400 passengers than if you have 10, but if you speak to the 10 passengers they'll probably want exactly the same level of service with respect to forecasting as the 400. Peter, did you want to add something to that?

MR BYSOUTH: Only that there are marginal differences, obviously, in that there's a high altitude met requirement - temperature, wind and that kind of thing - for our aircraft as opposed to something that's just flying below 10,000 feet. But that's a very marginal element as opposed to a take-off or terminal forecast - the most critical parts of flight for most - - -

MRS OWENS: You could pay a little bit more if you wanted that margin, given that you need extra information. It comes back to your point, David, about paying for what you're getting. You've mentioned possibly having a fixed charge per flight movement as one approach, but then you come back to: if that's the case, does that price all the real littlies out of the market that your general aviation - they've been paying, what, the same as you're paying for a flight movement, or maybe you've been paying just a slight amount more because you might need some more services.

MR FORSYTH: One of the things we've mentioned in there is if you disaggregate exactly what it is that you're paying for - Peter mentioned if we're flying up at 30,000 feet there's a particular type of forecast that you want. Someone flying below 10,000 feet in the dirtier weather, most likely in a small aircraft, is going to have probably more concern about knowing what the weather is at that low level. What he's flying into - is there a storm, is there a front, all that sort of information - is in some ways more critical to a small aircraft than to a big one that can withstand some of those things.

I think the important point here is that if you can disaggregate exactly where the bureau spends its money - and is it more expensive to provide a terminal area forecast than it is to provide an en route forecast? Is it more expensive to provide a forecast for low level rather than high level? What are the things that drive it? The hailstorm in Sydney in April last year was a good example. Did they have technology available to be able to forecast that?

MRS OWENS: They claim that even if they'd used the most advanced American

technology they still probably wouldn't have been able to forecast that.

MR FORSYTH: I don't know whether that's right or not right but it cost us a lot of money in terms of not having a good forecast for that. We had aircraft out of service for some weeks. We're still working on aeroplanes, fixing them, from the hailstorm. The real cost of providing that service and the real benefit of that service, and people paying for the service that they require, is important. Having said that, there are examples, and there's a recent one to do with pilot briefings, where if you make the service too expensive and the low-level operators say, "Well, we're not going to use it," and then get themselves into more trouble, there is a responsibility attached to making that decision, and that's an important one. In that case Airservices provided a service on the Internet, and Airservices would probably have told you this, which has resulted in an increased use of the Internet service, which is in some ways probably a better service and Airservices were trying to encourage people to use it.

You do have to be careful with the GA operators and the low-level operators, we recognise that, and again that gets you back to disaggregating what is really required, what is the cost of what's really required, and what are the things that are essential for every operator going up into the air to have available to him?

DR STEWARDSON: Could you help us by just talking through some of the bits and pieces that you pay for that are in some way in proportion to the number of passengers you're carrying or the size of your aircraft, and those that aren't proportional in the way that you've just been talking about the weather forecast, because virtually all the cost recovery is proportional to size or number of passengers, but what you were saying about the weather forecast not being proportional was quite interesting. Are there a lot of other things in that sort of category?

MR PEMBERTON: In terms of the met, it is proportional to the aircraft because the formula is based on the square root of the maximum take-off weight of the aircraft.

DR STEWARDSON: Sorry, can I interrupt. What I meant was the charge is, but the need for it isn't - the same as you were explaining about the weather forecast just a minute ago.

MR PEMBERTON: Sorry, I missed the early part. Are you saying is there anything that we basically pay on a flat-based charge?

DR STEWARDSON: You pay for more or less everything proportionately to roughly the size of your aircraft or the number of passengers you're carrying, or whatever, but the question is how many of the services you get, as between you and smaller companies, is the benefit to you and your need proportional to your size of aircraft or your number of passengers?

MR FORSYTH: Where are there things that are proportionate to the number of passengers?

PROF SLOAN: The regional towers are an example of where they're not proportional.

MRS OWENS: They're not proportional, but what Robin is asking is: are there any where there is a degree of proportionality?

PROF SLOAN: I see.

DR STEWARDSON: Presumably, to the extent that you're paying to the airports - the heavier the plane, the stronger the concrete for you to land on is, but in terms of these other fees I was interested in what you said about the weather.

MR FORSYTH: Customs is an example which I'm sure I can talk about. Obviously a customs service is directly proportional to the number of passengers they have to process. That's a fairly obvious one and that's the way that should be charged. Something which is like the cost to register a pilot's licence is the same whether it's a GA pilot or whether it's a high-capacity pilot, although you could potentially argue there are more requirements for a high-capacity pilot.

MR BYSOUTH: Items like check bag screening are a fee for service, for security.

PROF SLOAN: I think we should talk about that passenger movement charge because, if I were you, I'd probably be feeling a bit miffed by that arrangement.

MRS OWENS: Collecting a tax on behalf of the government.

PROF SLOAN: This comes right off your bottom line, as far as I can see, because the Customs Service don't actually pay you a fee for collecting it. Is that right?

MR LONG: We are in fact paid a charge which goes to the cost of collecting under an arrangement with Customs and it's related directly to the labour that we utilise to collect it.

PROF SLOAN: But are you given a choice? Could you say, "We'd rather not collect it"?

MR LONG: We said that initially when this thing was introduced; that we preferred not to get involved. The argument was brought forward, "Well, you know, we'd like you to do it as a voluntary activity as opposed to the alternative."

PROF SLOAN: "But we have ways."

MR LONG: Yes.

MRS OWENS: As a public service?

MR LONG: Yes and no. We always recognised, when we went into this thing, that there would be a shortfall, and we've addressed that shortfall in terms of our paper, and we negotiated within the arrangement that we, and indeed every other airline, would receive payment from the Australian Customs Service for the cost of collecting it and a tolerance level for the short collections, that's correct. The inherent problem of course is that most of the PMC charges are collected on tickets outside of Australia. 80 per cent of our tickets are sold by travel agents and these are people over whom we have no control in terms of ensuring that they actually collect the correct amounts. Thus, when the passenger arrives, that's counted against us as a movement and therefore there's a $30 fee accruing to it but, in fact, the travel agent may not have collected that $30 off the passenger and we are left with a shortfall.

PROF SLOAN: I can't understand the legality of that, because the liability must rest with the passenger, not with you, so how could they ask you to make up the shortfall?

MR LONG: Under the PMC Act, the legality does lie with the passenger. Again, prior to the act actually being introduced, when there was discussion about moving to it, the Australian Customs Service approached the airlines and asked us in a long-term negotiation to collect it on their behalf and remit it to them. The comments we've made in the paper about the ANAO revolve around the fact that the ANAO has said that the Customs Service does not have the right to allow a tolerance for non-collection. The fact that the Customs Service as a whole collects 99 per cent of the fees that it's due was not an issue as far as the ANAO was concerned.

DR STEWARDSON: But isn't the key point really - on which I would have thought you would be complaining strongly - that it's not solely linked to cost recovery of customs, immigration and quarantine services.

MR LONG: I thought we actually made that point there very strongly. In our view, the whole intention of the PMC when it was introduced was that it was to cover the full cost of customs, immigration, quarantine, the issue of short-term visitor visas and some costs for rental within airports. Subsequently, it appears from the various comments that it's moved away from that, more to a tax, and we believe it actually should be relinked back to the actual cost of the provision of the services and that some of those services that were provided for in the make-up of the fee should actually be paid by the government specifically - the rental fees to the airport companies - and there have been economies made by the government in the issuance of visas which are not reflected in the PMC.

DR STEWARDSON: What sort of response are you getting when you put this to the appropriate authorities?

MR LONG: The comments come back that it's a tax. We took the issue up of the rental with the minister for finance prior to the sale of the airports and he responded by saying that he would not address the issue at this time, so that was fairly straightforward. It's difficult to pin down any one government organisation which

really has responsibility. Customs have responsibility for the collection. They don't have responsibility for the formulation.

MRS OWENS: Actually, you have responsibility for the collection at the end of the day.

MR LONG: True.

MRS OWENS: You become the tax collector.

MR LONG: Yes. Customs have the legislative responsibility for the collection of the PMC. We would like to see the PMC become more transparent and more related to the services actually being provided.

DR STEWARDSON: Who actually estimates - have you told us this - the amounts that you're supposed to be going to collect in the end?

MR LONG: Passenger numbers are collected by customs. Every time you enter and leave the country there is a computer entry made, and part of that computer entry links the passenger to the flight they have arrived on or are in fact departing from. It gets a little bit more complex since we introduced this concept called code sharing and alliances. We have enough problems with that, without trying to explain it to Customs. We have been trying to do that recently. It's a bit of a struggle but I think we'll get there eventually.

MRS OWENS: Why does that make it more complex?

MR LONG: Customs tend to link the travel with the flight on which the people either arrive or leave. They may arrive on a Qantas aircraft but they may be American Airlines passengers.

PROF SLOAN: And ticketed thus.

MR LONG: Correct. The responsibility under the agreements goes to the airline that the passenger is ticketed on, and it gets a little bit hard because they tend to utilise the boarding pass as the trigger for the flight number.

PROF SLOAN: I would have thought that was going to get worse rather than better.

MR LONG: I wouldn't necessarily say it would get better, yes. I tend to agree with you. It is going to get more complex and we're going to have to find ways of dealing with it.

PROF SLOAN: The idea that you're paying the government a tax which you actually haven't collected from a portion of passengers, who may go only on a small part of their journey with Qantas - - -

MR LONG: That's true, they're the types of issues. It's difficult. We do have collection mechanisms in place, but the reality is that some of these amounts are so small, you would expend more in collecting it than you would in actually - - -

PROF SLOAN: That's presumably why they thought it was good to get the airlines to collect it, because they didn't want to go chasing after individual passengers themselves.

MR LONG: In fact they didn't have to. If you hark back long enough, there were in fact departure tax booths in airports, to pay it.

PROF SLOAN: Yes. They still have them in some countries. They still have them in New Zealand I think.

MR LONG: Yes, they do. There were two arguments advanced to Finance at the time that it was decided to move towards a passenger movement charge. One was pure facilitation - that is, the passengers didn't have to line up a second time - and the second one was a reduction in the cost to the Commonwealth by doing away with the booths.

