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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

DRAFT REPORT ON COST RECOVERY

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

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON THURSDAY, 7 JUNE 2001, AT 10.54 AM

Continued from 04/06/01 in Melbourne

MRS OWENS: Good morning. Welcome to the public hearings for the Productivity Commission inquiry into cost recovery by Commonwealth regulatory administrative and information agencies. These hearings follow the release of the commission's draft report in April. My name is Helen Owens and I'm the presiding commissioner on this inquiry. My fellow commissioners are Judith Sloan and Robin Stewardson. The purpose of this round of hearings is to facilitate public scrutiny with the commission's work and to get comment and feedback on the draft report. Hearings have already been held in Melbourne. Following these hearings in Sydney hearings will be held in Canberra commencing on 13 June. We will then be working towards completing a final report to government in August, having considered all the evidence presented at the hearings and workshops held on 17 and 18 May and in submissions as well as in formal discussions.

The participants in the inquiry will automatically receive a copy of the final report once released by government. We like to conduct all hearings in a reasonably informal manner and fairly quickly this morning. But I remind participants that a full transcript is being taken. For this reason comments from the floor cannot be taken, but at the end of proceedings for the day I will provide an opportunity for any persons wishing to do so to make their presentation. Participants are not required to take an oath but should be truthful in their remarks. Participants are welcome to comment on the issues raised in other submissions. The transcript will be made available to participants and will be available from the commission's Web site following the hearings. Copies may also be purchased and there is an order form available from the staff here today. I'd now like to welcome the Australian Pharmaceutical Manufacturers Association. Could you please give your names and your positions with the APMA for the transcript.

MR EVANS: Alan Evans, chief executive officer of the Australian Pharmaceutical Manufacturers Association.

MS MONK: Deborah Monk. I'm the manager of scientific and technical affairs.

MRS OWENS: Good, thank you, and welcome. I'm sorry about the delay in getting started this morning. Would you like to make any comments before we ask you a few questions?

MR EVANS: Look, very briefly, commissioner, we welcomed the report. We believe it has taken the issue of cost recovery a very great way along the track and indeed it will, I think, provide clear guidance for government and government agencies in the future to address this issue which at times has had vexed discussions about it. But we welcome it and we've got some comments which we'll probably bring forward during the course of this discussion about how we think it might take an extra step or two.

MRS OWENS: Okay. Well, thanks for that. Deborah, do you want to make any further comments?

MS MONK: No, thank you.

MRS OWENS: Well, thank you for your submission and as we were saying before we started this morning there are a number of issues you raised in your initial submission to us which we have picked up in the report and I think it's reflected in your favourable comment on those, in particularly recommendation 6.2 and 6.4 in your most recent submission to us. Now, one of the comments you've made in this submission is you don't feel that our recommendations have gone far enough and that you'd like to see a specific reference to a comment that we made in our report that existing cost recovery arrangements should be reviewed and revised.

You say that that should be made into an explicit recommendation and I think that we're inclined to do that. But I think what I'd probably be saying is that both the existing and new cost recovery proposals should be reviewed using the guidelines in that existing arrangements be all reviewed within five years and there would be some sort of timetable developed by perhaps the Department of Finance and Administration.

MS MONK: Yes. I think that's what we'd really like to see. I think the discussion in chapters 9 and 10 about reviewing existing arrangements and using those guidelines as a basis for any proposed future arrangements are very good. But it just didn't come through that there was a specific recommendation to government that that should occur and we'd just like to see that included.

MRS OWENS: I think it was just really an oversight on our part. I think it was implicit in those later chapters.

MS MONK: Yes, in the discussion, yes.

MRS OWENS: That that's what we were intending, and I think that it's a good idea to make that even more explicit with a direct recommendation so it doesn't - - -

MS MONK: Get lost.

MRS OWENS: - - - fall through the cracks. What was your view about the five-year time horizon doing these reviews with the existing arrangements?

MR EVANS: Of course we'd probably like a shorter time. But being practical and being realistic about it, if all of the existing arrangements were reviewed in that time then I think on a whole, a whole of public service wide basis that would be, I think, the best you could achieve. For our case I mean our principal area of course is the Therapeutic Goods Administration and we would be pressing them to make sure they do it sooner rather than later, in terms of their review.

MS MONK: Indeed we've already had contact from the TGA through the TGA Industry Consolidative Committee Forum, inviting us to participate in a working group with the other individual associations to start looking at the TGA's arrangements against the guidelines in the draft report.

MRS OWENS: That's interesting.

MS MONK: Yes, so we've very pleased and obviously we've agreed to participate.

MRS OWENS: What's the timing of that?

MR EVANS: We're looking to commence that shortly with a view to finishing within - - -

MS MONK: However, I guess we would really be waiting for the final report in case there were any changes to any of those guidelines.

MRS OWENS: We're still working on the guidelines and we did have a couple of workshops with the agencies last month, and I think it would be fair to predict that we probably will be making some changes to make them clearer. We're trying to make them more user friendly and there were a number of issues raised by the agencies at those workshops, which we are now taking on board and seeing what we can do with them. I think you did make a specific reference to one of the charts in figure 9.3. I went back to that figure and I think you're probably right: there is an inference there that levies - - -

MS MONK: Are not a form of cost recovery.

MRS OWENS: Are not a form of cost recovery and I think the wording needs to probably be looked at there.

MR EVANS: Anyhow from our case for example that is a not insignificant component in the charges that have emanated from the TGA. I mean, once a product is registered as a registered therapeutic good then there's an annual charge for it remaining on that and that's adjusted on a frequent basis or an annual basis and there is always debate about the basis for an adjustment. We believe, you know, there is a public benefit in there as well as a benefit for the pharmaceutical company or the others who have goods upon the register. But sometimes we have a degree of difficulty understanding why the charge arises that way.

MS MONK: Because a component of the annual charge, there would be some industry-related activities in there but it's not transparent exactly what goes into that bucket of costs that are related to the annual charge and I guess what would be better would be that that was more transparent and clear, and perhaps moving some of those costs over as a more fee-related activity rather than the levy through the annual charge.

MRS OWENS: But you wouldn't actually get rid of the levy altogether because there are some activities that it's covering, like ongoing surveillance in somewhere. It doesn't really make a lot of sense to have fees.

MR EVANS: No, we accept that.

MRS OWENS: So really you're talking about changing the balance.

MR EVANS: And I think in terms of the transparency. What are the components that go there and therefore how can we make a reasonable assessment that it's a reasonable charge? I mean, when you look at it some companies have quite a number of products on the register and so you're looking at, for them, an annual fee that could be somewhere between two to three hundred thousand dollars just for having a range of products, which might be essentially the same fundamental pharmaceutical but they might have different pack sizes and different strengths. So what might be the public benefit is, in a sense, addressed on a whole of that product basis. But they're actually being charged individually for each pack and each pack size and as I said, it can be quite substantial in some cases.

MS MONK: I guess to take up a point you made, Helen, in relation to the surveillance activities I'm not sure that we'd necessarily agree that they were industry related activities that we should necessarily be funding. I think we could mount an argument that they're more public health or public service related activities, that we could argue that the government should be contributing to funding. For example, there is a surveillance unit within the TGA that monitors the marketplace to ensure that there's no counterfeit goods in the market, or unregistered goods that haven't gone through an evaluation process and that really is protecting the public health and should necessarily industry be paying for that?

MRS OWENS: Have you got other examples of what you're calling public health-type activities apart from surveillance? Are there other areas where you consider there should be no charge?

MR EVANS: If we take the whole approach I think we discussed it the last time. I mean, in essence a pharmaceutical company will have submissions to make in the US through the Federal Drug Agency, very comprehensive. You basically replicate that in Australia and in order to ensure integrity and independence you've got bodies like the Australian Drug Evaluation Committee which are independent et cetera. So all those costs come back onto us, so that the government has set that up for its public benefit or for the public good but we're meeting all the costs. Now, one could argue that - and I'm not arguing but one could argue, for example, that the real cost we should meet in Australia is essentially the cost of providing the documentation which enables them to see that the product has been properly evaluated by an international organisation like the Federal Drug Agency or the European Commission.

We accept the fact that for a variety of reasons, both from public health position and what I'd call nationalistic reasons there's a complete evaluation done in Australia. We meet that full cost. But then on top of it you've got these other committees as in like ADEC and - - -

MS MONK: The EMEA in Europe or NCA in the UK.

MR EVANS: Yes, and so there's probably four or five independent committees

which are involved in making sure the public interests are protected but those costs are ones that fall back on us and of course given we meet the large bulk of the costs of the operation of the TGA, it's this industry that wears them.

MS MONK: I might pick up on a few. At the moment if you want to have your product listed on the Pharmaceutical Benefits Schedule there's a requirement that it has to be tested by the TGA before that listing can occur and that's a requirement under the National Health Act. But the industry funds the costing of that testing and you could argue that through the drug evaluation process and all of the checks on the quality of the product you shouldn't necessarily need to then test it at the end. All of that quality is built into the product during the evaluation process. So should you then need to test the product, physically test the product just for the purpose of PBS listing - and then there's a separate argument as to whether it should only be goods that are supplied under the Pharmaceutical Benefits Schedule that should be so tested.

What about products that are sold primarily to hospitals and therefore not on the PBS or through the private prescription market? We feel there's a bit of an anomaly there, that should we really be paying for that testing? Also the TGA undertakes a program of sampling of products from the marketplace to test them to make sure that they meet the standards that the company says that they do. Again that's protecting the public interest. Should we be paying for all of that cost, all the recall activities to ensure that appropriate goods are in the marketplace, and maintaining that sort of watching brief, adverse drug reaction monitoring and post-marketing surveillance once products are on the market? All of these activities are protecting the public and we're contributing to that as part of the industry. But should we be paying the full cost of the activity?

DR STEWARDSON: In your submission you referred to activities undertaken for government.

MS MONK: Yes.

DR STEWARDSON: Maybe quoting us in that. Were you referring to the sort of things that you've just been talking about now when you talk about that? I had assumed that you were talking more about perhaps policy matters, policy advice to government.

MS MONK: Yes.

MR EVANS: As at - yes.

MS MONK: In our first submission to this inquiry we identified that there are a lot of activities the TGA undertakes responding to ministerials, parliamentary inquiries et cetera and in the TGA's annual report we gave an extract with our submission that showed the number of ministerials et cetera that the TGA is responding to, and we were arguing that should the industry be paying for those services to the parliament.

DR STEWARDSON: We've had a few comments from people about how to define and describe generically those sort of matters. Do you have any suggestions for us on that?

MR EVANS: Yes. I've been thinking - and I agree with you there's a marked degree of difficulty in defining it, but I think it's sort of, in a sense, a test. Who is the principal beneficiary of the activities? Is it industry in our case that we are then able to gain a market advance or a market benefit, or is it the public who gains the benefit? I guess if you start to apply those to things like ministerials for example then clearly it falls on the side of the public benefit or a benefit for the parliament. The fact that we have a product evaluated and it gets registered, I think that gives us clearly an advantage in the marketplace. It's then when you start to step out that you start to get the weightings.

Can I give you a graphic example which I think does illustrate the difficulty? You'd be familiar with the extortion threats on the paracetamol products, Herrons and Smith Kline Beech and Panadol. Now, that involved the TGA in quite extensive costs as part of that exercise and of course revision and review of all the guidelines and there'll be promotion. Now, that was an over-the-counter product - and I'm not complaining about this by the way. But there were substantial additional costs to the TGA from that. On the full cost recovery basis this industry is going to meet nearly 70 per cent of the costs of that activity. Now, we see that in a sense as a public benefit but also there's a benefit for us, that it guarantees the integrity and security of products. Ours already are in a very secure supply chain so, you know, you could question whether or not there is a benefit to us in the prescription pharmaceuticals from that activity, but certainly there's a benefit to the public as a whole.