DR STEWARDSON: A lot of countries have either incoming or outgoing taxes equivalent to this one. There tend to be fewer booths. You used to have to do it with a booth, but these days it tends to be done for you by the agent and you don't have to. Do airlines based in other countries have this same thing put on them as you are having?

MR LONG: Yes. The United Kingdom air passenger duty which is, from July next year, 40 pounds for certain classes of passengers, is imposed as a customs duty in fact on passengers departing the UK.

PROF SLOAN: It costs you 40 quid to get to Paris and 40 quid in tax.

MR LONG: Yes, exactly. Precisely.

MR PEMBERTON: The air fare is cheaper.

MR LONG: And that's the point that I think David made at one stage: that the accumulative taxes on a lot of the tickets are getting to the stage where it's almost equal to the air fare.

MRS OWENS: Then you add the taxi fare on at the other end and you've got a really expensive journey.

DR STEWARDSON: Can we broaden the question a bit to international comparisons to all of these costs that you are talking about - Airservices and CASA ones and so on. Are the costs that you have to pay different from those that

comparable airlines have to pay overseas and does this impact on your international competitiveness, given that you're both a domestic and an international carrier?

MR PEMBERTON: In terms of CASA, we obviously don't meet any oversight costs overseas because all our safety oversight is done within Australia. There are different models. David alluded to New Zealand earlier on, which has a different framework, which is more of a flat-based fee. The UK operates with a standard licence fee as I understand it. So principally that's how safety regulation in those two countries - and others differ. I think South Africa was looking at imposing originally a fuel levy and I think that ultimately there have been some disputes over the fuel levy.

DR STEWARDSON: I wasn't meaning so much the style of charge but the quantum of money that has to be paid.

MRS OWENS: Yes. What does it do to your competitive position?

MR FORSYTH: The way the Australian dollar is at the moment, it's probably not too bad, but by way of comparison, you could look at what our charges are in the US and in Europe in terms of Airservices charges compared to what we pay here.

MR PEMBERTON: Yes. We actively try and manage that issue in terms of Airservices/air traffic control charges, where our flight planning system actively tries to deal with the costs of overflying a particular country vis-a-vis going over. The flight planning system actively considers that, if you like, in terms of the route selection, so whether we go through northern Russia and Afghanistan or whether we go through Iran and the southern Russian route is something that's in essence selected on the day based on a number of parameters - fuel, crew costs, navigation costs, and weather obviously. So there are a number of issues, but there is a spectrum of charges from different countries, obviously.

In terms of India, you pay a flat-based charge through the whole airspace. Generally, quite a few countries overseas denominate their charges in US dollars, more so perhaps in some of the more Third World type countries, and within Europe the airspace is expensive. One of the main reasons is because of complexity of airspace and some of the particular issues that the Europeans are trying to deal with at present, so certainly Australia is not as expensive as Europe, but it's by no means as complex either.

MR FORSYTH: And generally on a route-specific basis we'll be paying the same as another operator. In terms of whether our domestic costs are greater than domestic costs for airlines in other parts of the world, as Chris said, in Europe it's quite expensive. There's a lot of congestion and they get a lot of delays, and in some cases, particularly in congested areas like Europe and the United States, sometimes the delays that you get because the system is so clogged can be significantly greater in cost terms than the actual charges that you are putting forward.

One of the good things that Airservices is working on is moving to a free flight

regime where we'll be able to climb at the rate that's most efficient for the aircraft. Their new tax system will give some efficiencies in terms of more optimal routes, hopefully. The things that they're working on there will give us some advantages because that sort of technology in the wide open spaces of Australia means you can operate more efficiently, so in some cases the operating efficiencies are greater than the charges. I would have to say that on a particular route we wouldn't be at a competitive disadvantage with another operator.

MRS OWENS: One of the other issues that Ansett raised that I don't think you have raised is the issue of the fuel levy to fund airport regulation through the ACCC. We discussed this issue with them and we also discussed it very briefly with the ACCC this morning. Have you got any views on that particular issue?

MR PEMBERTON: I think in essence, no, we didn't specifically comment on it. It does seem a little unusual that generally, in essence, the entity that's been regulated, if you like - that the burden of that regulation falls on the actual user. There doesn't seem to be, in essence, a connect there. Generally, you would expect that the entity that's been regulated would meet the costs of their own regulation.

MRS OWENS: But maybe you're the beneficiaries of it, you see.

PROF SLOAN: That is what the ACCC were really arguing.

MR PEMBERTON: From the airlines' perspective, particularly Qantas, I guess - to ensure that there is regulation of monopolies. I think the ACCC are a crucial element in the issue of regulating monopoly aeronautical services. The question that we always have is how broadly you define aeronautical services at the moment. I think they're quite narrow. However, certainly there is an interest, and regulation is an important issue and it's important that the ACCC has the resources to provide effective regulation. However, in saying that, it does seem a little unusual to us that in essence, while the passenger may ultimately be the beneficiary of regulation, at the moment they're asked to bear the cost of that.

MR FORSYTH: Again without visibility.

MR PEMBERTON: Yes. Again, being linked to fuel usage one could argue that with a 35 per cent increase in the Sydney-Brisbane market and 25 per cent increase on the Sydney-Melbourne market and obviously the significant changes that we've seen in price from Airservices, obviously fuel usage within Australia is climbing probably at a fairly rapid rate, so the direct accountability and transparency of that sort of arrangement, while an entity may be provided through an appropriation - a certain amount of money - certainly the collection might be significantly higher.

MRS OWENS: You raised at the beginning the Sydney Airport pricing issue and the fairly significant price increases that you were facing. I'm not quite sure whether that is a specific issue we can cover in this inquiry. I think what is interesting about the issue is the principle of increasing prices in a pre-privatisation phase, to increase

the value of the entity and whether that is something that we should be thinking about in the context of setting up our guidelines. I'm pleased that you've raised it with us. But don't be surprised if we don't get into that particular issue in detail. I noted that you've given us some material - no, that might have been Ansett that's given us some material on that in confidence. It may be a difficult one for us to actually directly address and I think the ACCC is looking at that at the moment.

MR FORSYTH: Looking at it. Yes, they are.

MRS OWENS: But we will think about that as an issue in relation to our guidelines.

PROF SLOAN: Except it's a GBE really, isn't it?

MRS OWENS: Yes, but - - -

PROF SLOAN: So it's kind of outside our guidelines.

MRS OWENS: It's GBE, but there may be other entities that are going to be sold that aren't GBEs where this may be - it may be an unusual occurrence, it may not. I can't judge.

PROF SLOAN: Yes, very unusual occurrence.

MR FORSYTH: The ACCC is obviously the forum in which it's being looked at, but we thought it was better for us to raise it rather than not raise it.

MRS OWENS: Yes.

MR FORSYTH: Given that the potential is there for it to spread to other airports, so it could have a really significant impact on all airlines, not just Qantas. There was a fundamental principle about the sale of airports in Australia which was set up, I think, via the legislation which was the CPI-X. If we're going to move outside that the game is played, the goalposts have moved and we think that's fairly important from the point of view of this inquiry as well.

MRS OWENS: Good, I think we've covered our issues. That was clear and I'm very grateful that you came today. Thank you very much.

MR FORSYTH: Thank you very much and thank you for hearing us.

MRS OWENS: We will just break for a minute and call the next participant.

MRS OWENS: The next participant this afternoon is the Department of the Environment and Heritage, known as Environment Australia. Welcome to the inquiry hearings. If you could each give your name and your position with the department for the transcript.

MR BUTTERWORTH: My name is Robert Butterworth and I'm the chief finance officer for the department.

MR GORDON: My name is Simon Gordon. I'm a research officer in the environmental economics unit.

MR GUNASEKERA: I'm Don Gunasekera, assistant secretary, policy and accountability branch.

MRS OWENS: Good, thank you. Rob, I understand you want to make some opening remarks.

MR BUTTERWORTH: Yes, just a very short statement. We've made a submission to the inquiry and provided a draft on Tuesday, I believe, and a final yesterday so hopefully - - -

MRS OWENS: We've got a final.

MR BUTTERWORTH: Yes.

PROF SLOAN: We haven't read the final.

MR BUTTERWORTH: Okay, there is not a lot of difference between the two, just a little bit of finetuning. In the submission we've tried to outline our understanding of the issues, the rationale for cost recovery, its role in establishing efficiency, equity and providing some guidance for internal governance and decision-making. We've also outlined the principles that we believe are relevant to government agencies in applying cost recovery. I think the thing of major interest will be the table on page 5 which summarises the application of cost recovery within the portfolio. You'll see from page 5 there is a very broad range of programs that have an element of cost recovery in them.

We've also summarised our, to date, limited experience with the output pricing review process which, while not directly related to cost recovery, has involved a fair bit of benchmarking with other Commonwealth agencies and external providers and given us a great deal more insight into the costs of our operation and the way in which we might move in the future to manage those prices. You'll have had an opportunity, I believe, to take separate evidence from the Bureau of Meteorology and - while I haven't read the transcript - I imagine hear from them about the strategic review that is under way with the bureau which is of particular relevance, I think, to these issues. I understand you've also had separate evidence from the Great Barrier Reef Marine Park Authority in relation to the fees they charge.

MRS OWENS: I think we have, but they haven't appeared before us at these hearings.

MR BUTTERWORTH: They're a long way away and I guess it's probably a little difficult. We can provide some assistance there if you need any.

MRS OWENS: Thank you.

MR BUTTERWORTH: The only other major area I believe that you might want to focus on, and we might be able to do a little bit more work for you, is in relation to the National Parks, which are part of the portfolio which haven't provided separate evidence and I don't believe have made an offer to talk to you separately, but if you feel that would be helpful we can organise that.

MRS OWENS: Thank you. We've really just got the park entrance and permit fees. Is that correct?

MR BUTTERWORTH: Yes.

MRS OWENS: I don't know whether that's something that we'd need a major submission on, but if there are further questions we can come back to you.

MR BUTTERWORTH: I raise it because it has been, in the past, subject to some public debate about the appropriate level of those fees and how they're organised.

MRS OWENS: There is a similar set of issues in one of the other departments, about communications - the department we were going to see yesterday - which one was that? I lose track of what they're all called. DOCITA. I probably should say what it is for the transcript, though, and they have a similar issue in relation to entrance fees for galleries and so on - Department of Communications, Information Technology and the Arts. That's why I can't ever remember the full name, and they change every two years, as well. It may be worth coming back on that issue because I think there may be a difference of approach between the two departments on that issue which we may wish to explore further.