Now, as I said, I'm not complaining but it just does illustrate, you know, how we can get caught in substantial costs when you've got 100 per cent full cost recovery. Clearly there was a public benefit in guaranteeing that when you go to a supermarket and buy an over-the-counter paracetamol product that there's a degree of security about it. You can never be 100 per cent secure, as we discovered going through this whole exercise. But we've participated in that, not only in terms of meeting the additional costs that will be occasioned to the TGA from that activity but in getting involved in the whole activity with the TGA. So we're getting costs on both sides of the ledger.

MS MONK: And where Alan's explaining that we bear the lion's share of that cost is because the prescription medicine sector provides about 65 per cent I think it is, 62 or 65 per cent of the overall TGA's revenue.

MRS OWENS: Yes.

MS MONK: So that's why Alan has made that figure.

MRS OWENS: It's interesting to think about whether your comments would be picked up in the application of the guidelines where there could still be a degree of subjectivity about deciding what's, you know, in the public benefit and what's not,

and you won't be surprised to know when we did have our workshop with the regulatory agencies that a number of the things that we considered to be things that should not be charged for like, you know, international work and government policy development and ministerials and so on, which we basically said, "Well, most of that should just be covered through the budget." People at that workshop were saying, "Well, you know, a lot of what we're doing for government in terms of policy development is really to do with our regulatory activity and so why shouldn't the industry pay?" So there's an interesting sort of debating point there.

MR EVANS: There is, but as I said, I think it comes down to - and this is probably a useful one to look at because it is a global industry and there are regulatory agencies which involve themselves to a large extent and, you know, the European, the North American and the FDA are - as I think I said earlier, we think the TGA is a very competent professional organisation but the FDA is probably regarded as the paramount regulator in this field in the world. So we'll get a prescription product through the FDA processes. You have to then repeat the whole thing again in Australia. Now as I said, we've accepted that and we accept that there is national reasons why governments would not want to be seen to hand over responsibility for these very important products to another jurisdiction

But when you start to then say, "Well, there is a benefit for the industry in agencies like the TGA involving themselves in international activities and all the costs associated with it," I think you've got to do some pretty critical examination again as where is the weighting in that activity, who is the beneficiary from that activity? I can understand the public servants thinking it's, you know, the view that it's probably easier to put it on industry because we're probably less difficult to fight with than the Department of Finance and Administration and we think - - -

MRS OWENS: And you can't really fight back too hard.

MR EVANS: No, no. We're - well, we've got to get on with business.

MRS OWENS: Yes.

MR EVANS: I mean, you don't want to - I mean, in our case it's clearly commercial judgments. I mean, if you - you have a product delayed going onto the market for weeks or months, it's substantial dollars and can be in some very big products, you know, you probably could talk in the order of something like $1 million a week. So an agent comes along and says, "We want to charge you an extra 10, $20 thousand," you've got to make that commercial judgment.

PROF SLOAN: On that specific issue it would, I think, be helpful to us if we could create a kind of form of words which gave us, I think, greater defence in terms of why you might excise these issues - like policy making, international liaison and the like - because I think Helen is absolutely right, that when we had the workshops with the agencies you got the distinct impression that they were quite happy to squirm out of that one - - -

MR EVANS: Yes.

PROF SLOAN: - - - saying, "Well, you know, yes, we hear what you say but actually all the policy work we do and all the international work we do is all part of the regulatory function so it's still 100 per cent cost-recovery," you know, "your next point," you know.

MR EVANS: Yes.

PROF SLOAN: So the thing is, I think we need a kind of set of robust, you know - - -

MR EVANS: Principles.

PROF SLOAN: - - - dare I say it, bureaucratic words.

MR EVANS: What I reckon is, look - - -

PROF SLOAN: No, we - - -

MS MONK: Maybe - - -

PROF SLOAN: - - - I think need to tighten it up, if at the end of the day - - -

MS MONK: Maybe it's the direction that the policy - - -

PROF SLOAN: - - - it's going to make any difference.

MS MONK: Maybe it's the direction that where their policy is coming from. If the policy - for example in the TGA's are, if the policy is coming from the overall Department of Health and Aged Care or even from the minister towards the TGA, maybe that's something that we could argue should be not funded by industry. But where it's a more nitty-gritty detailed policy about how we're going to calculate fees and charges for X activity, obviously that's part of the regulatory function and it's industry-related costs. So maybe there's a way of trying to make a judgment there about who is driving the need for a policy.

PROF SLOAN: Yes, we need to give it some thought, I think.

MR EVANS: Well, if I could seek your indulgence, I mean, given I've walked both sides of the fence in recent times - - -

PROF SLOAN: Well, that's the - - -

MR EVANS: - - - if I could have a week or so and I'll sit down and try and develop something.

PROF SLOAN: Yes, that I think would be extremely useful.

MS MONK: Yes, it would.

MR EVANS: Because I do have the benefit of seeing it from both sides and having, you know, run organisations like Oz Industry where we were very conscious about charges we were imposing. You know, I've got some ideas formulating but I'd like to just refine them, yes.

PROF SLOAN: I mean, the reason I say that partly is that you always worry when everyone is telling you that this report is welcome. So that's equally true of the - - -

MR EVANS: I've used those words myself in the past.

PROF SLOAN: No, but when, you know, the payers of the costs - - -

MR EVANS: Yes,

PROF SLOAN: - - - that certainly is welcome. But when the agencies are telling you it's welcome too, you think - - -

MS MONK: Yes, they're being somewhat sanguine and you're sort of worried.

MR EVANS: Yes, well, I mean, look, I think I mentioned earlier, I mean, it is a very difficult area, and in this one, you know, what is the appropriate adjustment for the costs and charges? You know, we've just gone through a recent experience with the TGA trying to ascertain what would be the actual basis of increasing the charges for this year and setting the principles for the future. Now, I know, for example, from my own experience that the Department of Finance and Administration issues an index to departments for adjustment of their running costs which seemed to me a useful basis on which we could talk to the TGA about adjusting the charges to us. I mean, if that was - given that they're part of a department of state, and that's how they're getting their running costs adjusted, then it should be reflected back in the charges to us. But the Department of Finance are not prepared to make that index publicly available. So we had to use - you know, look at indexes which could - you could pick up because they were in the public arena - and we've come up with a hybrid again, and I know the Department of Finance and Administration index is a hybrid as well, but it's one which is, you know, clearly used by government to make sure it's getting the maximum benefit out of its increase in allocations to agencies and getting the maximum efficiency. It seemed to be useful.

So we've now got this situation where we've got fees and charges adjusted by a hybrid index. We welcome the comments about the efficiency and the needs to establish a basis for efficiency because we don't really have a good handle on it in TGA. But you can have those and you need some other mechanisms to make sure all the time, people are focused on delivering the right product at the right price and being conscious of that all the time.

DR STEWARDSON: Perhaps I can just take up what you were saying then in your

initial submission, you did make comments about the inadequacy of the consultation with the TGA and we have made suggestions about that and invited comments including on the efficiency audit committee that you mentioned just then. I take it from your comment that you think that's a good idea.

MR EVANS: I think it's an excellent idea, commissioner. There has got to be some discipline imposed on both parties in any process like this and from our side the market imposes some disciplines on us and of course, particularly in the prescription pharmaceutical industry where the government is a (indistinct) purchaser and we're getting more disciplines imposed on us. It was indeed something I was able to point out in the recent negotiations, just to give you an example, that the government sought to impose last year a revision or downward revision of the prices of pharmaceuticals for the GST effect. That was based on the projections of the GST savings - a saving that would be occasioned by the introduction of the GST but they weren't proposing to do it on their own charge, they were going to charge us. So I was able to point out there was inconsistency in the government's approach within the one agency and I think we actually won that battle but it was only because they were too embarrassed to say, "We'll take it on that hand but we won't give it back on that."

But the lack of transparency in these things is difficult and we don't know efficient they are. You can do some comparisons with other bodies but that's pretty crude. It's in terms of the length of time they take to do something but we don't know the internal efficiencies compared to others, so I think there's a real value in having efficiency audits and getting some useful measures so that we at least feel comfortable they're getting some value for money.

MRS OWENS: But, I mean, you've just given quite a good example of the government or the TGA being reasonably responsive to your request to reconsider the application of the GST and I think you mentioned before we came in here today that the initial increase was going to be - I can't remember the percentage figures - - -

MR EVANS: It was 7.9.

MRS OWENS: 7.9 and you got it down to 6.6.

MR EVANS: Yes.

MRS OWENS: I mean, that's to me an indication at least there is some degree of consultation that is working. You might not have got everything you wanted.

MR EVANS: No, and there are factors in there - I mean, part of the reason why that increase is so high was the decision of Department of Finance to increase the rent for the property the TGA occupies prior to it being disposed of as part of overall government policy. What we don't know and probably will never know is, has industry in the past met the cost of that building through previous fees and charges and paying for it again because it's now going out to the private sector and they will be seeking a return on their investment; don't know, and we just have to live with it.

But, I mean, part of the cost reduction has been you're netting out the GST effect on the CPI and getting some variations on the wage cost index that was used to create this hybrid index.

So I'll give them their due, they have been responsive but it took a bit of argument across the table to arrive at that point. In some ways if there was a more transparent, more principled process we wouldn't have to go through that. It's not the best environment to conduct a relationship that you've got to spend weeks and weeks just arguing over how much you're going to charge us for the next year and the basis on which those charges were increased. If there were clear principles and a clear process, then we could all sit down and be pretty satisfied with the way we're going forward. But the industry as a whole - us, the self-medication industry, medical devices - all spend a great deal of time and effort getting a 1.3d per cent adjustment.

PROF SLOAN: That issue of the building is an interesting one. I think if I was sitting in your chair I'd probably feel pretty cross about that.

MR EVANS: We do.

MS MONK: All of the therapeutic goods sectors are very concerned about it.

PROF SLOAN: I mean, have they revalued the building in the past? Is this all just - - -

MR EVANS: This is all happening in a very short space of time.

PROF SLOAN: On the basis of it, it sounds though it's been prompted by the decision to sell the building and the fact that the value of the building is driven by the yield.

MR EVANS: Yes, absolutely.

PROF SLOAN: There might be other high-minded principles behind this.

MR EVANS: Might be, but they're not apparent to us, no. Look, from our position it's very clearly the Department of Finance wanting to make sure they get the maximum yield out of the property prior to its disposal to the marketplace and in essence be able to sell a building with a very good return and a long-term lease. I mean, it's a specialised building and as I understand from discussions with TGA it was a very tough negotiation with the Department of Finance and it was at the point where it would have been more cost-effective for the TGA to vacate the building and go and occupy a new purpose-built building from the private sector than the rent that was proposed by the Department of Finance. So they sort of reached the point of equilibrium where it was cheaper for them to pay the rent than to vacate the building and get a new one with all the attendant costs of shifting. So it would seem to me that the yield from the building is going to be reasonably good. If you build in the fact that they have factored in the removal costs, the transfer costs, in assessing whether it's a worthwhile rent for them to pay.

PROF SLOAN: So the truth is though that because of the lack of transparency previous to that, you don't quite know what you were paying for - - -

MR EVANS: You don't, and as I said you have this suspicion that you might have actually already paid for a substantial part of that building and you're going to be paying for it again.

MRS OWENS: But transparency hasn't been accentuated through other mechanisms like audit committee reviews or whatever. There's been no other way that government has been able to meet those concerns about transparency. I mean, others have said to us when we've been talking about having an efficiency audit committee that there are already a lot of other processes in place and we have an ANAO and we've got other government committees and you've got the TICC which is a consultative committee but there's still opportunities there to ask about cost issues. There's nothing that actually takes the place of having a stand-alone committee that would look at efficiency issues and cost issues.

MR EVANS: No, I mean, the ANAO has looked at the TGA but they have looked at, as they do, other public service agencies and haven't looked specifically in terms of the value for money cost recovery aspects. They looked at it as a traditional public service agency. They have made comments about the way it's operated and its performance which I have to say have been beneficial, but not in the sense we'd like to look at it as a business enterprise.