MR BUTTERWORTH: I guess, by way of conclusion, we would - as a portfolio - see considerable value in some broader Commonwealth principles and guidance on cost recovery. We're aware that many of the elements of our application of these principles have grown up over a long period of time and it is a good time now to reflect on that and perhaps establish some more coherent principles.

MRS OWENS: Thank you. Is that all? Did your colleagues want to make any comments?

MR BUTTERWORTH: No, that's fine.

MRS OWENS: While we've got table 1 on page 5 open, my draft says "not for reference" but I presume we now can reference it at these hearings, if there is a final one.

MR BUTTERWORTH: Yes.

MRS OWENS: You've got a range of different proportions of costs recovered from 100 per cent, for example, for ozone protection reserve, down to 5 per cent for the administration of Environment Protection Sea Dumping Act 1981. It's a permit fee. I'd be interested to find out the underlying rationale for the different levels, what sort of thought process you go through to determine what's going to be at 100 per cent and what's going to be at 5 per cent or 10 per cent. Do you look at the degree of public and private benefit and how do you make the distinction? How do you decide the proportion of public benefit versus private benefit? Or is it some other rationale?

MR BUTTERWORTH: That would be a major rationale. Each of these programs have probably made that decision separately at particular points in time, made judgments about private and public benefit and other issues, including such things as capacity to pay and the effect of incentives. I guess it's a particularly relevant area there in relation to sea dumping where we feel if the fees are too high we may in fact encourage people to dump illegally, for instance. There are issues like that.

The table, of course, provides the best information we were able to gather, but one of the difficulties we have in preparing this sort of information is determining what the boundaries of the cost base are and our ability to measure that. In some instances it's fairly straightforward because the unit that delivers the service is well defined; in others it's a little bit more difficult to make that distinction if they're delivered through part of the organisation that has a range of roles and functions. My colleagues might want to add.

MR GORDON: I might just add that in some of the cases in the appendix it's been noted now that they have been reviewed every couple of years or every year and updated. I think that's pretty important. It reflects the dynamic nature of the public-private component. But there are still a couple of instances where they were set as late back as the 80s and haven't been reviewed since then - set in legislation at a certain level and maintained at that. I think we think a move towards more regular reviews is probably a good thing.

MR BUTTERWORTH: It's one of the things we've become increasingly conscious of - the dynamic nature of the distinction between public and private good.

MRS OWENS: Yes. While we've got Parks Australia there, and I know I just said maybe we'll come back to you on this - that's at 10 per cent - I suppose it does raise the question of why we do charge for entry to parks which are basically a community resource. I think DOCITA has the view that perhaps you don't charge for entry to galleries, but if you have a big blockbuster exhibition then you charge for that. So maybe I could ask you why the difference and why 10 per cent? It seems a pretty

token amount.

PROF SLOAN: Is that net or gross, that figure? You get 10 per cent of your costs. How much do you spend getting the 10 per cent?

MR BUTTERWORTH: I don't know - - -

MR GUNASEKERA: I think it's a gross figure. We can check that out. I think it's a gross figure.

PROF SLOAN: This is an important issue. If you charge too low the costs of collection are a lot higher than - - -

MRS OWENS: I presumed they'd be gross figures.

MR PEMBERTON: Yes, we have - one of the virtues of our parks is that they're fairly remote and there's usually one way in and you can get by with a single gate. I guess an added bit of texture here that you might want to reflect on is - certainly in relation to Uluru, I'm not sure about Kakadu, but there is an agreement with the traditional owners, who receive a share of the park entrance fees, so while we might see it as a community resource the benefit of those lands is in fact a little bit more complex than that.

MRS OWENS: Okay.

PROF SLOAN: You're not rationing too much demand at 10 per cent. Some agencies have made the point that they really need to ration demand, but you're not really seeking to do that.

MR PEMBERTON: That has not been an issue in our parks to date, but it may well be an issue in the future. There are concerns about congestion and over-use in particular parts of, particularly Uluru. Whether adjusting the entrance fee is the right way to manage that impact is another question.

DR STEWARDSON: Can we look at this table in a same sort of question, but in a different way, instead of just looking at the percentage of costs that happen to be being recovered and some of which may be simply by government fiat - the percentage rather than any other thing; take advantage of the fact that you have oversight for such a wide range of organisations here and ask you for your thoughts about the definition of public versus private good. You've got some of these chemical regulatory authorities - who's benefiting there? Is it the public; is it the user of the chemical or is it the industry? Compared with the parks, where you don't have an industry participant in that case but you have the user - but you also have the general public - in some instances there have been a lot of claims about the community values, having parks, knowing that they are there, even if they never go near the things, there has been a lot of discussion about that that I have been involved in in the past. Can you give us your thoughts on this whole business?

PROF SLOAN: Before you answer that, how come you've got NRA and NICNAS, where they're actually - I thought NICNAS was part of employment, workplace relations and small business and NRA is in agriculture, how come you're putting them down?

MR GORDON: I think we are involved in the administration of the collection, so while they're sort of nested in those other departments, we are involved in small part, so the actual entire collection could be cost recovered and then we'll cost recover from them.

MR GUNASEKERA: Some of those initiatives are undertaken by joint arrangements, a number of departments are involved in that, our department and other departments. Depending on the issue, there's cross-portfolio arrangements.

PROF SLOAN: We had better be careful then with what that means. With NICNAS, does that mean it's NICNAS itself or is it your department that's recovering 100 per cent from NICNAS itself?

MR GORDON: It's our department recovering 100 per cent.

MRS OWENS: So that's a transfer.

PROF SLOAN: Similarly, with NRA, you're recovering 70 per cent of the costs of the services you provide for NRA, which is in another department. Okay, that's quite important for us to know that, I think.

MR BUTTERWORTH: Similar issues arise in other areas. The bird and bat banding scheme, for instance. Most of the people involved in bird and bat banding - - -

MRS OWENS: Australian bird and bat banding.

PROF SLOAN: Does that have a board? Just imagine being on the board of the bird and bat banding scheme?

MR BUTTERWORTH: It's probably a little bit too small to run a board. What we do there is control the issue of numbers and little tags and we do that to make sure that the same numbers aren't issued to two people and end up on the same species of bird and confound and confuse the researchers.

MRS OWENS: Far less the birds.

MR BUTTERWORTH: It doesn't usually confuse the birds. We levy charges for that service, but most of the people who pay those fees are university researchers or other people. If you like, that's akin to regulating the spectrum to make sure that people's signals don't get in the road of each other.

Coming back to your question about the degree of precision with which we've looked at public and private good, is that the gist of it?

DR STEWARDSON: Not given all that precision, but just how do you feel that roughly the division between public and private good of all these various things is?

MR GUNASEKERA: In cases where the product or the group of stakeholders who are involved in that particular initiative or arrangement can be fairly easily defined - in the case of hazardous waste, you can easily argue that there is an easily definable private good component there.

DR STEWARDSON: In a particular bit of land, do you mean?

MR GUNASEKERA: Yes, or a factory basically emitting a certain type of hazardous waste and it's quite easy to clearly identify them. On the other hand, if the issue covers a wider location or fairly wide group of stakeholders, it's not that easy to clearly identify the private good components and we tend to basically put that into the public good category. I think that's a fairly simple rule of thumb that people tend to use.

MR GORDON: I think it's important to note, too, that 95 per cent of Environment Australia is not being cost recovered, so we're looking at 5 per cent here of which it's been deemed there is at least some private element. The first process was getting down to this 5 per cent. I'd say that while some of the ideas that Rob spoke about earlier are the rationale for cost recovery, the private and public is only one of them. I'd say also that it probably hasn't been finessed right down to the last detail and it's very difficult in some cases to determine the private and public element. There might have been other factors which resulted in 100 per cent recovery.

DR STEWARDSON: With the parks, for example, have you gone through this argument as to who is benefiting from having the parks - the general public that likes to know they're there, or the people who actually go?

MR BUTTERWORTH: When you look at the outcome here, the low percentage of cost recovery, I guess you could make the judgment that reservation benefit and the fact that these parks are held for the broader community, who may not ever go there, is the principal argument for funding the parks. We've tried to get a small contribution from the people who gain a private benefit from a particular visit and, I guess, also trying to develop a bit of partnership with the traditional owners in that sharing the revenue with them we are giving them a stake in ensuring that the visitors that do go there go away with a positive experience of the place. So there is, I guess, a bit of trying to establish a bit of partnership there between the park administration and the traditional owners. Whether it's attributable to that mechanism or not, I think we do have a very positive relationship with the traditional owners and it is important for us to build those minor governance incentives into that relationship.

DR STEWARDSON: Do you see any difference between the land parks and the marine parks - the Great Barrier Reef?

MR BUTTERWORTH: As a general rule the cost structure of managing the Great Barrier Reef is probably much higher than the land parks and that may be a reflection of the amount of pressure that is on them. In relation to the marine parks, I guess the government has taken the pragmatic decision that it's only practical to levy the tourist operators because you basically can't police access if anyone with a small boat can motor out into the reef.

PROF SLOAN: But you do want to ration demand, though?

MR BUTTERWORTH: You do, and the collection of the fee is a way of helping direct the intensity of use of the park. We can do that in a way that hopefully reduces the potential to damage the reef.

MR GUNASEKERA: I guess the other issue is in terms of costing these things, the difficulty in valuing some of those totally different components, the recreational value versus the broad environmental values, biodiversity value and various other difficult to quantify types of components - I think that's another issue we need to consider.

PROF SLOAN: I suppose without wanting to put words into your mouth, your department is there to serve the public, both now and in the future, and your cost recovery arrangements essentially reflect that core function. You're not there actually providing private benefits in any case, and it's only by providing private benefits that you can really charge anyway. Essentially NRA and NICNAS kind of subcontract you to undertake their work and that's why you're getting those high proportions of costs recovered for those activities. Is that how that works?

MR GORDON: We could check that out.

PROF SLOAN: Yes. I presume that is how it works.

MR GUNASEKERA: In some cases what happens is when some of these initiatives are developed they are done in a sort of cross-portfolio framework, and then at the end of the process the system will decide who will have the responsibility in running the thing, and in many cases it's the result of a bureaucratic process, if you like. That's just sort of a general response.