MS MONK: But really it's just through the TICC, that's really the only forum whereby we're provided with quarterly performance reports which are measures of the activity and the efficiency as well as budget and revenue figures that we're provided. But it's only through the TICC that we receive that information and I guess we feel a little bit hamstrung in the TICC in that we're able to comment and discuss the information we're provided but we don't necessarily have any force or ability to require changes. We can recommend changes but the national manager doesn't necessarily have to accept our opinion.

MRS OWENS: But the information you're getting through the TICC, you're saying that's not adequate, that doesn't give you enough information about the efficiency of the organisation or the costs imposed.

MR EVANS: No, I mean, partly was because it was put in traditional public service form and the people on the other side of the table were not experienced in analysing basically the way the public service presented its financial information. Having had some recent experience in the Public Service, that gained an advantage when I changed sides, so I was able to actually raise some of these issues. But as you would be aware, the way the public service presents its financial information, sometimes seems a mystery to the outside world. It actually seemed a mystery sometimes when I was in it.

MS MONK: But indeed, the national manager has been quite concerned not to give

us at the TICC the level of information we might desire, so that we can really get inside the organisation and see where costs are being spent and the activities that are being undertaken and how quickly those activities are being undertaken.

MR EVANS: Yes, for example in their costing there is just an administration charge from the department, from the corporate area of the Department of Health for activities. They are including things like the provision of IT. They have no ability to adjust that, nor to justify to us why it costs that. It's just a cost imposed on an agency basis on that element. But that's the one that deals - the TGA is the one that is dealing directly with the market, the commercial sector and imposing charges. Simple things like that. So you are actually able to go back and probe what is the composition of those corporate charges. They were unwilling to give us the breakup and we don't know - for example are they getting efficient supply of IT? The whole of the outsourcing of the IT in government was directed towards efficiencies and reduced costs. We don't know.

MRS OWENS: Alan, do you think you could overcome some of these problems - rather than setting up a new layer, just trying to get the TICC working better with better improved information. Or is that not going to work, because you have said before that there is a power imbalance in those sort of consultative arrangements. But if we were to recommend as another option trying to get the TICC working more effectively with improved information, would that be a reasonable approach?

MR EVANS: I have to say if the principles you have outlined in your report are applied and there is more information and greater transparent information provided, I don't see much purpose in setting up another layer. That will suffice, but it has to make sure the information is provided and the ability to debate and discuss whether that is the appropriate level of charges or whether it is an appropriate interpretation of - - -

PROF SLOAN: It's quite heartening that they seem to have taken it quite seriously about - - -

MS MONK: Yes.

MR EVANS: Yes.

PROF SLOAN: So that may be another benefit of the guidelines, that it's the lever on which that closer analysis can occur.

MR EVANS: Yes.

MS MONK: One difficulty of the TICC is that it covers all of the four therapeutic goods industry sectors, so the issues relating to the prescription medicines industry are going to be relatively different to the other sectors and I guess we would in addition need a separate forum where we can get down to the real detailed activities in relation to our own sectors. But the good thing about the TICC is that there is cross-fertilisation of information and ideas between the different industry sectors in

that forum, which I wouldn't like to see us losing.

PROF SLOAN: We would probably have that and subcommitties or something. One of the interesting things we have learned is that there are a whole lot of different regulatory agency models and I mean the TGA as far as we can see does basically everything in house, whereas there are other regulatory agencies which are actually tiny little agencies and basically then outsource the testing and recommendations.

MR EVANS: Yes.

PROF SLOAN: It seems to me a kind of market testing that the TGA should embark on in a sense, so you should be assured that the model they have is as efficient at least, because there are it seems to me some quite different models.

MR EVANS: There are.

PROF SLOAN: Did they ask that question?

MR EVANS: It is something we have raised and I think for a variety of reasons at the moment there is a reluctance to sort of examine that path. I think it would increase our confidence, given the TGA is both the writer of the regulations and then it evaluates whether you are meeting those regulations or not. So they really do have a quite marked degree of control. Whereas if you took at least part of it and see that it was market tested you would feel confident that you were getting value for your money. I think there is a capacity - not all of it, but some of it - to go out there into the private sector and test procedures. I'm quite confident they could write specifications for a contract for those tasks to be undertaken which meets the public interest requirements of having the regulatory control.

MRS OWENS: Okay, I think we might finish it there, but I think we managed to cover everything that we wished to, so thank you.

MR EVANS: I will provide an additional supplementary - - -

MRS OWENS: That would be useful, thank you, and I'm sorry it was a bit rushed today.

MR EVANS: Our pleasure.

MRS OWENS: Thank you.

MRS OWENS: We will now call the next participants this morning which is the Cosmetic Toiletry Fragrance Association of Australia. Welcome.

MR WOODS: Thank you.

MRS OWENS: I'm sorry that we were delayed unexpectedly, but I'm very pleased that you have been able to wait for us and we will try and cover what you would like to do. I understand that you have some opening comments and we may have time for a short discussion before you have to leave.

MR WOODS: I would hope we have time for discussion. I think this is more important than going to where I'm going.

MRS OWENS: Could we please ask you to give your names and your positions with the association for the transcript.

MR WOODS: John Woods and I'm executive director of the Cosmetic Toiletry Fragrance of Australia.

MR BROWNBILL: I am George Brownbill, government relations consultant with ACIL Consulting and consultant to CTFAA.

MR WOODS: I would like to start by thanking the commission for hearing us, because we are putting the very sketchy thing initially with the Direct Selling Association. A little thing about our association and I think we have an annual report. We represent about 85 members, we have been going for 60 years and I think it is probably the bulk of the bigger companies within the cosmetic toiletry fragrance area. The industry itself and it's hard to tell you what exactly we account for in consumer dollars, but it's in the area of $5 billion a retail price. Our members only come up to representing about half of that.

Our concern today is really NICNAS and its charges and the way it operates. As you know, they have a registration program that came into effect in 1997 and that was originally to replace what they called priority existing chemicals analysis that was needed; chemicals in other words that had been put on the register and there was some question mark as to their safety for consumers or the environment. This was done to levy a registration charge against all of those that are on their register. It comes in three areas in fact; under $500,000 there is no charge, a lower level between 500,000 and 5 million a more modest charge of $1200 and then over 5 million it runs up to $7000 and it can import or create 2 to 3 million dollars worth of cosmetics and are still at $7000.

Our concern really is with the importers of finished goods. The importers of finished goods I might add import retail ready products. The law and NICNAS's charter on this registration cost is relevant industrial chemicals. There are some areas that are excluded, like naturally occurring substances and therapeutic goods and that sort of thing. I will give you just a quick and little example. There are two products here and they are not top of the line, they are not the fanciest of products

and I think I should have brought lipstick in, because that tells it much more. This product comes in from overseas. It has a customs value or a transaction value - - -

MRS OWENS: For the transcript, we are looking at a perfume?

MR WOODS: We are looking at a perfume in this case and there are two of them here. This product therefore comes in at much more than the relevant industrial chemicals that are contained within the bottle. The packaging, the get-up, the image, the trademark all have a cost and I might add that the cosmetic industry doesn't transform the chemicals. What it does is mix the blend. So how do we value that full registration fee? Well, it may be difficult, but let me just add as an aside, all these products are fully ingredient labelled.

Here we have this product and I will read from the box: alcohol, water and fragrance. Alcohol and water fall into the category which is not included as a relevant chemical. The rest of the product has a cost which NICNAS have decided of that product as it comes through the docks, the total value of the imported value of that product should be the basis for assessment of relevant industrial chemicals. We put it to you that that is just wrong in law. It is wrong in the Tax Act and really it is a tax that established the registration fee.

You can see in the handout there that we have had discussions with NICNAS and I have the highest regard for NICNAS people who did that, but when they did a review in 99, the Allen Consulting Group report, they decided that customs value should be the basis on which the relevant industrial chemicals were added up to levy the charge. Two years before that we went to see them when this first came in and at the outside it's 10 per cent of the landed cost to get a rule of thumb (indistinct) to implement and we agreed on a 20 per cent figure. They deny that now, but in fact they accepted it for two years.

So we think they are wrong in law. The handouts that we have and I won't go through those, those documents that were sent to us by NICNAS was from a solicitor advising that they are only allowed to charge the relevant industrial chemicals and they chose to ignore that and in fact the Allen report just changed direction altogether. There has been no corrective action, despite out protests and we are now faced with taking this to the AAT and I think the issues hearing is next week some time. I think it is a pity it has come to that, because I think it's an abuse of power. That states our case fairly simply and very directly I think.

PROF SLOAN: Why did you bring two bottles of perfume?

MR WOODS: Just to show you the variety. Perfume is just one of the things, but the same sort of figures come up, even down to shampoos. The gross profit margins will vary a little bit, but it's not all that much. We would put to you that really the relevant chemicals in this is probably 5 per cent of the net cost.

MRS OWENS: So can I just clarify for my own benefit - when NICNAS are determining the relevant cost, the relevant chemicals, they are for the purposes of

setting their fees, looking at the value of the product coming in, the retail value of the product?

MR WOODS: The customs value of the product.

MRS OWENS: And the customs value will include the packaging?

MR WOODS: Customs value is what it is sold for to the subsidiary company or the agent in Australia and that is full cost plus profit and all the rest of it.

MRS OWENS: So they are looking at the customs value and that includes the costs of the chemicals in it, the packaging and the water - I mean the water and the alcohol is not going to be a big slice of this - so basically the charge is based on the whole thing?

MR WOODS: Yes, this comes in as a finished product.

MRS OWENS: Yes.

MR WOODS: The basis of what we're saying is, your charter is you have to value relevant industrial chemicals; here you are valuing a retail ready product.

MRS OWENS: Yes. So that means that you've got the Australian Government Solicitor's advice which you've given to us today on a - this is on a confidential basis.

MR BROWNBILL: It was given to us unclassified.

MRS OWENS: So we can't really actually talk about the content of that advice.

MR BROWNBILL: No, it was given to us in that form but it was not stated to be confidential.

MRS OWENS: It's got "confidential" printed on there so we will go - - -

MR BROWNBILL: But it will be presented to the AAT in open evidence.

MRS OWENS: Right. But at this stage we have before us a document that's got "confidential" on it so we won't be able to actually discuss it in this forum - - -

MR WOODS: Well, I think it is the fact that they knew that they were skating on thin ice.

MRS OWENS: But there has been this decision or an advice that says at least the packaging should not be concluded. If you take out the packaging cost, what proportion of the charges at the moment would comprise all these other factors? What would be left? How much would the charges be? Have you done that calculation?

MR BROWNBILL: Roughly 10 to 20 per cent would be relevant chemicals of the customs valuation, and that's the origin of the so-called 20:80 rule that John mentioned.

MRS OWENS: Yes, okay.

MR WOODS: That was notional. In fact if you take a lipstick, it's probably 2 per cent of the mechanism and what other relevant chemicals. If you take a mascara, even less. If you take a shampoo, it's probably edging to the 10 to 15 to 20 per cent, within those ranges.

PROF SLOAN: Is that the point though? If everything had a similar proportion of the relevant industrial chemical in it, would it really matter? I mean, I want to know what distortions this is giving rise to because - - -

MR BROWNBILL: The point is that a regulatory agency is consciously in receipt of advice that its practice is contrary to law and it has declined to change it, and that's been pointed out. That's the point.

PROF SLOAN: Okay, and it's over-recovery.

MR WOODS: As a result of that.

PROF SLOAN: Yes.

MR WOODS: It's pushing people into the top end of the registration scale rather than probably being in the medium category.

PROF SLOAN: But is the point also that it's going to - it will be having differential effects? I mean, can you import a whole lot of fragrance and then package it here? Would that be treated differently?