PROF SLOAN: I just think interdepartment charging is a slightly different issue.

MR GORDON: I think with the NICNAS there's an industry levy, and I'm not 100 per cent sure on this, but I think it is full cost recovery for the entire process.

PROF SLOAN: We're dealing with NICNAS big-time but probably not through your department so much.

MR GORDON: Right, and I think we're just getting the full cost recovery as a subset of that.

PROF SLOAN: Yes.

MR GORDON: Just getting back to that parks and wildlife example, though, I think in that case there hasn't been a formal analysis of the public and private component as such.

PROF SLOAN: There's some interesting emerging work on it, though, isn't there?

MR GORDON: Yes.

PROF SLOAN: You know, what would people be prepared to pay, etcetera, and all that.

MR GORDON: It does come down in some cases to what is the willingness to pay.

MRS OWENS: We have to develop some guidelines and I suppose what we need to balance up is this public-private question against issues like willingness or ability to pay. The other issue that you raised, Rob, at the beginning was the incentive effects and how much weighting you give to all those factors. In some cases they could be quite contradictory, conflicting objectives, and is willingness to pay a factor that we should take into account, or ability to pay, or are there other ways that you should be dealing with that more broadly, by government providing a CSO or whatever? I think what we're interested in is getting a mechanism which promotes efficiency, but we're also interested in equity. But how do you deal with that other objective?

Then incentive effects - that's a very difficult one, if the charges actually have perverse incentives which mean that people won't actually - if we're talking about regulation, won't go to the regulators to have their product registered, they'll just go through the back door and put it on the market anyway. We heard that with the standards and weights. The incentives are for people with machines not to be - whatever they do, what do they with - - -

DR STEWARDSON: Calibrating.

MRS OWENS: Calibrate, that's right. They calibrate them and just do things illegally. I don't know if you've got any bright ideas on this but it's quite a difficult one for us to deal with.

MR BUTTERWORTH: It is, and there's another closely related issue which is I guess the tension between polluter-pays principle and beneficiary pays. If we've got a choice about extracting the costs from those who make the mess versus those who might benefit from cleaning up the mess and who has the relevant property rights in those circumstances where the property rights have not been entrenched or legally identified in the past, I guess as a pragmatist you would tend to take into account

who's the easiest to find and police and what are the incentive effects likely to be and make a judgment in that sort of incremental and very pragmatic way. If you have any deep insights into resolving some of those issues, we'd be very pleased to hear it.

MRS OWENS: Don might be able to give us some literature on this.

MR GUNASEKERA: I'm happy to point to literature later on. Just going back to the parks issue, one of the things that we discovered is these facilities have assets and various infrastructure which requires replacement from time to time and it's fairly costly, but I'm not really sure that we take into account such replacement type issues when we work out our pricing. I don't know. I don't think so.

MRS OWENS: That's the next level down, Don, isn't it? You've first of all got to decide whether you're going to charge, and you're not going to charge on the basis that we've got all this infrastructure and we've got to somehow recoup the costs, because that's not the basis of the decision about whether to do it. But once you've decided, then you say, "Well, what are we actually going to put into these costs that we're going to try and cover? Are we going to try and cover those capital costs?" That's the next set of questions really. Again have you got any insights on that one?

MR GUNASEKERA: I would just come back in an indirect fashion to the community service obligation concept and look at what part of the cost structure we're going to cover through the CSO-type framework, and then you have another component where you'll have a different sort of arrangement - user pays in a sense. I don't think we have gone into an in-depth analysis in formulating our pricing structure, but this is where probably the commission's guidance would be useful.

DR STEWARDSON: One can conceive that if you charged the full cost of operating your parks and some sort of allowance for the capital cost of the infrastructure and whatever, one can conceive that that might put the cost of visiting parks beyond the capacity of a lot of people. Now, suppose we were in that situation, what would you do then? I think you may not have been in the room when we were discussing it, but with the people from Qantas we were talking about a situation where there are a whole lot of small airports with their towers and little bits of navigational aid that are necessary for what is called the "general aviation" - that is, the little planes, the cropdusters, the little tiny charter planes, the individual private planes - and the cost of maintaining the services for them is said to be beyond the capacity of that part of the industry to pay. So somebody else has got to pay and at the moment the big part of the industry cross-subsidises them; the alternative would be the government.

Now, if you envisaged a full cost recovery charge for your parks that kept a big part of the population out because it became too expensive to indulge going to the park, if the community jibs at paying for the safety of the airports why should the community pay for going into the parks? It's an interesting question.

MR BUTTERWORTH: It is very interesting.

DR STEWARDSON: Do you have any comments on that?

MR BUTTERWORTH: Very theoretical possibilities arise. I mean, we're essentially a monopoly provider in these parks and I guess we could price discriminate. One way of looking at the Kambroompa fee structure which is levied on tourist operations, but not on locals who visit the reef, you could say there is an element of price discrimination there. I don't think that's the logic of - I think it's more a question of where can you economically collect the charge that's driven that.

We may well face some of these questions in the future in relation to parks where major commercial tourist operators might say, "Well, we know that's where the road is now but we'd prefer to have it over here because it would suit our commercial purposes better." We might be willing to make a contribution to that investment. In Kakadu, for instance, I think we've had some overtures in paving the road to an isolated falls because you can't get in there when it's wet, and paving the road would extend the season, if you like, so there's the potential there for a private contribution to open up those economic possibilities, but then would you make that facility open to everybody or would it be a separate arrangement?

The major constraints on these sorts of possibilities are essentially political. It's not deemed appropriate for government to price discriminate in most instances and very difficult for governments to consider those sorts of options.

DR STEWARDSON: Very specifically in relation to things going on in Kakadu, there have in the past been contingent valuation studies to try and assess what the community at large valued simply having the thing there, albeit they might never go, so maybe you could turn the use of that around as an argument for a CSO.

MR BUTTERWORTH: That's in fact what we have, a very substantial CSO, because we're only cost recovering a very small part of our - the dilemma for government of course is the visitor numbers grow. The costs of maintaining the parks in the condition the community expects will continue to grow too, and this rationing issue will loom large. We'll have to confront the most appropriate way of rationing.

Now, in some of the parks - Kakadu for instance - there are particular rock art sites that are developed for the public to visit and there are others that are deliberately not developed or indeed people are forbidden to go there out of respect for the traditional owners and by agreement with the park authorities. That's in a sense a bit of geographical rationing, if you like - you try and shift the pressure to the areas that can stand it or where you can monitor and repair the damage that's caused more easily. But for something like Uluru there are a lot of people going past it, and in some senses they're getting in each other's road and reducing each other's enjoyment of the experience now.

DR STEWARDSON: Why shouldn't we a hundred per cent cost recover the parks?

MR BUTTERWORTH: I guess because those that don't visit aren't gaining a great deal of benefit as well.

MR GUNASEKERA: My gut feeling is it will be prohibitive if you use a hundred per cent cost recovery. It will be a fairly high charge too.

MR BUTTERWORTH: It may actually result in less revenue being collected rather than more. It is a function of how many people are prepared to pay or what you collect.

DR STEWARDSON: I guess I'm being a sort of devil's advocate here, but if you look at it you're talking about in many cases parks in fairly remote areas, relatively remote areas, where people have had to expend considerable time and cost to get there and the entry fees are pretty low at the moment, and if you get 10 per cent, if you multiplied them by 10 would it really be a deterrent to people who are prepared to take the time and cost to go all the way to this park?

MR GORDON: I'd say that full cost recovery in that case would probably be a deterrent. For, say, Buderi National Park that has more visitors than either Kakadu or Uluru, and that's the Sydney market and Canberra market as well, I guess. But I think - - -

PROF SLOAN: They're not all remote, either. I mean, we have a big national park in Adelaide, right in the middle of Adelaide.

MR GORDON: That's not a Commonwealth one.

PROF SLOAN: Yes, but they don't have cost recovery and I reckon if they did then people wouldn't go there.

MR GORDON: There's other ones like Christmas Island and there are a lot of Commonwealth national parks and most of them are remote. I think there could be some argument for maybe increasing the fees based on the fact that it is such a low proportion, but then you've got to look at your market there as well - a lot of foreign tourists. These are Australian icons and there is a large sort of public element of maintaining quite low access to Australians to those, I think, politically.

DR STEWARDSON: Yes, but the political argument shouldn't weigh with us.

MR GORDON: Yes, sure.

DR STEWARDSON: It may with you, but we at least can have the liberty of being a little bit free from that. Just as we talk I'm wondering, if we're saying the definition is private good versus public good, I would be inclined to think you could argue that there is a very substantially greater proportion of the value of the park to those who actually go there and enjoy it, rather than to those who just get the warm, fuzzy feeling of knowing it's there.

PROF SLOAN: Maybe we should sell it off, Robin.

MRS OWENS: No, I think this comes back to future generations as well. I think we do get a warm, fuzzy feeling knowing it's there and that we can protect the heritage for the future, because even if we may not go there our children may wish to.

MR BUTTERWORTH: As someone who is on the receiving end of the ministerial traffic, for instance, we find that people who have never been there value it highly enough to make their political views known to government, where they perceive that to be an issue. So I guess I'd have strong theoretical and perhaps practical reservations about many of the contingent valuation applications. I tend to think they generate values that are too high, but what you certainly see through the political process is people showing that they care, that they are prepared to invest personal time and effort in making those views known. Many of those people that express views in that way if they have been there, they're not regular users but they still feel very strongly about ensuring those areas are preserved.

MR GORDON: I think in the classic economic sense you could say that Uluru can be defined as a private good. You could just put a toll on the road or something, a certain distance away where you can hardly see it, and charge people, but this is where the rationale for this public and private has to meet these other considerations. That's why it's so difficult for you to set a framework up because of all these different elements.

PROF SLOAN: That's why you don't charge for people to go into the museum and the art gallery, isn't it? Those are there to impart cultural heritage values to the society at large and you don't want to dissuade people from accessing them.

MR BUTTERWORTH: We find, in working with the traditional owners, that that is very often their view as well. They do want people to have some appreciation of the area and they do see the tourist flow, if you like, through as being in a sense part of their obligation as traditional owners of the land.

PROF SLOAN: He is agreeing with me, Helen, don't worry. He's saying you've got to encourage the use - isn't it? That's right, if you charge the full opportunity cost of these parks - if you said, "We could fell the trees and turn it over into rice paddies up in Kakadu" - which you could - then the cost would be astronomical. Really what we're saying - I think what you're implying with cost recovery is just kind of maintenance costs and stuff and you're not actually going the full, full costs, are you?