MR WOODS: Well, you'd only be importing the fragrant oil which would be part of the relevant industrial chemical here as minute quantities, but that's what you would be doing, and buying the alcohol and letting the water - alcohol and sterile water here.

PROF SLOAN: I mean, I hear what you say but you know - I suppose because we're economists we're also kind of wanting to know whether this throws up additional distortions, which it probably does.

MR WOODS: Well, you can if you - - -

PROF SLOAN: Because - well, for a start, the percentage of relevant industrial chemical in the customs price is clearly going to vary across the product so you're getting a funny effect there, aren't you?

MR WOODS: You are, and maybe it's convenient for NICNAS to do it this way but I'm sure industry and NICNAS could come to some arrangement, you know, a rule of thumb - - -

MRS OWENS: Well, you could end up having a formula, you could have a formula.

MR WOODS: Let me give you another example. If you were to manufacture a chemical here, it is on factory cost of producing that chemical in bulk, which is minute in relation to here and it is really a trade barrier as well. Perhaps the easiest way to look at it is a little example I dreamt up in this. It's a bit like equating - a bit akin to assuming that the value of a painting is the value on which you register such a charge rather than the paints used in its creation. Most of the cosmetic companies in their fragrance creation or lipstick or make-up think they're producing a work of art.

DR STEWARDSON: Are there other areas, other than your particular industry, where this same issue arises?

MR WOODS: I think there would be. There are not that many, I am told by NICNAS, from the director. But take a laser printing cartridge, for instance, is one I can think of and I think it's probably in one of the examples - - -

MR BROWNBILL: It's in the legal advice as an example.

MR WOODS: It is where the added value comes from the reputation, the packaging, the combination, the style of bottle and cost of bottle et cetera et cetera.

DR STEWARDSON: But things like agricultural products with chemicals in them are by and large manufactured here.

MR WOODS: They are manufactured here or they come in in bulk in big containers and they probably - you've got to have something to transport them.

MR BROWNBILL: They're not under NICNAS.

MR WOODS: They're not under NICNAS, that is true.

MR BROWNBILL: The other distortion, Judith, is distortion between locally produced products and imported products to a point where there may be questions by the WTO about whether this tax is unfair to imported goods, is a non-tariff in point of truth, and that's something that my clients haven't prosecuted actively yet but it's a significant issue of policy, of trade policy rather than cost recovery policy.

PROF SLOAN: Yes.

MR BROWNBILL: But I think it's worth mentioning in answer to your question.

MR WOODS: I think the Europeans were very interested in taking this forward

and we said, "Not yet" - because I think our relationship with NICNAS is quite good, it's just a matter of being fair and implementing the law the way it is written.

DR STEWARDSON: What, for example, happens in America if they're importing, say, European produced products?

MR WOODS: As far as I know, and I can't be precise, there is no charge whatsoever for this sort of activity otherwise the funding of a regulatory body if they are - usually if there's analysis of ingredients to be done, it is done by the chemical manufacturer rather than the downstream user.

MR BROWNBILL: The United States government system might question more than has been the case in Australia whether a National Industrial Chemicals Notification and Assessment Scheme which drags into its net sweet smelling oils is a proper province of government.

DR STEWARDSON: I didn't quite get where the Allen report fitted in and which way its conclusions went.

MR WOODS: The Allen report, Allen Consulting Group report was to look at the registration charge that is applied because they - I think they had to review it after three years of operation and that was put together. We weren't on that body and probably didn't have any right to be on that body. There was a steering group there and that was when we were told that it would be on imported value of the product rather than anything that was done previous to that. That all happened before that Allen Consulting Group reported, so there was some direction there either from NICNAS or someone else to get as much charge as possible.

DR STEWARDSON: What was the Allen report's conclusion?

MR WOODS: That cosmetics should be treated exactly the same on an equity basis as any import of chemicals, but I think that that was not a thought out and logical report.

MR BROWNBILL: The Allen report didn't advert to the legislation and seems to have substituted its own notion for equity contrary to that which the parliament had drawn up.

DR STEWARDSON: So in other words it supported having the assessment fee on the basis of the full retail price or the import - the customs price.

MR BROWNBILL: The custom transaction value.

PROF SLOAN: And this is your point notwithstanding the fact that all these things would have very different percentages of packaging and - - -

MR WOODS: Yes.

PROF SLOAN: It's not just packaging in a sense, is it?

MR WOODS: No, it's the whole - - -

MR BROWNBILL: Intellectual property is another element of course.

PROF SLOAN: Yes.

DR STEWARDSON: It's the brand name, isn't it?

MR WOODS: That's part of it.

PROF SLOAN: I mean, what was the official status though of this Allen report? Was this just something that NICNAS asked them to do?

MRS OWENS: Actually, Mr Woods, you're going to be running late for your next meeting.

MR WOODS: I am indeed.

MRS OWENS: I don't want to remind you of this but - - -

MR WOODS: No, this is much more interesting than the next meeting.

MRS OWENS: Actually I've been sitting reading this government solicitor advice which actually makes a distinction between where packaging is part of the product and where it's not part of the product, like packaging is part of the product for lipsticks but not part of the product for - presumably where there's a box like with the perfume, and basically - which I shouldn't be quoting from this because it is confidential but it's basically arguing in the latter case that - they're basically saying there's a distinction. I'm just trying to do this without quoting from it and they're basically saying that for the wrapping and boxing, it should be included as part of the value of the relevant industrial chemicals - - -

MR WOODS: Yes, that is the outer box or the container in which chemicals would normally come in.

MRS OWENS: So they're not talking about the box of the - - -

MR WOODS: They're not talking about the retail box but they're talking about the chemicals that would be in a 44-gallon drum.

MRS OWENS: You could actually read that two ways, I think.

MR WOODS: Yes, you could.

MR BROWNBILL: Yes, and my client's legal advisers, two separate legal advisers who reviewed that opinion, have come to that point too, Helen, and more or

less reserved our position on that distinction. But our feeling is that it's not a very important distinction against the principle that we're trying to put here, which is that what is being charged for and assessed is the relevant chemical and therefore it's all the other things that aren't in.

MRS OWENS: But I mean, I misread that, maybe it was a bit ambiguous but - and I couldn't understand the logic if they were talking about the box of the perfume being included because to me that doesn't make a lot of sense.

MR BROWNBILL: As I say, my client's own legal advisers came to this point in precisely the way you did but we're not here to talk about that because there's a case before the AAT.

MRS OWENS: Yes. Well, hopefully the AAT will look at this on its merits and reach some determination but it's a very interesting point that you've raised with us and we might get back to NICNAS and ask some more about this particular issue. Is there anything else you want to raise?

PROF SLOAN: No.

MRS OWENS: We'd better let Mr Woods get to his next meeting in Sydney. I know how long that takes, to get from A to B here. So thanks very much for coming.

MR WOODS: Thank you for having us.

MRS OWENS: We'll just break for a couple of minutes and then we have got the Australian Self-Medication Industry and Cosmetics Industry Association, which I think we've also got Mr Brownbill appearing.

MR BROWNBILL: Afraid so.

MR WOODS: Thank you.

MRS OWENS: So thank you very much. And we can treat this as a submission?

MR BROWNBILL: Yes.

MRS OWENS: Thank you.

MRS OWENS: What we'll do is we'll now resume and Mr Brownbill will just finalise the discussion in relation to the CTFAA.

MR BROWNBILL: Thank you. My client has asked me to say that we'll have a look at the second legal advice that they obtained independently as a commentary on the crown solicitor's advice and we'll provide that to you if we can sort out the bits that advise about matters that might be sub judice and matters that are not, and we'll

provide that to you as a submission.

MRS OWENS: I'd also appreciate if we could get in writing clarification on the status of that other legal advice that you tabled today so that we've got in writing that we can use that material that's stamped "confidential". Would that be possible?

MR BROWNBILL: What I can do is send you a copy of the letter with which it was transmitted to my client.

MRS OWENS: That might cover it for our purposes.

MR BROWNBILL: I will see to that later today.

MRS OWENS: Thank you, Mr Brownbill.

MRS OWENS: We are now going to talk to the Australian Self-Medication Industry and Cosmetics Industry Association. Could you both please give your names and your positions with the association for the transcript.

MS JORDAN: Yes, I'm Zephanie Jordan. I'm a scientific director for the Australian Self-Medication Industry.

MRS OWENS: Thank you.

MR BROWNBILL: And I'm George Brownbill, government relations consultant with ACIL Government Relations and consultant to ASMI.

MRS OWENS: Good, thank you, and thanks very much for yet another submission. We've had three submissions from you so far and I'm very appreciative of that and we've read all three submissions and we'd like to discuss some of the issues that you've raised. But meanwhile, Mr Brownbill, you've got a few opening comments.

MR BROWNBILL: Yes.

MRS OWENS: Would one of you like to address those comments?

MR BROWNBILL: Thank you. ASMI appreciates the opportunity to appear before the commission after the draft report has been issued. On 29 May my client wrote to you to comment on the draft report and I table a copy of that letter which you have in front of you. In that submission we indicated our support for the guidelines as set out in chapter 9 of the draft. We made the point, however, that unless these are in statutory form, we fear that the Finance Department will simply ignore them. We went on to present a case where the Department of Finance has been driven by an overweening demand for revenue maximisation here, which is the case of the TGA building which was adverted to earlier this morning by other witnesses. In this case the government is forcing up rents in order to get a bigger price when the building is sold. In our view such activity is unconscionable. It forces pharmaceutical manufacturers to pass on price rises and it thus pushes up costs all-round. In our view it is a perversion of the principles of cost recovery as they have been developed by the commission and, although my clients have protested to the government, the only government comment on what has gone on is a letter from the acting finance minister, actually to me, which I table. That concludes our opening remarks.

MRS OWENS: Thank you for that. We'll come back to that letter from the acting minister for finance and administration in a minute but I think probably what we should do is address some of the issues you raised in your response to our draft report very briefly. There was a short submission that you sent to us on 7 February which I think you didn't table today which has some reasonably detailed comments and you've also made another shorter submission on 29 May.

MR BROWNBILL: Correct.

MS OWENS: I think one of the issues that you've raised which you mentioned this morning is this issue about ensuring there's an appropriate legal status for the guidelines and the decisions that would be made through the application of the guidelines should be subject in some way to legal challenge through the Administrative Appeals Tribunal and/or the AD(JR) which is the - what is that?

MR BROWNBILL: The Administrative Decisions (Judicial Review).

MS OWENS: Thank you. I asked one of the staff earlier and I wrote it down somewhere and then I forgot where I'd written it but I found it. We've had to learn so many acronyms in this inquiry, it's not funny, but that's another one. I think one of the important issues to sort through at this stage, and I would like to really just bounce this off you, is how you can actually make some of the decisions that would be involved in application of the guidelines, which are essentially policy decisions. Some of them are policy decisions and how in fact you could make those subject to legal challenge or review. Does it make sense to do that?

MR BROWNBILL: I don't think this proposal is particularly path-breaking. The decisions of officials and of ministers in relation to matters, in relation to policy issues, are being made every minute of every day and they are in a very wide range of cases subject to what's broadly called the new administrative law. That is, they are subject to freedom of information access, if you've got the patience and the stamina.

MS OWENS: And the money.

MR BROWNBILL: And the money, yes, thank you Madam Chair. Secondly, they are open to review on the merits through the Administrative Appeals Tribunal process, that is, was it a fair thing in the light of the policy of the government in the light of the regulations laid down. Is this a meritorious decision? Are you a refugee, are you not, et cetera. Thirdly, the decisions are subject to the due process and procedural fairness requirements of the Administrative Decisions (Judicial Review) Act, that is a judge will look at whether the proper processes of decision-making which have been drawn from the great body of the old prerogative writs have been properly followed.

Those tests are set out in section 5 of the Administrative Decisions (Judicial Review) Act but they go to issues like, "Did you take into account all relevant considerations? Did you take into account irrelevant considerations? Did you blindly follow a question of policy? Did you act in good faith? Did you act contrary to the law? Did you give a person an opportunity to be heard and when you did, did you give them an opportunity to cross-examine and to rebut?" There's a huge body of case law about those matters now. That is, you know, to use an Australian expression, did the object of the decision-making get a fair go? A judge will not replace his or her judgment for that but he or she will remit that matter back to the decision-maker as appropriate if one of those processes hasn't been observed.

That's the due process review; I mentioned before that the merits review.

These apply right across many areas of government activity these days and I would not have thought it was beyond the width of parliamentary council to draft legislation, whether it's an act, whether it goes in the Financial Administration Act or whether it's part of a special act about the principles of cost recovery and I would have thought it's not beyond the width of departments to make regulations under such an act in some way. I wouldn't want to outline the precise aspects of that today but I don't think it's a particularly radical departure from anything.

MS OWENS: An important point, what you're making though, because I think you were here when I was saying with a degree of cynicism that everyone seems to be welcoming this report. What you're saying is that the guidelines are lying. It may not actually achieve much because the agencies would say, "Look, we've followed the guidelines. This is the decision." In fact the parties who are paying costs then really have absolutely no leverage other than to accept that decision. What you're saying is that this is a means whereby the principles of cost recovery would need to be articulated in the legislation, certainly in the broad and possibly in some detail in some cases.

MR BROWNBILL: The guidelines for administration of nursing homes or for HECS payments for scholarships or assessment by customs of valuations, these are all matters that go to the AAT all the time.

DR STEWARDSON: But what do we need to suggest that the guidelines are made into legislation in order for them to go on dispute to the AAT? I mean, if the government accepts our recommendations and says, "It is now government policy that these guidelines shall be applied," isn't that not something that's adequate to - - -

MR BROWNBILL: The other part of requesting it be legislation and whether it's a statute or whether it's regulations or guidelines made pursuant to a statute imports a second important principle and I'm quite old-fashioned enough to believe in the supremacy of the parliament, and that is that the parliament should lay down these principles. Goodness knows, as we look at the work of this particular inquiry, it has become very apparent that all manner of people in departments and agencies have done all sorts of things without - I think the commission's words are "without any significant guiding principles or policy consistency". I may have the words wrong. The parliament is the supreme agency of our government. Ministers and more particularly officials are accountable to it and the constitution gives it the power to raise taxes.

One issue which the commissioners correctly addressed in my view is whether charges are correctly charges or taxes, but the parliament is the place where both of them can be imposed, and I happen to believe that some of the charge-making powers that are so liberally given in statutes to agencies ought in fact to be held back by parliament. As a practical matter they are to this extent, that if there is subordinate legislation they are disallowable. That is the second leg of the parliamentary supervision. I think the costs that industry and business bear to receive government services, many of which they have no choice but to receive, are a legitimate matter of high policy interest to the parliament of Australia. So I would

say it's important that this be a legislated matter.

DR STEWARDSON: You would see this as being a specific bit of legislation, not just bit that applied to the legislation setting up all the individual agencies.

MR BROWNBILL: I think that one of the reasons why there is such a lack of consistency now is that many, many of these agencies have their own Therapeutic Goods (Charges) Regulations. In the case of my present client and in the case of the one I appeared for a minute ago, it's in the act, and there's all manner of different processes. I think the commission's inquiry has shown how important - in an economic rationalist model of government that we have - this issue of cost recovery really is. It's not a small question of picking up a few bucks here and there. It's a major issue which affects the economic activities of business and industry.

PROF SLOAN: Does this require the agencies to be statistics authorities or are there other means of - - -

MR BROWNBILL: I don't think - - -

PROF SLOAN: It obviously is cleaner when they are.

MR BROWNBILL: I think that is a legislative complexity but it's one, for example, that the financial accountability statutes that the Department of Finance administers has overcome. It can be done.

MRS OWENS: Coming back to the other issue - the related issue we were talking about in relation to appeals and so on, part of our approach is to either have regulatory impact statements or what we call cost recovery impact statements. At the moment, as I understand it, regulatory impact statements, there are recommendations that go to cabinet that cabinet can decide to accept or reject those. It doesn't have to follow what is implied in those statements. I don't think that is subject - a cabinet decision is not subject to any appeal. Cost recovery impact statements might follow a similar route. So does an appeal process, such as you're just talking about, make sense in that context?

MR BROWNBILL: I don't see why not. I mean, the principle of cabinet, government and ministerial responsibility are principles which operate in the arena of parliamentary democracy. There is always a tension between a cabinet decision and the exercise of a ministerial discretion, either pursuant to that cabinet decision or deriving from independent statutory authority. Mr Costello, you will recall, in the famous Woodside matter was at pains to explain that the decision was his because it was a decision taken by him under the relevant section of the foreign takeovers legislation. The Prime Minister was at pains to explain that he had not sought to influence that and by inference you could deduce that the cabinet had not - there was not a cabinet decision. These days I don't see too many of those but I'm familiar with the format.

You could deduce there was not a cabinet decision directing the minister.

Indeed, one of the principles in the AD(JR) is that decision-makers must not follow a blind policy rule, they must take a decision on the merits. They must be seen to have done so. So I don't see any necessary irreconcilable position. I mean, there is this fundamental tension which is in the nature of our democratic government - and thank goodness, because it does give industry and business and the ordinary citizen recourse to mechanisms of appeal to hold the decision-makers, whether they're ministers or officials, to account. In this manner, we submit this is a very important principle.

MRS OWENS: It's an interesting one and I'm glad that you've raised that with us. We'll look at it at that issue further. We will get our - Lawrence McDonald, our legal expert on the team, to have further thought about this. I think the other interesting issue you've raised, which we discussed earlier, was this issue about the TGA building and what that implies. I don't know whether we want to discuss that further in terms of, you know - there is this issue of how would you actually - if you had your way, how would you value that building?

MR BROWNBILL: I heard what the APMA people had to say. My client wasn't there but I wouldn't have disagreed with the views that were put there. The valuation of that building is not a static thing. The reality of the value of that building is that the tax payers of Australia have already paid for it. It's been amortised by definition because there were not continuing payments, as it were, to pay off the building as you would pay off a house. Therefore, presumably the taxpayers of Australia own that and therefore the issue of its valuation is really a symptom of what I would call the Department of Finance's obsession with revenue maximisation. I would prefer to see a Department of Finance that was concerned with value for money, that is, public money. I would suggest to you that this is an accounting trick to jack up the value in order to increase the bottom line surplus available to the Commonwealth but at the cost of what amounts to a hidden tax, namely, the passing on by pharmaceutical manufacturers of the costs as imputed to them under the cost recovery process to meet the additional rent.

DR STEWARDSON: Fairly clearly - - -

MR BROWNBILL: I mean, it's a tax in order to raise a surplus.

DR STEWARDSON: Fairly clearly it's the change in the value - in the rental would appear to be related to the forthcoming sale.

MR BROWNBILL: Yes, indeed.

DR STEWARDSON: But somebody has raised with us the appropriate valuation of fixed assets in respect of cost recovery generally and whether those fixed assets should be revalued from time to time anyway and a higher depreciation charge attributed to them on the basis of the higher valuation. This particular case is fairly stark because it's suddenly a big leap up but - - -

MR BROWNBILL: Fortuitous one I'd say, in the old meaning of the word.

DR STEWARDSON: If in fact it were the correct thing to have the re-evaluated value of an asset as the basis for a charge, and if in fact theoretically one should be revaluing quite frequently over time, one would come to a different output - a different outcome. There would be only perhaps a small increase this year but there would have been small increases over a number of years. Do you have any views on this issue of the correct value the historical cost versus revalued cost of assets in the question of cost recovery charges?

MR BROWNBILL: I think it's not a field that - I'm not an economist like commissioners and I hesitate to offer opinions but when you are moving from a public ownership to a privatised asset, there is always a question of where you go back to. I recall when I began my public service career there were - and I was in what was then called the postmaster general's department - there was an endeavour made by people to find out how much the copper wire acquired since 1901 was worth and what was its interest and so forth.

I guess the only point I would make is the same point as the commissioners made. If you are going to have an asset valuation and an asset revaluation process, then it ought to be in the law and it ought to apply equally to all publicly owned assets so that there is a distinction between what the tax payers have already paid for and what they or the users of service should be asked to pay for in recovery charges. But I don't myself believe you should fiddle the books on fortuitous occasions. I mean, what sort of a market is there for a TGA headquarters building in Australia? I would have thought it was somewhat restricted and somewhat specialised. Therefore, what is the value? Do we build another one and have a market test complete with towers and what have you? Do we look at whether we can rent one in New Zealand. I'm sorry, I find this a government monopoly price arrangement.

PROF SLOAN: I mean, that is the issue in a sense. That's an important part. If you're running an AMP property trust, I mean, they revalue the buildings every year.

MR BROWNBILL: Fine.

PROF SLOAN: And they do that on the basis that the market is telling them that, you know, it's tight in a certain area and the rents have gone up and therefore they essentially value the buildings on the basis of the yield.

MR BROWNBILL: Yes.

MS OWENS: But the important point I think in that scenario is that they have no monopoly power because a tenant who might be thinking of an AMP building could equally be thinking of another building down the corner, you know, and I mean, that's the issue why there needs to be principles, isn't there?

MR BROWNBILL: Exactly, in the norm.

MS OWEN: Because whatever capital valuation method they decide on as the

monopoly pricer they can just pass on costs so - - -

MR BROWNBILL: And let it be the same principle for the TGA headquarters, the headquarters of ASIO, an embassy in Thailand or Treasury or Finance's own buildings. Let it be the same principle, let it be on the table, let the parliament be able to examine the principles in the estimates committees. What's wrong with that?

MS OWEN: To your knowledge there is no such principles in existence?

MR BROWNBILL: To my knowledge, but my knowledge, I wouldn't claim to know it all, I'm sorry, but I - - -

MS OWEN: We don't expect you, George, to know everything.

MR BROWNBILL: There may be in the deep recesses of finance but I seem to remember Alan Evans saying, for example, that the index for the TICC they declined to put that on the table. I rather fancy if such an obviously significant piece of information is withheld then the principles of valuation of buildings would be unlikely to be well-known either.

PROF SLOAN: You see, part of the problem, and if you look the acting minister's response, is that my guess is that if that was so that's all news to you, you know, the fact that there was - what it's really implying is that there was under-recovery of appropriate rental and that they had done you a service in the past, you see?

MR BROWNBILL: Yes.

PROF SLOAN: But, I mean, there was never sufficient transparency for you to be aware of that. One might be a bit suspicious of whether that's the case I suppose.

MR BROWNBILL: The whole thing of course is premised also on a policy principle which you found to be defective, namely, that agencies should be cost-recovered as a whole rather than services provided assessed as to their value and their costs. Clearly Senator Kemp, in his letter whenever it is, February, hasn't yet accepted that principle.

MRS OWENS: I think the other interesting thing that the APMA, Alan Evans, the other issue raised this morning, is you don't really know how much industry has already contributed to that building in the past through fees and charges, that it's not just the taxpayer that may have been paying for that building in the past indirectly. It may be industry through previous earlier fees so they're potentially charging for it.

MR BROWNBILL: As per my copper wire analogy with what's now called Telstra, you can't tell how much over a century the subscribers to the telephone system through their rentals and their call charges have paid as it were for it.

MS OWENS: Yes. No, there are some interesting, I think, economic and accounting issues in this and maybe accountants would come down with a different

answer to economists but I always - well, not every inquiry but a number of the inquiries I have been involved in, this issue of valuing assets tends to come up again and again and the last inquiry was the inquiry I did on Australian railways. Again the issue came up there in the context of valuing the railway lines and the bridges and so on, and we had quite a terrific discussion with some of the participants about whether you use historical costs or DORC. Don't worry about what DORC is but as a valuing mechanism it's appreciated, optimised replacement costs, and I mean, there is no simple answer, and I think we said in that inquiry that there's no simple answer. It really depends on the circumstances. I think predominantly at that time was that it really should be historical costs rather than replacement costs.