MR BUTTERWORTH: No, you're not - - -

PROF SLOAN: We're not going to create a balance sheet here.

DR STEWARDSON: Not fully exploiting potentially.

MR BUTTERWORTH: There's a strong education element in many of the activities of the department as well, and I guess you could say the parks have a role in that. Obviously if you ration throughput then you're reducing that educative value to some degree.

MRS OWENS: Can we come back to polluter pays versus - what did we talk about before - beneficiary pays? We sort of skimmed past that very quickly and it's another one of those issues that we're looking at. The New Zealanders had a term for it - risk exacerbaters. If you've got these negative externalities that those who cause those negative externalities should actually pay for that, and just charge them. So if it's industry that's done something, it's polluted or, in the case of providing particular products onto the market which could cause harm, paying for the cost of minimising that harm. In your department have you thought about those issues in any depth?

MR BUTTERWORTH: I guess we think about and discuss them quite regularly. We don't have a - - -

MR GUNASEKERA: And write reports about some of these things, too, but when it comes to application I think - as I said before - is it identifiable, where we know that you have a certain industry; as a result of the activities you emit certain pollutants, then you can easily target them and introduce those charges. Those activities are already happening at state level and the Commonwealth has, in a sense, less involvement in dealing with specific industrial level and polluting activities - perhaps with charging them, if you know what I mean. Most of the state environment protection agencies are responsible for managing those things but, as Robert said, we discuss those things and write reports and advise the minister, but the difficulty is the practical application, when you move beyond that clearly definable industrial manufacturing sector or factory - entity.

MR GORDON: It's important to note the difficulties in actually making that identification in the first place.

PROF SLOAN: Of course poser's theorem tells us it doesn't matter; it's exactly the same whether you impose it on the polluter or the beneficiary, it works out. Part of the trouble with, say, land contamination - it will have happened over a very long period of time. The people who have actually undertaken most contamination - first of all, it was probably legal or it wasn't actually illegal at the time, so you've got that problem. You haven't necessarily got a violation of property rights at that stage, but also they've flown the coop anyway.

MR GORDON: There's this perception of responsibility.

PROF SLOAN: What happens really is that the land is devalued by the price of the remediation costs, so the market works that out.

MR BUTTERWORTH: There is often an important incentive effect too. If the activity is being done by somebody else or done illegally, the last thing you want to do

is make sure that people never tell you about it.

PROF SLOAN: That's true, "Yes, could you tell me how you were breaking the law?"

MR GORDON: I think you guys might have put a submission as well to the Public Good Conversation Inquiry.

PROF SLOAN: Yes.

MR GORDON: We discussed some of these issues and the difficulties and the dynamic nature of people's perceived responsibilities and the duty of care concept and these sorts of ideas, and how they can start to make the distinction of who actually is the polluter, how much are they polluting - quite difficult - did they have a right to pollute or did they think it was their right to pollute. All these issues are very complex.

MR BUTTERWORTH: Generally speaking, where you can assign property rights you'll theoretically do better. There are often political constraints to assigning property rights. It very often raises issues of compensation, if you want to change things from hereon in.

PROF SLOAN: It's a minefield in many ways, isn't it?

MR BUTTERWORTH: In many of these issues that we deal with, defining property rights is very, very difficult. Just the act of measuring the cause and effect and tracking cause and effect on things like salinity, for instance, are very problematic.

PROF SLOAN: I know about this a bit because I sit on our Ports Corporation Board in South Australia and in fact a lot of the land around ports generally is quite seriously contaminated but it goes back 100 years. It was often chemical companies and it wasn't illegal. I'm not sure they actually had permits but I don't think there were permits, so what do you do about it? It becomes a public function actually to clean it up.

DR STEWARDSON: You mentioned the Bureau of Meteorology. I don't recall that we did actually discuss with them anything about the review that Allen Consulting is doing. You raised it in your commentary and you've got a page on it in your submission. Is there anything that you want to say to us about it? What in particular are you looking for? What are the issues there?

MR BUTTERWORTH: I guess we're taking particular interest in it. It's not at a stage yet where any of the results are accessible, unfortunately. You're about three or four months ahead of the optimum time there, but we think it is an excellent opportunity to tease some of these issues out in a very practical setting. One of the key issues we want to focus on is how to define, in a dynamic sense, public and private good for meteorological services and to equip the bureau with a robust

framework and a robust mechanism for keeping that up to speed and then applying it in a practical way.

MRS OWENS: I have to say, looking at the bureau's framework, that they more than many other agencies have actually had at least a go at trying to develop a reasonable framework. They have actually thought it through. It may not stay as is after the review, I can't foreshadow that, but I think there is some logic in the general approach that they're taking where they've got their core basic services and then they've got their services to aviation and defence. That raises the issue of why not coastal shipping and other shipping? Why aren't they brought in there? We were asked that question yesterday by Ansett - and then they've got the mixed public-private and then they've got the commercial operations. They've got a pricing structure that reflects all that and it will be interesting to see whether that can be improved on. I don't know whether you have felt in the past that that approach was a reasonable approach or whether you do have concerns yourselves.

MR BUTTERWORTH: It's a reasonable approach and, you're right, they have made considerable effort and have considerable strengths in those areas. There are two contemporary pressures, at least two, that are challenging that sense of security they have. One is in the aviation sphere, the consciousness of the cross-subsidy between general and commercial. There's the pressure from new entrants into the aviation industry about whether they're prepared to fund that cross-subsidy or not, and since that's such an important part of the bureau's income they'll need to respond to that in some way.

The second area is the very rapid pace of technological change where people are demanding new and very novel weather services, and I guess the best example of that is the very beginnings of weather futures trading that is taking place now. That's a very new and novel market. If you can trade in weather futures then there's obviously a private benefit there for someone. Working that through and making sure the bureau has the appropriate role in, in a sense, the development of a new industry and is providing the best foundation for that I think would be a major - - -

DR STEWARDSON: They could have a comparative advantage and might make a fortune for you on this.

MR BUTTERWORTH: They also need to recognise that they're an arm of government as well and they have to reconcile those two objectives in some way.

MR GUNASEKERA: One of the things that the strategy would help is to clearly identify that particular comparative advantage they are likely to continue to have, involved in a dynamic sort of a market, I guess. That's one of the things that the study would do, hopefully.

DR STEWARDSON: Basically the Bureau of Meteorology's basic pattern seems to be very similar to the other information agencies that have thought about their situation, and the two problems that you've identified as similar to other information

agencies as well - how to deal with the downstream part of activities and the sale to customers and different classes of customers, and how the Internet is going to impact on that, and how to deal with particular groups of customers. In most of the cases it's perhaps particularly deserving customers who can't afford to pay. In the aviation industry it's perhaps a slightly different category of customer but it's a special sort, so it's a similar thing.

MR BUTTERWORTH: The thing that puts such an edge on it for the bureau, in my view, is the fact that when you're talking public interest it's very often public safety and life and death, and the economic benefits that a successful bureau has for the Australian economy are enormous. The costs of people not having that information are very considerable and so there is a lot at stake in getting the structures and frameworks right in relation to the bureau.

MRS OWENS: Which raises really interesting questions about contestability on those basic services, for example - you know, the New Zealand issue. I think the bureau did put a pretty convincing case about ensuring consistency and so on at that very basic level.

MR BUTTERWORTH: That's right.

MRS OWENS: Thank you, Rob and others, for coming. There is some afternoon tea out there if you want to join us. We'll now break and we're resuming at 3.45.

MRS OWENS: The next participant this afternoon is IP Australia. Thank you for coming and thank you for the submission that we received - I think it was last week. We were very pleased to receive your submission roughly on time - more on time than some of the others we've been dealing with today. Could you please each give your name and your position with IP Australia for the transcript.

DR HEATH: I'm Dr Ian Heath. I am the director-general of IP Australia.

MR GOULD: I'm Rick Gould. I'm the deputy director-general, corporate strategy, with IP Australia.

MS KEATING: Shirley Keating, finance director, IP Australia.

MR CRAWFORD: Rod Crawford, assistant director, corporate strategy, IP Australia.

MRS OWENS: Thank you very much for that. I think, Dr Heath, you said you'd make a short opening statement.

DR HEATH: Yes, thank you. You have our submission before you, in which we have tried to set out a couple of things which I'd just like to verbally underline. The first of them is, we've tried to explain the rationale and basis on which the organisation does its cost recovery. We took some trouble to do that because we thought our situation was a bit unusual in the sense that the life of intellectual property rights actually goes over some time and we have, as a policy position, a charging regime which adjusts the costs over the life of the whole right. In most instances that means that the costs to the organisation are at the front end and there are a few costs later in time, but we in fact reverse that in terms of the charging, so the costs that we charge people at the beginning of the process are under-recovered, if you like, and we recover them later on.

That's a policy position and set out in the paper are the reasons for it. There's a couple of them essentially: that government wishes to encourage people to seek and obtain such rights, so putting the full costs up-front would be a discouragement, and secondly the government also wishes to encourage people to relinquish these rights so that these things go into the public domain. If they're not getting value out of them then they will be reluctant to continue to pay the ever-increasing costs of maintaining them. Patenting is a good example of that. People release their technology to the public domain rather than pay the higher fees as they come up for renewal. So that was one issue which we were keen for the inquiry to understand because it directly reflects a pricing policy.

The other issue which the paper tries to address in relation to the substance of your inquiry is, as a fully cost-recovering organisation - that is, we survive completely on the fees that we charge - we have tried to set out in the paper the way we see our accountability to the users of the system and to the government of the day, which we thought was an important aspect of your inquiry. I'll leave it at that. I guess we

thought today was for asking us questions about the submissions - whether there are matters which are not clear, or further things which you would wish to understand which we can hopefully answer here, or we would be happy to provide further material if that's of interest.

MRS OWENS: Good. Thank you. When you say there's full cost recovery, that full cost recovery applies to the whole agency rather than the individual activities - the fact that you said you have this arrangement where you charge less up-front but the charges go up later.

DR HEATH: That's right. The agreement we have with government is that the costs of the whole agency would be fully cost recovered over time. One of the challenges that we have to deal with is that we expend resources at one point in time and recover the money towards those later in time, so we run a budget that's a bit out of kilter with - - -

DR STEWARDSON: You have presumably been going for a long time. When did you start?

DR HEATH: In 2004, 100 years. I sit at the Colony of Queensland's Commissioner of Patents' desk, so longer than that.

DR STEWARDSON: When you first started, assuming 100 years ago there was cost recovery, which there may not have been, there would have been many years when you wouldn't have in fact cost recovered, given the distribution of the charge over the life of the patents.

DR HEATH: I assume that's the case. The historical knowledge isn't there. In terms of this inquiry, we moved on to close to a cost recovery type activity in 1984, from memory, long before my time, but certainly going back to the beginning of that cycle. My expectation would have been that we were probably, as most government agencies were, collecting money which the government paid into consolidated revenue and the staff were paid - - -

DR STEWARDSON: So you started cost recovery in 84 or whenever. You were all right with the system that you have because you came into the middle of an ongoing stream, so in that respect you're perhaps not very helpful to us as an example for things like, say, the gene technology regulator and, indeed, even perhaps there's a space activities licensing organisation or whatever it's called, but in the gene technology in particular where there is basically a situation similar to yours, I guess, where the ability to pay from some of the developments will come later in the life of the product. From your own experience do you have any comments to make about that sort of regulator's cost recovery?

DR HEATH: I have no direct experience of setting up a cost recovery activity with that sort of a lead time. Others that I've had some passing involvement in have always had a fairly quick recovery time in terms of your annual budget and you could see

how the money would flow through quickly. I think that it's probably buried in the mists of time as to what it was it was like when this agency started. We're talking 20-year periods here for patenting now. Back then it was probably shorter, but not by much - 15, 16 years.

MRS OWENS: I think the gene technology regulator issue raises a very similar set of issues, doesn't it? You have structured your charges in a way to encourage innovation and encourage people to come to you, by charging low and then increasing the rates later, albeit there's a 100 per cent cost recovery that's going to be covered one way or the other, whereas the Office of the Gene Technology Regulator is going straight into 100 per cent cost recovery, which could actually act, as far as we could see, as a bit of deterrent to innovative and research activity.

DR HEATH: Certainly the policy basis of the charging was that the costs up-front would be considered to be prohibitive by a number of people who wished to enter the system if we charged what it costs us to actually do that task. If you think about it from our own work point of view in, say, patenting, the hard work is the searching and the examination work, opposition activities, those sorts of things, which occur within the first couple of years of the processing, and then if the right is granted they have got that right for another 20 years.

MRS OWENS: Is there anything else you do in that period?

DR HEATH: There's an annual renewal fee that comes up and we do the administrative task of collecting that. That's the chain that covers the full cost.

MRS OWENS: But there's not a - in other regulators there's a surveillance activity that's going on. There's nothing else that those charges are really covering?

DR HEATH: We have no direct role in how the owner of what is now a private right defends it against infringers, asserts it in the marketplace.

MRS OWENS: That all becomes part of the legal system.

DR HEATH: That becomes part of the legal system. We, of course, monitor what's happening to these rights and look at our policy settings and legislation and all those sorts of things, so we have that ongoing role and we do adjust what we do, but we don't actually have a, quote unquote, regulatory role beyond that point, no.

MRS OWENS: To the extent that you are fully cost recovering, that infers that you are cost recovering for a whole range of activities which we might argue - well, you say they're non-chargeable activities, but activities that in other areas might be deemed to be in the public interest. You talk about, on page 2, your involvement in the development of an international intellectual property system, including trips and the World Intellectual Property Organisation in the negotiations that take place in that context. What's the argument for charging the users of your services or the applicants for those sorts of services or those activities?

DR HEATH: I think the main argument is that the international system is a system which the users use, generally speaking, so the work that the agency does to maintain that system - work with other countries to simplify it, make it cheaper, harmonise it, those sorts of things - is work that's in the interests of the users of the system first. As we say in the submission I think, in a couple of points, there are some broader public interests in this, but the prime benefits of all of this work go directly to the users of the system in the first instance. I guess that's the rationale for saying that the agency puts out fees and charges which are sufficient to maintain a set of activities, which includes the international activity and which includes the information activities which we use to talk more generally to the population about the system, about the use of it.

DR STEWARDSON: On page 10 you talk about non-chargeable activities. I take it what you're saying there is much the same as you said a moment ago, that all these things are not specifically cost recovered but your fee for the general - - -

DR HEATH: Is set at a sufficient level - - -

DR STEWARDSON: To cover them.

DR HEATH: - - - to cover the costs of those, that's right.

DR STEWARDSON: Your education and awareness programs: do you justify that on the basis of it being in the interests of the user also or more as sort of a public good which you have to cover, given that you're told by government you've got to recover 100 per cent?

DR HEATH: I think the issues are a bit mixed. There's a series of different ways you can look at that sort of activity. From a management point of view I would argue quite strongly that a range of those activities are all designed to make the system more efficient for the people who come to use it. If I have an ignorant consumer, then I actually have to spend more resources dealing with the way they have come to the office and tried to deal with the office, the way they have structured their application and all that sort of thing. Some of the activity is designed to improve the way potential and actual consumers access the system. Some of it is about, clearly, that the government has a broad policy interest in Australians being innovative and creative and, if it's appropriate, seeking protection through this system so some of it is about making sure that they're aware the system is there to do it. You could characterise that as a public policy activity or, alternatively, you could say I'm out there touting for business. Those two views sit sort of side by side. I would generally put it in the former because when we're out there we're frequently trying to get the message out about using intellectual property protection appropriately, not just trying to get as many applications as we possibly can. So the public policy line would be, "It's not in the applicant's interests, my agency's interests or the government's interests that they make an application," and then I refuse it, because they shouldn't; that's wasting everybody's time and effort and money.

MRS OWENS: But normally when people tout for business they don't actually charge for touting.

DR HEATH: They do. All the advertising that I've seen - all the commercial world charges a price for what they sell, and they do their advertising on the basis of the money that they get from selling the goods, surely.

MRS OWENS: But they don't try and charge the people they're trying to attract.

DR HEATH: No. We charge - - -

MRS OWENS: You are, indirectly, by charging the - - -

DR HEATH: We charge the users of the system. Effectively we don't charge anybody else.

MRS OWENS: No, it's not a fee for service.

DR HEATH: Some of the seminar series we run, we actually put a small fee on it, but that has got a lot to do with making sure the people who say they'll come, will come. It does help recover some of the cost, but it's as much designed as a way you would set up a seminar. You'll get people to come along and take it seriously if you've got them booked in and taken a fee from them and give them something back for it. But generally speaking, you know, a very small amount of our revenue comes from that sort of activity - it's the fees and charges.

DR STEWARDSON: I guess your situation is perhaps a slightly clearer one than most of the organisations we've talked to in terms of what's a private good and what's a public good. I don't know that even yours is totally clear, but I suppose there is undeniably a strong private good element from your activities given the monopoly right that the customer gets once his product has been approved by you and given the patent or whatever.

The down side which you mention may be a certain amount of reduction in secondary innovation, but the big upside for the community is the encouragement to do the innovating, because you can get what other organisations have referred to as an exclusive capturable commercial benefit. I mean, that's exactly what you're giving, an exclusive capturable commercial benefit. A number of other assessment agencies, the food regulator in particular, has that particular phrase.

DR HEATH: It's not a phrase I've heard before, but I understand the plain words. Yes, that's exactly what we do.

DR STEWARDSON: Yes, so you are really, in terms of this split between private and public goods, right up one end of it, I think, which makes it more logical that you would 100 per cent cost recover, than it does in the case of a number of other agencies which perhaps have been told to 100 per cent cost recover, where it's not so

clear that the private good is as dominant as it is for you.

DR HEATH: I think that's right. I think what we do is fundamentally about in the end recognising a private good. But we're a government agency so we're not purely that. At some level you've got to be able to say what we do must be something about the public good as well. But I agree, if there is a spectrum we are very, very strongly at one end about private good.

DR STEWARDSON: In a sense, I suppose, you could be a private corporation given a monopoly right to license trademarks.

DR HEATH: You could. It's a subject matter that has come up in some discussions, although I'm not aware of any country in the world that has gone down that path. When you think about what we're doing, there is a piece of legislation that has been put there and we're actually saying, "If you pass this hurdle, the government will give you this exclusive thing." I suppose if I was wanting to make a lot of money for government it would be a bit like what we do with the airwaves. I could sell off the airwaves and say, "I own the airwaves and I'll sell it off in slices. So I'll give you this business for - what will you bid me?" "I earn 70 to 80 million good cash flow," and in return government would want something back from that. So you could sort of sell off a spectrum - I'm trying to run in parallel with the airwaves - they didn't do it with Internet names and I've never understood - - -

DR STEWARDSON: I seem to remember Charles I got into a bit of trouble doing something like that. He tried to do it about parliament.

DR HEATH: Exactly. The statute of monopolies which was passed in 1623, which our legislation still refers to, was actually introduced then to clean up the mess that governments had got themselves into, kings particularly, handing out these monopolies to various people around in exchange for - you know, "Give me a little pile of instant gold and I'll give you this right to monopolise that forever." I know it's nearly 400 years ago and perhaps it's time to change, but I think the logic was quite good.

MRS OWENS: Somebody is actually looking at the monarchy this very minute. I think the Guardian newspaper.

DR HEATH: Yes, I saw that.

MRS OWENS: I was going to ask do your counterparts in other countries also charge in a similar way?

DR HEATH: Yes. The front end, back end issue which we've talked about is almost universal, as far as I am aware. Certainly all of the major patent offices are fully cost recovering in some way or another. The differences that are around a little bit has been that in some countries the government of the day has kept the money and then passed some of it back to the office to keep them running in those countries.

That's been a nice little earner for some countries. But in most major countries now the charges and the cost recovery have been effectively lined up in some way as we have.

MRS OWENS: Do you have a section 31 arrangement?

DR HEATH: No, we have a special account.

DR STEWARDSON: Can we ask you about that. I didn't understand on page 13, where you - perhaps in answering that previous question about section 31 accounts and 31 matters, I really didn't understand what you were saying on the bottom of page 13 there about the accounts you have - appendix 1.

MS KEATING: The last italics paragraph?

DR STEWARDSON: The whole bottom paragraph and in italics.