MR BROWNBILL: But if you had been playing Aussie Rules for a while and then the whistle blows and it turns out to be soccer - it gets to be a bit hard for the people on the outside who didn't know there was a change coming; you're likely not to kick too many goals.

MS OWENS: I like that one.

PROF SLOAN: The issue too of replacement costs in this context is it goes back to a point I made previously, was that there are of course different models for how the TGA might operate. So when you ask yourself how - you know, replacement, I mean, would you necessarily want to be replacing such a large set of laboratories and such a large set of offices and the like. There are different models. Now, obviously there would be capital costs associated with those different models. You outsourced it, then the capital costs would be charged back to the authority but it seems to me a very simplistic idea that you would just necessarily value something at the replacement cost of what you have got. I suppose that's the idea of the optimisation; that you had to ask yourself the question whether you have got the most efficient model in the first place.

MR BROWNBILL: I think one of the very interesting outcomes for me at least in thinking about your inquiry is how significantly it often leads you to questions about the machinery of government: should you be a statutory authority or agency; should you be a department of state; should you be run by a board; should your accounts be contained within the agency's operations or should you have some of these fantasy fictions that the finance department has created for departments to pretend that they are running like businesses. Everyone gets called "a manager" too, that's the other bit of it. Which process of construction of government system do you use? The TGA sits inside the Department of Health.

As Alan Evans mentioned, you get a bill for that department's idea of what share of the IT or whatever else it is you are using. No questions will be asked; no correspondence entered into, "Here is your bill." But NICNAS, I remember being told, is a system not an organisation. I am still coming to terms with that but that is the one the NRA is an agency - and operates within itself. The Maritime Safety Authority is an agency and charges fees under the Navigation Act, which is administered by the Department of Transport. So you get all these strange hybrid processes but they all go to questions of how you organise government.

MRS OWENS: Before we finish, there is just one other issue that we discussed earlier when you were here, I think, with Alan Evans on the issue of consultation and, in particular, the TICC. I think we have discussed this with you in the earlier hearing but I was wondering whether, from where you sit - there was a Pricewaterhouse report. I don't know whether you saw that report. I think it is a commercial-in-confidence report.

MR BROWNBILL: I haven't seen it.

MRS OWENS: Again, because it's a commercial-in-confidence report it was looking at the operations of the TICC and said that it should have certain responsibilities, one of which was to look at the costs that are passed on to industry and ensure the efficient and effective regulatory systems are in place. That is very loose. That is only one of the things it said. I can't sort of obviously quote that report here because it is a confidential report but since that report went to government back last year, I was wondering whether there's been obvious improvement in the operations of that consultative committee, whether from where you sit you're getting better information about costs and so on, revenue - cost recovery, revenues and so on? Do you get better information now?

MS JORDAN: No, not at this stage. I have seen that report and we provided comment. ASMI provided comment in response to the report to the TGA back in November last year. In February this year - no, sorry, April this year, the ASMI met with the TGA to have a business planning session. This is the first opportunity that we've had in history to have input into the planning for the coming year, for the TGA and their priorities. One of items on the agenda was the performance and financial reporting and the progress on the changes. We didn't get to that agenda item during the day so we were expecting to have a full discussion on the issue at the TICC meeting which was held in May. In preparation for that meeting we reprovided the comments that we had provided in November. We provided those in April.

Again there was no discussion, or very little discussion, of the issue at the May TICC meeting. The explanation is that because of an IT project that's going on within the TGA they don't have the facilities to change the financial reports at this stage, so we're not in a position to receive more information but they assure us that they are working on it and that we will see those improvements in future.

PROF SLOAN: So you are optimistic?

MS JORDAN: I'm optimistic that the reports will change. I don't have a good feel - in fact I am probably slightly pessimistic that we will actually receive what we're looking for, which is reports that relate expenses to revenue to performance. At the moment we can't see that. We're not in a position to make an analysis. I am by no means an economist or an accountant but we're not able to assess the TGA's performance and link that back to the fees and charges that we pay.

MRS OWENS: I mean, I think one of the issues that we're looking at, which I

think is a very important is, is how do you improve that transparency in the context of having a cost recovery regime, so that the industry feels if the agencies are cost recovering that they are working as efficiently as possible. One of the approaches that we suggested that could be looked at is the idea of setting up a separate sort of committee where the industry has more clout - call it an efficiency audit committee. Another approach which we've discussed this morning with the APMA is possibly to ensure that the information that's coming to the TICC is worthwhile information where you can look at what's happening and provide feedback.

It still may not give you any more clout than you have now but at least it will be more transparent to you. I mean, even from where we sit we've had trouble getting information about the cost recovery arrangements within these agencies, including the TGA. We sent out a questionnaire to extract some information but it wasn't just sitting there waiting for us to go and just collect it.

MS JORDAN: I think one of the aspects is improved information but also - and I think it was in a regional submission - the terms of reference of TICC - I think - I haven't got them in front of me but they are about - - -

MR BROWNBILL: Commenting on.

MS JORDAN: Commenting on, rather than having real input into the direction of the process.

MRS OWENS: There is a big distinction there actually.

MS JORDAN: There is.

MRS OWENS: Because it all comes down to culture and attitude.

MS JORDAN: In fact you met Sue Williams last time. She has become our industry TICC representative. She's been to two meetings now and she recently commented to me that it truly isn't a consultative committee, it is an advisory committee where we receive information from the TGA but have little opportunity to influence or have input even into the decision-making.

MRS OWENS: It sounds like you're not actually getting enough time to get to the important things. I mean, given that you said at the main meeting there was no discussion on what I consider to be a pretty fundamental issue, if it is working as an advisory committee, presumably the agency is actually dictating what the agenda is and how long you're going to spend on different items. I don't know how it works. I don't go.

MS JORDAN: They do actually ask us for agenda items so we do have an opportunity to have input into the agenda. One of the things that I asked for going into the TICC meeting was a full discussion on the performance and financial reports and the direction that we were headed. I have already indicated that the discussion was minimal and that we're still awaiting an outcome.

MRS OWENS: Maybe at the next meeting you can suggest that that be the first item on the agenda and see what happens, and good luck. Got any other questions?

MS JORDAN: No, that's fine.

MRS OWENS: Anything else either of you would like to say before we finish?

MS JORDAN: No, thank you.

MR BROWNBILL: No thanks.

MRS OWENS: We will proceed and take all your comments on board. Hopefully we will have a final report out in August. Thank you very much for coming. We will just break for a couple of minutes.

MRS OWENS: The next participant is Whiteley Industries. Could you please give your name and your position with the company for the transcript.

MR WHITELEY: Thank you. My name is Greg Whiteley. I am the managing director of Whiteley Industries.

MRS OWENS: Thank you once again for appearing at our hearings, Mr Whiteley. As I think I said last time, you are a very special participant because you are submission number 1. I think that is always very commendable being the first cab off the rank and sticking your neck out and bringing things to our attention. I think what you raised at that time were some issues that ended up - a number of people followed on from you and complained about 100 per cent cost recovery and the impact on small business and so on. So you raised a number of very important points. You were certainly not on your own so thank you for that. Welcome today - and I understand you want to make a few comments and maybe have some anecdotes for us.

MRS OWENS: Thank you, commissioners. I would like to congratulate you on the draft report. From a small industry perspective we welcome the findings of the draft and we're looking forward to a final report. We believe that the 100 per cent recovery, the way it is being applied without any clear guidelines is actually having a fairly significant anti-competitive effect at certain key areas in the economy. Small businesses like ourselves, as the world becomes a more global marketplace, are being unfairly biased or having bias set against us just because of the way the cost recovery is being applied in various industry sectors.

I would like to say for the record we come from what is the downstream industry sector. We are a specialty chemical blending organisation. We manufacture products covered by a range of bureaucracies, federal bureaucracies, which are applying 100 per cent cost recovery, including the TGA, including the NRA and including NICNAS. Though we are small, we have the invidious history of having had interactions with all three of those particular bureaucracies, to a greater or lesser extent.

MRS OWENS: And you are still in business.

MR WHITELEY: We are still in business, which is a rather surprising reflection of our tenacity, I suspect. One of the things we noted in the draft report was there were probably not enough clear expressions of examples of the sort of biases so today I would like to give you a number, if I may, of specific anecdotes.

MRS OWENS: We would love some examples because I think we all would agree with you that we're light on in examples. We did before the draft report keep asking people, "Give us examples. Give us examples," but there weren't a lot forthcoming. They will enrich the report if we can get good ones.

MR WHITELEY: I would like to put on record that of course the fear of companies such as ourselves is that by using specific examples we identify ourselves

and make ourselves easy target for further regulatory impacts at a later stage, usually in other ways or means.

MRS OWENS: We could always put into the report, "A small downstream chemical company that deals with the TGA, NICNAS and NRA said".

MR WHITELEY: I think we would debate it. These are fairly harmless and they are, in point of fact, fairly public, all of them. Though I am identifiable, I think I am not at great risk. What I would like to do is do one on the TGA that has occurred since in fact we last spoke to the commission and since we were able to have any reactions. This reflects on the TGA, the Therapeutic Goods Administration, and strikes at the way that the cost recovery issues bias the marketplace. I would like to speak specifically in the first instance to an important market area for consumers, which is the antibacterial skin wash or skin rub marketplace, which are fairly innocuous products. The chemistries have largely been around for 30 or 40 years. There is not a lot of new chemistry.

The products are fairly straightforward, not overly expensive, and you would think that they would be easily dealt with. In most jurisdictions in the world that turns out to be exactly the case. For example, in America these products are classed as over-the-counter pharmaceuticals which - the equivalent in Australia would be listable pharmaceutical products. In the American context it is a fairly low level fee of a couple of hundred dollars per product. There are obviously manufacturing and other specifications that manufacturers must conform to but the actual regulatory impact in terms of fee and so forth is very, very low. We in Australia have a number of companies who have made these in the past. In recent times one of the larger manufacturers has in fact withdrawn from manufacturing in the Australian marketplace, creating a niche opportunity for local manufacturers to participate in the opportunities provided.

We are one of those companies. We already have a therapeutic goods manufacturing licence for our medical sterilants and high level disinfectants. We are probably the only manufacturer who is an Australian manufacturer in that marketplace. The chemistry is allied to what we already do and where we already have product registrations, so we went to the TGA with a view to finding out what we might do about getting these products registered, knowing that the American marketplace it is going to cost several hundred dollars. We found that a we met a law called the rule of inversed proportionality where basically when we went to the TGA and said, "Look, we have four pieces of chemistry, four products." Two of the products are basically - one is half the strength of the other; the other product requires basically a non-rinseable antiseptic process using ethynyl, or I suppose propanol, either product works. There is another product that uses a very common global anti-microbial material that is already in a lot of pharmaceutical products, both in Australia and elsewhere and again, it's a fairly mild antiseptic skin wash.

You would think that with a market of 19 million people, one-twentieth let's say the size of the American marketplace, we may have an equivalent fee. But I'm pleased to inform you that no, the rule of inversed proportionality means that at

one-twentieth the size, our fees are 100 times the level of the American marketplace. The TGA fees to get four products on the marketplace in this area run to in excess of $36,000 - this is the TGA fees alone - this is before you get to any efficacy testing. What is more, the way the TGA deals with it is that they recommend you go to a consultant so that the consultant will actually put the package together for you after you have developed a whole pile of the materials and then hopefully what happens, this consultant makes sure that you have all the necessary information there and it's all in the right format, that the TGA can read it through and check that it's satisfactory and then hopefully approve the product to marketplace. For that fee, for the first 50 pages for each of the different segments, it is around $3500 per segment, plus an application fee of $650 and if all goes well, they will take hopefully somewhere between 90 and 180 days to approve your product to marketplace.