DR HEATH: Those two clauses quoted there are the key elements of what is our purpose, so we are able to operate this special account that's been set up for us for those two purposes listed there.

DR STEWARDSON: Do you get an allocation, an appropriation in the federal budget at all? You don't?

DR HEATH: We do, but it's in an odd way. Government sort of puts into its account that those moneys are able to be spent, but it's not appropriated to us. It's a zero appropriation.

MS KEATING: A special account comes under the FMA Act. There is a particular section; it says that all moneys held in this account are appropriated. So it doesn't have to get specially mentioned in the budget. It's an automatic appropriation of whatever the moneys in that account are.

DR STEWARDSON: In your account, whatever its form.

MS KEATING: Yes, we have an account and it gets audited.

DR HEATH: We, in the budget process, therefore, set out to government all our estimates, how much money we expect to raise, how much money we expect to spend, but we appropriate zero.

MRS OWENS: But it's not a section 31 arrangement.

MS KEATING: No, I think section 20 is special accounts and that mentions this automatic appropriation arrangement in there and a number of agencies that come under those accounts.

DR STEWARDSON: Are you a statutory corporation?

DR HEATH: No, we're not. We are a little bit unusual in that scheme of things because I am a chief executive officer under the financial - of the FMA Act - but I am not a chief executive officer under the Public Service Act. I am a division head inside the Department of Industry, Science and Resources. I have a secretary. If you think about it for a moment there is obviously some odd tensions in there because no money can be expended except under my authority inside this organisation, but I've got a boss who isn't a minister. It's just someone up the chain but it hasn't caused any problems.

DR STEWARDSON: I thought we had understood all this section 31 stuff but you've upset us.

MRS OWENS: Yes.

DR HEATH: It's a while since - section 31 was a section of the old - - -

MS KEATING: Section 31 agreements. Is that what you're referring to under the old act?

MRS OWENS: Yes.

MS KEATING: They were for a term - - -

MRS OWENS: No, it's under the current act.

MS KEATING: So it's not what I was thinking of, sorry.

MRS OWENS: I think, under section 31, there are agreements that are put in place.

MS KEATING: Yes, there are still agreements.

DR STEWARDSON: It's not our concern, but just from our understanding, it would presumably be possible to have your whole operations under a section 31 agreement with DOFA whereby your whole estimated expenditure was appropriated to you as an annotated appropriation, going in and out of the budget. That's right, isn't it?

MS KEATING: Yes.

DR STEWARDSON: But for some reason you have a different arrangement.

MS KEATING: That was considered at the time when we obtained a trust account back in 1993 under the old Audit Act. Being a trust account was considered more

suitable for us at the time in our discussions with DOFA, etcetera.

MRS OWENS: I was just looking at that page that we had our submission open to, page 13. This is just coming back to this issue of public and private benefit of your operations. It actually says, "Australians benefit from the effective use of intellectual property, in particular through increased innovation, investment and trade." So there is some element of public benefit in your activities.

DR HEATH: Yes. That's my point about saying why would we be a government agency if there wasn't. If we were a purely private good then I think we're in the wrong - we shouldn't be a government agency of any sort. So there is a very broad public policy good in what we do, but when you look at the bulk of our operation and purpose of the organisation in a direct sense, we in the end are in the business of essentially using our statutory powers to grant a private right to people who apply for it.

DR STEWARDSON: The interesting thing is that you are saying you've got a bit of both; you've got a bit of private, a bit of public. We've already said you're pretty well up one extreme end, but this issue arises for us in a lot of cases: where there is some private, some public should the costs be allocated in - should one try and determine the proportion of public and private and allocate the costs in that way? Or, if the private benefit exceeds the cost of operating the agency, should one say, "Okay, well, let the recipient of the private benefit pay the whole lot and the public benefit can sort of free ride on it"?

DR HEATH: I think we're at the latter, and my argument along those lines would be there's no question that the private value of what we recognise is vastly more in value than what - even what they're paying. Take the extreme case - the pharmaceutical industry would commonly say with a successful drug that they've patented, they're probably earning a million dollars a day just from that one drug, so there is enormous wealth potentially. The right itself you can't value the moment it's granted, because some other ones we grant are going to be valueless, but if you actually added up the value of all the rights we've granted we're talking billions of dollars.

DR STEWARDSON: Actually what they tell us is that they're sitting around waiting for the TGA to improve it.

DR HEATH: I'm sure they are.

MRS OWENS: What you've inferred in your submission is that the applicants actually don't mind paying higher prices if that means they get it at the higher quality service. That's the implication I got from page 9 and also page 11, where you said that actually they perhaps weren't so fussed about getting the recent fee decreases, they were more concerned about the frequency of the changes, which seems to infer that they don't seem to be too unhappy paying the charges.

DR HEATH: I think that's very true, particularly of the successful applicants with commercially successful rights that they've got out of it, and they're the group that are going to say that. The government policy there is clearly a pressure on us to try and keep our costs down, and we've been trying to do that. There is that other government policy there about trying to make sure we're encouraging people into the system if they can use it. So while the successful companies were saying the most critical thing to them is that the right we have recognised through our processing stands up in the courts of the day and is defendable against the world, because that's what their commercial success sits on, and they will pay a lot of money if that could be guaranteed.

The sort of price that would take you to would be that much higher than the small backyard inventor who has got a really good idea that could be commercially successful in some years' time but has got no resources essentially to back them up at the beginning of the process. If the cost of doing it was higher and all brought up-front, that's the area we believe would be frozen out of the system very quickly. We clearly have a commitment to try and do what we do at the highest level of quality and there processes going on to look at issues about where that can be changed.

The pressure is an interesting one. I'm not sure whether I should name other countries. There are other countries who, it is commonly said, have gone to the extreme of pushing their prices down and the marketplace is saying, "But the rights you get aren't worth it." They have not been well examined, they haven't thought it through. The moment you try to assert the right in the marketplace it gets challenged and gets knocked over by the courts, because they've done it cheaply, they've done it quickly - - -

MRS OWENS: But they incur their costs later on down the chain.

DR HEATH: That's right, it passes across in a different way. So that's a balancing issue which we have to get right but it's about trying to keep access to the system open and keep the quality of what we do and the standards that the legislation and we apply at a sufficiently high level so the right is actually valuable.

MRS OWENS: Is it true that the patent attorneys actually would prefer to have higher fees because their charges are proportional to your charges? Is that really a true reflection?

DR HEATH: I don't know whether they do it on a proportional basis. There are certainly issues - and we have discussions with the professions about these issues when we are reviewing fees about their interest, not just in the level. That's sometimes an issue. There is often interest in the way we structure it because clearly if we have five fee points in a process and they're acting for somebody in the process, then there are five points where they can clearly say to their clients, "You owe me some money." If we come along and say, "It will be better administered if there are only three" - there is certainly that sort of debate. I would be surprised if it is a serious linkage. They do different things. It's $150 to start off in the trademarks

processing system - that's the application fee.

An attorney could do quite a lot of work, both of searching other marks, checking out all sorts of things, where he might charge a couple of thousand dollars to do a lot of work before the application went in. So there's no actual matching between what the attorneys are doing and what we're doing. There is in the case where if all they're doing is a disbursement, if you like, but generally speaking, no.

DR STEWARDSON: Can we just go back to the matter you were speaking about before, about the balance between costs and the standards that you set because this also is something that comes up with a number of regulatory authorities. Can you tell us anything about how you go about judging the appropriateness of your standard? You've compared yourself with some that you regard and other people regard as totally unsatisfactory, but within that OECD table that you gave us where you ranked quite well - but there's not a vast difference in fees, I guess - is there some compatibility of standard of service?

DR HEATH: There's a couple of things that drive the quality of what we do. The first of them is the actual policy legislative framework that sets it, so you can actually change the standard of what we do by changing the legislation in the first instance. You can lower or raise the bar, and certainly we have views being put to government about where the bar is and our constituents have been talking to us for a while about raising the bar in a couple of areas. The consequence of raising the bar is then what we have to do with it there.

Let me give you an example. In the patenting world when you're searching a patent in the Australian system as it stands at the moment, you have to find when you're doing the test of obviousness - you go looking at the prior art, the previous material that's around, and you're limited under our current legislation to finding prior art effectively from a single source. You go looking for where somebody previously has done something pretty similar, and that stops the patent from working.

In some jurisdictions, the US for example, the patent examiner is allowed to go looking for an idea from that source and an idea from that source, and if you put them together you've got the invention that you're applying for, and that's sufficient to knock it over. To do that sort of searching is harder than to do the first. So if we change that as a setting, from a policy point of view, then my patent examiners will have to do a more thorough type of searching - ie that will cost more time and effort - to raise the bar. So that's the major area. The trade-off generally speaking is at the - the core task is that examination task and the steps that you require the examination to cover for it to be sufficient.

We have opportunities to reduce our costs, we believe, through a process which we've been working on at an international level - I think it's mentioned in the submission about full faith and credit - where if somebody else has already searched in relation to this application in another jurisdiction, why should we search again? Why can't we just take their search results and use those as something my examiners don't

have to do.

DR STEWARDSON: We've got two things there, mutual recognition or something of that sort.

DR HEATH: Yes.

DR STEWARDSON: But just before we get on to that, how do you determine whether you should have the higher fee and the search for the "two ideas together business" as your standard rather than the one source art, whatever the word was?

DR HEATH: The issue in the first instance comes up as a policy view essentially which will based around, "Is the right which we are granting standing up in this jurisdiction?" To give you another example, we've collected some data - and our stakeholders collect it and talk to us about it - which is saying, "The courts are knocking over the patents that you're granting." That's clearly not a good outcome if they're doing it to too great a degree. Of course the courts will find for various plaintiffs, but if it's happening too much - so there's evidence like that saying, "Is the standard right?"

The other standard is the users of the system, generally speaking, would put to us that they want the standard that we're using to be as similar to the standard that other major markets in which they might want a patent. So we look particularly to Europe and the US to try to keep the standards that we're using at a similar level. Most people in the patent worlds are looking for a right that they want to assert in a number of jurisdictions. It starts to wobble the system, if you like, when people can get a patent in one jurisdiction and not in another if the standards are too far apart. So it's pressures like that which are saying, "Where should the standard be?" Then there are the issues of what are the costs to us to try and maintain that standard and can we find ways of achieving those standards and what effect does that have on our costs, therefore in the end what effect will that have on our charges?