Now, the TGA have been so bombarded by people such as ourselves inquiring about this work with the products, that in fact they now have a Web site of commonly asked questions, FAQs; frequently answered questions and I am happy to give you a copy of it for the commission for their edification and they have this Web site and they tell you what you need to do and basically what is required. They don't tell you any of the fees and the interesting thing about this is that when it comes to the key pieces of efficacy data and I should say some of the efficacy data requirements are expensive in their own right, the simplest testing which is in fact not applicable any more to the TGA is a simple test that costs about $500, but that is not good enough now, we have to use other tests. The cheapest of those costs around about $5000.

So the cost to get product onto the marketplace per product in our estimation varies between about 30,000 and $A60,000, for what in America is an over-the-counter pharmaceutical product where you conform to a very clearly defined monograph and get it onto the market with fees within 30 days for a couple of hundred dollars. So that's the first anecdote - - -

PROF SLOAN: What is the reaction to that comparison?

MR WHITELEY: By the TGA?

PROF SLOAN: Yes.

MR WHITELEY: One or a number of the trade associations are in fact negotiating the TGA to see if we can get some sort of regulatory commonsense into the marketplace, but as I understand the negotiations so far have been going on for about 18 months and as per the last speaker, not necessarily the critical items on each of the agendas get dealt with in a timely and effective manner. I mean all the TGA really need to do is to declare these products as listable and put out a fairly simple set of guidelines and they could remove the whole ridiculous situation that currently exists.

PROF SLOAN: What are they? They are just like - - -

MR WHITELEY: Non-sterile - - -

PROF SLOAN: - - - soap?

MR WHITELEY: Basically - well, they are antibacterial handwashes. When a nurse for example - there are applications in the common market. There are products in the market at the moment you can buy through both pharmacy and supermarkets that would be a sanitising skin disinfectant. There are a number on the marketplace. One of our Australian competitors managed to get a product on the marketplace, it took them nearly two years, cost them a huge amount of money. Their managing director had a meeting with the TGA where he I'm sure helped them discover new meanings for language about what he thought of this particular matter, but that has really had no great impact on them in a timely and effective way.

In the meantime, what they are effectively doing is making it that the only companies that can afford to enter that market sector for these very low level of hazard products are multinationals who are willing to front up with the fees and spend a huge amount of money out of proportion and get their applications through.

DR STEWARDSON: Can I just clarify something to make sure that I understand the comparison that you have made. In some instances in the States we are told that part of the reason that an approval charge is lower than here is that there is more done by approved agencies other than the FDA itself. I just wanted to clarify in the example you have given us whether that few hundred dollars that you referred to is ignoring possible other approved agency testing.

MR WHITELEY: I understand. No, is the simple answer, commissioner.

DR STEWARDSON: Thank you.

MR WHITELEY: The TGA might try and dress up all sorts of terms on this, but the simple answer is no. The FDA context has what they call a monograph. Our equivalent would be probably a therapeutics goods order. These are well-used instruments by the TGA. They are not complex to do. This particular area, all that would need to be done is basically gazette an order and the industry associations would gladly participate in getting the clarity into this marketplace, let alone small manufacturers like ourselves jumping for joy that we don't have to go down and have individual product by product, case by case negotiations with our consultants doing the negotiations. So we are paying consultants' fees to get down to Canberra. I mean if they move themselves just out of Canberra to perhaps one of the capital cities or a major regional city where device manufacturers and pharmaceutical manufacturers were actually present, that would alleviate some of the costs.

PROF SLOAN: So in a sense this is as much a misclassification of the product as the excessive cost recovery?

MR WHITELEY: Well, I think they are going hand in hand.

PROF SLOAN: I was going to say is there an incentive there - - -

MR WHITELEY: Clearly, commissioner. They could have done this - I will move to disinfectants next, because there is a couple of wonderful stories there where they gazetted a therapeutic goods order for the disinfectants area and I will come to that in a minute. That was done six to eight years ago in quite an extraordinary manner, but it was put in place almost overnight where they wanted to make it happen at TGA. It has had the opposite in fact, because now we have the therapeutic goods order, the cost recovery works in being the order that justifies the cost recovery. This is the other way around where if they actually classified it as it should be, which is a listable product under the ARTG classification rules, they wouldn't need a therapeutic goods order. If they did, they could do it by a very simple couple of mechanisms. We would still have to produce all of the efficacy testing, we would still be responsible and legally liable for failure in our submissions if there is information lacking, which is dealing with the issue, commissioner, the products would still need to be made under the code of good manufacturing practice in TGA licensed premises, so they gather it all up on the other side. It's just by leaving it where it is they rank their fees in the most extraordinary manner.

MRS OWENS: Before we go off the skin wash, can I just clarify - you have talked about the $36,000, that is all fees, that's not including some compliance costs of paying the consultants? That's all fees?

MR WHITELEY: No. I'm happy to read them into the transcript. This is from my regulatory consultant. The application fee per product is $650. The pharmaceutical chemical evaluation fee is $4300. The efficacy evaluation fee is $4300. So the cost per product is $9250. Now, in fact if two products are similar as we have, they have been very generous and given us a discount, because we have - - -

PROF SLOAN: That's the strength and half-strength?

MR WHITELEY: Yes, that's right, so I actually get to avoid two pharmaceutical chemistry evaluation fees and efficacy fees. So in fact my actual application fee for my particular four products, because of the way I'm grouping them together, is $28,400, which is some relief.

MRS OWENS: That's before you pay the consultant?

MR WHITELEY: Yes, absolutely.

MRS OWENS: You have all your compliance costs, yes.

MR WHITELEY: And that's before you make under GMP and these products, to give you a feel for the level of efficacy that I have done already in my premarket preparation, I've actually got specialised equipment I have had bought in. I have already paid consultants to do toxicology analysis on the products. I have had then sitting in a stabilised temperature in three separate ovens under a validated system under my existing GMP plant. They have been going through constant chemical

analysis. I have done premarket microbiological examinations and I can't start my efficacy testing until I have got to the end of my holding time for the products for stability testing. So I have already encountered several thousand dollars worth of costs, minimum, I haven't even bothered to add them up. I mean you just deal with them in a normal manner, but if you dealt with them truly and added the accountancy - the accountants sort of don't like it very much.

MRS OWENS: Why don't you just get put off doing this? Why do you still persevere?

MR WHITELEY: One of the issues in a global marketplace, and certainly our market is dramatically affected by the global marketplace, is that the effective recovery cost for a multinational into a market, they have accountancy hurdle rates or hurdle rates that mean if the market is small they just can't get to the hurdle rate, hence the biggest manufacturer in the marketplace in Australia withdrew from the market two years ago and closed their plant down. That created an opportunity for another global player to enter. One Australian manufacturer has entered in the meantime. There has also been a change in consumer demands, so the type of companies now wanting to enter the market are more consumer companies than traditional pharmaceutical manufacturers and that says the market is changing.

For us in our particular market, our customer group who are largely hospitals, medical practitioners, dentists, veterinary surgeons, use a lot of our other existing products and this product, chemistry and the microbiology fits perfectly into what is our core product range.

MRS OWENS: So it's still worth doing?

MR WHITELEY: It's still worth doing, but the cost implications to a business of our size is that instead of being able to quickly ramp and get into it to prevent, if you like, another multinational coming along and taking advantage of the market niche, we have to try and basically pay for this out of our normal cash flows and of course it's lost on the TGA that the costs to these things premarket don't come out of profit, they come out of cash flow. You know, the cost implications are very, very steep.

MRS OWENS: The delay is expensive.

MR WHITELEY: Yes. Lost opportunity cost is enormous.

MRS OWENS: Okay. You said something about disinfectants. Do you want to make another example on that?

MR WHITELEY: Yes, I would like to speak to the example of the disinfectants. In 1996 the TGA gazetted a therapeutic goods order, therapeutic goods order number 54 covering disinfectants and there have been a number of interesting issues arising out of that process. I would just like to run through the simple chronology without boring us to death with the detail. The simple chronology was that after a number of industry submissions to the TGA, the TGA decided probably in 1995, early 1995, to

look at developing a therapeutic goods order to control the disinfectant market federally.

The submissions from industry had come about and complaints from various places had come about because in the lack of a clear set of guidelines there were claims made in certain key important ethical areas of disinfectant use that were probably false and misleading and it clearly fell under the therapeutic goods administrations responsibility area. These products are classed as therapeutic devices. The sort of claims that were being made were product A might work and kill hepatitis B or HI, AIDS virus, and in fact when you got into looking at the claims, the types of testing and the nature of the testing has not actually been done at an international standard that would be acceptable in, say, the United States for example.

There were no rules in Australia and so people were getting away with claiming product suitability where it wasn't applicable. In the most high risk area that would be on, say, medical devices which were subject to reuse. So the risks of transmission of disease between patients via the devices was fairly high if the wrong product was used. So there was a good reason for both industry and TGA to come together and look towards getting not just rationality, but the public health benefit dealt with in a logical and effective manner.

There were only a number of players in the market truly at that stage and in fact our company is the only surviving Australian manufacturer in this area. No other Australian manufacturer survives in this area of high level disinfectants and steroids. So in 1995 they met together with the various trade associations, including the Australian Chemical Special Manufacturers Association, ASCI. I think they met with the Proprietary Medicines Association and the Medical Industry Association.

Some time in early 96 they convened a meeting of the disinfectant working party, which met three times during the process of the year to try and develop a regulation. The TGA contributed a set of guidelines and a draft therapeutic goods order. There were a number of meetings to get this in place. The last of these meetings, the third disinfectant working group meeting was in September 96. The agenda didn't complete any of the key areas, but at least me were moving in the right direction. Then we woke up one morning later on in September to find that the TGA intended to actually gazette the order and invited submissions. Everybody on the committee, as far as we're aware, said, "No, we're not ready to do this." Nonetheless, the order was gazetted in October of 1996.

One of the key pieces of testing had to do with sporecidal testing, and in all of the draft lead-up material, there was no mention of a particular test method which turns out to have been developed by the TGA themselves, and never subjected to any peer review analysis by any scientific person in the field. It was an unpublished method. In fact, its first publication turned out, after the order had been gazetted, between the third meeting of the disinfectant working party and the fourth meeting of the disinfectant working party, in which time the TGA effectively passed them into law.

One of these key tests was this test. Now, I need to cross-reference and say that at that stage, TGA were negotiating with Europe to have their devices regulations, you know, basically put into a situation where we harmonised with Europe, which was a good step forward. The trouble was, these device regulations were written by the microbiology part of TGA, who though, not unreasonably, Europe didn't know what they were doing because there were actually no regulations in Europe, and so they used the American model, which is a federal document called 510K. The US is widely regarded as having the most stringent criteria of any place in the world in this area, key area. So the TGA, rather than just taking what was the FDA criteria, came up with their own. It was then published in the guidelines under the Therapeutic Goods order. In fact, a person from TGA presented the theory of what they were doing at an international meeting in the US, which of course becomes part of the cost recovery process.

As it would turn out, there were a number of people who were adversely affected by this TGA mechanism, and I'd like to say that our company has been, as the only Australian manufacturer, probably more affected that any other single applicant in this area, to the point where when we went for registration in the FDA with our patented products, the FDA criteria where we went through the 510K took less than nine months. It cost a clear amount of money, which was about $US150,000. It's an expensive set of testing, but it's - the efficacy is very solid. When it came time to get approval, the TGA and the FDA had phone hookups and the one claim that we actually would have achieved in the US, but for the TGA's method, actually fell over because the TGA's method unfairly disadvantaged our specific claims. I'll give you the specific detail.