DR STEWARDSON: That's an interesting answer because we have other agencies where the regulated, and even I think to an extent the regulator, is saying that Australia should be leading the way in international - sorry, the regulated are not saying Australia should be leading the way, they are complaining about it, whereas the regulator is saying Australia should be leading the way, and the regulated are saying, "This is an unnecessarily high standard and an unnecessarily costly one and it's having detrimental effects."

DR HEATH: I think it's because we are much more in that business of recognising a private right, if you like, and much more in the business of - we're talking about the broad public benefit of the economic flow-through to the Australian economy of how this works. It's that broad public policy point of saying, "It is in Australia's interests that these rights are granted in Australia similar to other countries." If it was easier to get a patent in Australia - so lower the bar - what good would that do? Is there a value somewhere to having an easier patent to get? You could run a bit of a case but

it falls over fairly quickly.

The same thing when you go the other way. If we made it impossible to patent, except for really very large difficult inventions, if you like, then the argument would be that we would stop seeing technologies coming in into this country, because the owners of those technologies would not be able to get protection here for them so they wouldn't market them here. They'd avoid us. So keeping an international parity is almost the right place to be. There is no great value in being too far in front or too high or too low.

DR STEWARDSON: The mutual recognition - I interrupted you before we moved on to that - you're looking to recognise searches that organisations have done.

DR HEATH: To a certain extent we do already. The users of this system, I think generally speaking, say they would like it to be possible for them to make one application, have one set of processing, one fee and their right is recognised around the world. That would be nirvana to a user of either the patenting trademark or design system.

Life isn't that simple. There are national jurisdictions all over the world that have brought these up. That's a hard place to get to. The way the international IP community has been trying to move is exploring the ways that we can do things the same way, so that application procedures are identical worldwide so you don't have to write an application for that jurisdiction and a different one for that jurisdiction. A treaty was recently concluded, which we heavily participated in, which was about all of those sorts of things.

Then there's this other issue of how we maintain the law the same. That's some work that's still to come. But in between that is this issue of saying, well, if people are applying essentially for the same invention or the same trademark and the law that's being applied is fundamentally the same in each jurisdiction, then does the work have to be repeated in every spot? We now, whenever we get an application through the PCT - the Patent Cooperation Treaty system - we would know, as a general rule, if it's an offshore applicant, that it has probably already been searched at the place it was lodged, the International Searching Authority. We would automatically now get that search material. Our examiners would look at that and decide whether they needed to do anything more. That's about where we're up to. It's not quite all faith and credit yet. We don't just automatically accept that it's been searched, but we're looking for ways to not repeat processes that have already been done in other jurisdictions and that will keep the cost of the system down and make it easier for our clients to use.

DR STEWARDSON: Can I ask you about your advisory board - ASIP, was it?

DR HEATH: Yes.

DR STEWARDSON: It comprises industry people, very substantially, and interestingly it reports not to the chief executive of the body but to the minister. Is

that right - or to the director-general?

DR HEATH: Yes, to both. It's formally an advisory committee to the minister, but it has the role of, therefore, talking directly. I sit on that body as a general rule so I report to it in that sense and they talk to me about the administration of the office, as they can talk to the minister about that as well.

DR STEWARDSON: Do you find that that works well, particularly the aspect that they can talk to your boss - or one of your bosses? I think you explained you had many.

DR HEATH: I think so. The broad charter that they pursue the most is about how should this system be? What are the issues that need to be addressed in relation to the system? The work that they can do importantly, therefore, is with some independence from the agency itself, without the need to set up a formal inquiry on topic X or topic Y. The group basically sets up a work program. It was before my time, but about two years ago - and we're about to go through an exercise early next year to do the same - where they look forward over the next couple of years and say, "What are the issues which we think are coming up or need to be addressed in the system?" and they set up a work plan for themselves. Then they report to the minister on each of the ones that they've looked at.

I think that's been a reasonably productive relationship; you have your policy processing settings with a group and they're independent but they're not far removed from you - coming in cold and you have to explain to them what you do and then they go and do something and then come back. They're a knowledgeable group and they know us well. That's a different style from, say, the competition review inquiry which was an objective arm's length look at these sorts of things, if you like. You get two different perspectives on it. As an advisory committee it works well, because it knows the work well; it has a strong interest in the work that's being there.

The down side, if there is a down side, is I suppose it would take more for that group to be highly critical of what's going on around them because they're part of it. They would do it, but they're there. So it sits there with that sort of - - -

DR STEWARDSON: But by the same token it can't tell the director-general what to do.

DR HEATH: No, it can't.

MRS OWENS: This is the director-general.

DR STEWARDSON: I know. I was trying to make the discussion more impersonal.

DR HEATH: Yes. No, it can't. It is an advisory committee, so I go to them with matters that I am proposing planning to do and deliberately seek a discussion with

them about them. But it's my authority as to whether I take any notice of them or not, in a formal sense. I would be foolish if I didn't but - - -

DR STEWARDSON: But on the other hand they can make a recommendation, who can then independently decide whether he likes the recommendation or not, and he can tell you what to do.

DR HEATH: That's right, yes.

DR STEWARDSON: The reason I'm asking about this is that we have other organisations where the consultative committee - the industry body feels that it is totally ignored. So we're interested in the question of governance and your committee, where it cannot dictate to the director-general - that was why I was being a bit impersonal; I'm sure you would be sweetness and light with them - but equally the director-general can't just ignore them and wipe them off, because they are reporting to his boss.

DR HEATH: That's right, and they're appointed by the minister.

DR STEWARDSON: Yes.

DR HEATH: As a model, I'd have to say I think it's not a bad one. If you like, there are three broad ways you can do this and you have a board which is accountable directly, and GBEs often have that sort of an arrangement. At the other end you can have a range of advisory bodies that work directly with the agency and you get some of the tension that you've just been talking about, where they don't feel like what they say is listened to and they don't feel like they've got any other way to say it.

The model which we've got sits in between that and it has a bit of both of those; you have an advisory body, so they do know you well and they work with you well, but they're not stuck with the responsibility, as a full board has, of being absolutely accountable for what's going on. They don't have to sign off on the accounts and those sorts of things. But they've got an independence because they're appointed by the minister and they can report directly to the minister. They meet with the minister. It gives them enough of an edge, if you like, in the relationship to have an influence.

MRS OWENS: Did they actually have a say or did you involve them in the thought processes when you recently reduced your fees by 23 per cent or whatever it was? Do they get involved in those discussions about the fees, the structure of fees, the level of fees?

DR HEATH: I would expect them to, but I'd have to pass to my right whether that did in fact occur because I wasn't here when that was - - -

MR GOULD: There was consultation, I guess, rather than discussion. But certainly they make their views known on those issues, and in fact they're one of the bodies that push this quality issue very much.

MRS OWENS: I was really interested in whether it was seen as being a responsibility of the council, at least to review or be consulted on issues like fees.

DR HEATH: We're about to launch our annual fee review. This is looking at whether we will change anything in relation to our fees for the financial year starting in July. My expectation would be, yes, in one part of that process we would give some sort of an indication to ASIP of where that's going and seek their comment on that, because they're strong in that position - there are other interest groups as well which cross over, but they would certainly be in that channel.

DR STEWARDSON: Can I ask a specific question about accounting matters; that is about funding capital development. You make some reference to that. I take it that if you felt you needed to have some major capital development, you could borrow from DOFA and eventually repay the money to DOFA, and you would then add to your cost recovery activities some sort of amortisation of the capital or certainly some amount to cover the interest charge that you were paying. Is that right?

DR HEATH: We have two ways in which we can raise capital, if you like. One of them is exactly as you've described. We have the ability to go to the Department of Finance and say, "We want to do this. We don't have the capital to do it. Can we get it?" Our expectation would be, subject to the argument, that they would be prepared to lend us the money and we'd pay it back, and the costs of the money to the organisation would have to be reflected in our overall costs. The other way is we can get capital by trying to hang onto savings until we've got enough capital to do something. But as we do that, the same thing happens; we have to pay to Finance a capital charge. So they get us both ways.

DR STEWARDSON: I didn't quite get that last bit.

DR HEATH: The total amount of assets that the organisation has, we pay a capital charge to the Department of Finance on that. So if we increase our bank balance - say, a few million dollars every year for a number of years because we want to buy something in a capital sense - while we're accumulating the money we're paying interest on that money effectively to the Department of Finance.

DR STEWARDSON: The way you accumulate money, I take it then, is that you ordinarily have some sort of capital amortisation, depreciation, charge, in your cost element which is not matched by a current outgoing, and that's the bit you save up until you want to buy something. Is that how it works?

DR HEATH: That is true. But in addition to that, we are fully cost recovered over time, but in any one year we may make a profit or a loss.

DR STEWARDSON: Because of a depreciation charge, for example?

DR HEATH: Yes. I had to reveal to the minister, "I think I'm going to make a loss

this year," thanks to a depreciation charge. I'm going to make an operating profit but a - - -

MRS OWENS: Maybe you shouldn't have reduced those fees.

DR HEATH: No, it's got to do with some revaluation of assets.

DR STEWARDSON: So a bigger depreciation charge.

DR HEATH: Yes, a bigger depreciation charge.

MS KEATING: There are a number of costs that are not necessarily cash outgoings in a particular year, such as accruing long service leave entitlements.

DR STEWARDSON: Yes.

MS KEATING: So we have a few elements on the cost side that don't result in cash outgoings, whereas on the revenue side it's virtually all - the cash and accrued revenue are very similar. It's a management issue.

DR STEWARDSON: I guess you can't use the long service leave entitlements.

MS KEATING: No.

DR STEWARDSON: Yes, I see.

MRS OWENS: I think we've finished. Does anybody else want to make any more comments? That was actually very useful. As I said before we started, I didn't think we would have a lot to ask you about because your submission was a very clear one, but we've managed to fill up an hour.

DR HEATH: Sorry about that.

MRS OWENS: I think we gave you a false expectation. Anyway, thank you very much for coming. Thank you very much for filling in the questionnaire, too, by the way. We will now finish the proceedings this week in Canberra. My colleagues will be resuming on Monday, 11 December with a videoconference or teleconferencing with Adelaide, Perth and, I think, Cairns. Thank you.

AT 4.50 PM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 11 DECEMBER 2000

INDEX