In America, our claim for sterilisation at 35 degree C - we'd produced data which was sufficient under the 510K document to meet a five-hour kill time. In the TGA data that we'd submitted, because we wanted to cross-submit the FDA data, we hadn't done this particular piece of testing. So the TGA wouldn't accept the FDA data, and made us basically hypothesise an equivalent standard, which they pushed out to seven hours and 40 minutes. So when the TGA and the FDA got together and said, "Well, does this all match?", the TGA said, "Well, for sterilisation at 35 degrees, a key claim for us, a world best practice claim for this class of produce" - we were ahead of anyone else in the world as an Australian manufacturer. The TGA said to the FDA, "No, sorry, it's a seven hour 40 minute claim in Australia." So the FDA, accepting the TGA's advice, applied that level of standard into our product.

We have subsequently done the TGA test, and it turns out that we met the criteria for the TGA inside of the two hours that we'd originally put to the FDA, which would have given us - when you have a twice margin for safety - the five-hour claim that we were looking for. So the impact of that has been that the TGA test has actually disadvantaged our product in the commercial claims, in the global - biggest market place. 100 per cent of the costs of that test have been recovered as part of any device applications. In the meantime, the application fee initially for these devices for this new Therapeutic Goods order were $2700 per product for the highest category. The latest fee from TGA is $10,000 per product, so - on top of the efficacy

testing.

Now, in fairness, there is a lot of data that has to be done, but if the TGA are going to, in the middle of the night, get up and make phone hookups to the FDA and talk about dual submissions, why do we have our own test in Australia? It just is mind boggling, and for a little business like ours with a turnover under $A10 million, employing 27 people in the Hunter Valley and the lower Hunter Valley in the Newcastle area, why we're being forced to do things that are uniquely Australian with no reference anywhere in the world - in fact, the method being supported by the TGA was last year at the American Practitioners for Infection Control conference criticised by the former medical director for the Center for Disease Control in Atlanta, Georgia, who now works as the medical director of the biggest global conglomerate in this area. So once again, TGA going their own way, 100 per cent cost recovery, unique requirements, massively impacting negatively on small Australian businesses, for no net gain.

DR STEWARDSON: What was the nature of the criticism? Was this man criticising their technical tests or the fact that they were doing separate tests?

MR WHITELEY: He was criticising that (a) it didn't actually work, and (b) that it had no relevance, and (c) that in fact it was no better than the standard existing tests. So it was just a superfluous piece of academia applied on Australian industry. In fact, I can tell you that I know from conferences I've been to, the Americans now have to have special - it's a wonderful non-tariff trade protective barrier if it would work properly - but they have to have special conferences over there to tell their own manufacturers, the consultants in the US, how to get round the TGA or how to get through the TGA requirements and the sort of additional testing that's required just for Australia.

Of course, in terms of global GDP, in this area about 48 per cent of global health care consumption occurs in the US, about 32 per cent in the European community. You know, when you get into the European community, although the TGA supposedly can assess your application for any of the European jurisdictions, they still don't have a proper sign-off with the FDA, unless they do it in the middle of the night without telling the actual sponsor.

MRS OWENS: So doesn't this upset this whole harmonisation process that we're meant to have adopted?

MR WHITELEY: Look, I don't know how it's going to affect harmonisation, commissioner. I honestly don't know. The Europeans are still drafting guidelines, and they're going down a totally different route again. We know for a fact that the TGA have actually sent staffers to various meetings over the last six years, trying - well, not trying. That's not fair. But one of the things that the staffers have been constantly presenting, we know from minutes of meetings, is what the Australian system is, almost in an effort to try and convince the Europeans they should pick up the Australian situation. So we led the world, as it would turn out, and particularly Europe, and now we're trying to enforce our guidelines into Europe.

MRS OWENS: Are we different? I mean, is there something that's happening here that you're totally unaware of, that we should be aware of, that this is why the TGA has developed their own test?

MR WHITELEY: No, not that I'm aware of. The diseases seem to be in common. The primary cross-infections of concern, which are the blood-borne viruses and the standard infectious organisms - similar profile here as well as in every other developed country. I think, importantly, the US jurisdiction for this group of products is the biggest market, and they're had their 510K document in place for over a decade. It's important to note that at the same conference last year in the States, two separate presentations made the point that in 30 years of either EPA or FDA regulation of this product group, with the same basic 510K outline as to what sort of standard efficacy testing, there has never been a single outbreak of disease resulting from use of these products, even when they've not been used exactly as per the label.

So in 30 years - one of the papers was very stinging, because it was criticising even the FDA for having overly stringent criteria for the American marketplace. So we've sort of overshot the overshoot, if you follow. Let me give you one product example. My biggest competitor globally has a claim in America of 45 minutes at 25 degrees Centigrade to kill a key organism. That's their standard international protocol. In Australia, the best they could get as a label claim was 90 minutes at 25 degrees Centigrade, yet the standard industry time for this standard of product globally, from all of the medical societies, including the Royal Australian College of Physicians, is 20 minutes at 20 degrees. At 20 minutes at 20 degrees, there is not a single instance of product failure anywhere in the globe - that's in the literature - where the products have been used generally in accordance with their directions on the label, which is, if you've got a reusable medical device, you pre-clean it thoroughly, then you soak it in these solutions, then you rinse the solution off and the device is not in a statistical sense sterile, but effectively had no micro-organisms live left on it.

There are instances of product failure where ineffective cleaning takes place of where there has been a breakdown in some of the applicable systems in the nursing staff, but there's no literature evidence to support that the actual product itself has failed, where it has met the manufacturer's criterions at the time of release and the time of use.

PROF SLOANE: I suppose from our point of view, the - I mean, it might be a bit depressing to hear about regulatory overkill and failure to acknowledge overseas standards and the like, but it seems to me that the critical thing, from our point of view, is the extent to which a policy of cost recovery encourages agencies like the TGA to kind of go their own way, if you know what I mean.

MR WHITELEY: I think that - - -

PROF SLOANE: That's really - I mean, that is one of the themes you're pushing, isn't it.

MR WHITELEY: Yes. That's exactly right.

PROF SLOANE: But if they didn't have the policy of full cost recovery, they might in fact - and which probably - maybe I'm wrong in saying, but I mean, other people have basically said the TGA is dominated by the toxicologists, and hence your little story of having a kind of in-house test, which presumably was devised by one of the toxicologists.

MR WHITELEY: It's a microbiologist, in fact.

PROF SLOANE: Or microbiologist - and therefore they don't have a kind of mindset about the costs and benefits, and what does it mean to business, and marketing and stuff. They have a scientific kind of view - they will - whereas if there weren't the policy of full cost recovery, they might ask different questions, which is, "Are there standards around here in the world that could be suitable?" You know, "Has this product been tested overseas?" et cetera, et cetera, you know?

MR WHITELEY: Commissioner, that's a well made point and I didn't make it sufficiently clear. I'd like to make two comments in response. First one is, industry during the period of leading up to the original gazetting of the Therapeutic Goods order, and in the six years continuing since its gazetting, the disinfectant working party has continued to meet. In fairness to the TGA, they have allowed constant industry feedback, so that has been, you know, something that has been worthwhile, and we accept there was never a regulatory impact statement done by this, despite industry's protect, and it was clearly after the promulgation earns of the COAG guidelines, and in the minutes of the disinfectant working group, there are clear references by the working party members from a ministry of associations, criticising the TGA for not having done a regulatory impact statement.

But I would actually make a more practical suggestion. I would say - and this is coming from the only Australian manufacturer in this area. I, in one sense, don't have a problem with 100 per cent cost recovery if that cost recovery is directed to analysis of data that's confluent with the other major jurisdictions globally. I mean, if they had people who were simply reading through and rechecking that your submission made to the US was the same submission you're making to the TGA and it meets the basic requirements, I think that that would be well heralded by industry because, you know, it would be a worthwhile thing.

If there was a disincentive where the moment they come up with their own unique criteria the cost recovery drops to zero per cent and they have to fund it out of general revenue, I think that would be a tremendously positive guideline that could be put in place. As I say, in this particular instance with the disinfectants TGA have been sending people around the world for six years, you know, to specifically form this disinfectant area and they've largely been microbiologists who aren't even in the devices section, talking to committees and looking at standards, and yet we still have what is largely a uniquely Australian document. So it's - - -

MRS OWENS: Thanks for that. Did you have any other examples. That's a very good example of an issue we've confronted in other areas as well.

MR WHITELEY: Thank you. I'd like to just give one short one about my friends at NICNAS. I would hate to see that they were left out.

MRS OWENS: No, don't let them be left out.

MR WHITELEY: I need to follow this through, so if you'd bear with me. We fill a product in the Australian marketplace, and have done for some years, that uses a couple of overseas raw materials. It's for a specialised household cleaning niche. It uses one essential raw material that I'll call just the essential raw material and it uses it at 1 per cent concentration and we buy it from a global supplier. Our only competitors in this field are imported products who are making roughly equivalent products overseas and importing them directly into Australia, and they have either this essential raw material or an equivalent at about the same level and at 1 per cent it's not overly toxic.

Unfortunately with the changes that NICNAS constantly make to what they see as an effective threshold for hazardous material this essential raw material comes into Australia in one form at about 6 per cent and in another form at about 22 per cent of concentrate. The global supplier who has a number of small customers in Australia therefore is now finding that his boundaries are being hit by NICNAS and what NICNAS are forcing this global supplier to do with this essential raw material is change their labels. Now, in the United States even with the freedom of information in the state of California nonetheless there are certain protective mechanisms where declaration of materials explicitly would in fact disclose proprietary information that is non-essential to the hazardous nature of the product. That is to say, consumers wouldn't have a clue what that meant anyway, any of these declarations, but those who are knowledgably and reliably informed in the field would know exactly what this material is now made of and the whole commercial advantage would be removed.

Because none of that exists under NICNAS, NICNAS don't have any safety measures. So what they've done is they've dropped the level back of the hazard to, say, 5 per cent meaning that the global supplier has to now, if he wants to sell in Australia - he or she I should say, I shouldn't be sexist. But if the global supplier wants to supply in Australia they now have to make this label declaration, we're the only jurisdiction in the world, and if they want to pay for the review they have 100 per cent cost recovery. The only trouble of course we have as the small supplier who are doing it in Australia, competing against these imported products, is that because our market is fairly small, we're using this raw material at only 1 per cent concentration, the cost for the US corporation is less than the profit they make out of supply of the raw material in Australia.

As a consequence we can't get the raw material, so the product manufacturing shifts offshore. This is not a product being sold to consumers. It's purely being sold in the industrial and institutional upstream market, that is, to the blenders who then

sell it into the consumer marketplace - and I must say, it has a good consumer advantage. It's a household product that has a lot of benefits. I won't go any further than that because obviously I don't want to disclose information that would be unfairly biasing my supplier. We have offered to - in fact, the people to actually pay the cost or benefit them the cost. But because they're a global corporate that doesn't fit inside their corporate ethics. It would breach a couple of their board policies, so they can't accept that.

So what NICNAS have effectively done, have removed the product from the marketplace for no net benefit, just because of the cost recovery. The volume supply is just above the thresholds where you can import product but it's so small nonetheless commercially it's below the cost of the 100 per cent cost recovery that would be applied to them. So we said to the raw material supplier, "Why don't we get it specially made in the US and bring it in that way?"

DR STEWARDSON: Get what specially made?

MR WHITELEY: The raw material so that it's pre-diluted, if you like, commissioner, to a level that's below NICNAS. So we could become the importer. The only trouble again is, yes, they're willing to do that for us but then the cost of importing this material means that I have to import 94 per cent water to Australia to fit under the cost recovery guidelines. So my freight cost absolutely murders me.

MRS OWENS: Exactly.

MR WHITELEY: I mean, and it's not as though their water is any better quality than ours, in our view. Well, TGA may have a separate view but we're talking about NICNAS at this stage, sorry, so yes. So I can't now get this material. So the only way that I can feasibly get around this is to make the entire product overseas and import it to Australia to meet the consumer demand, thus denying my Newcastle-based workforce the chance to employ more people and continue. What's more, the next generation of these technologies have been slapped with the same sort of nonsense by NICNAS. So now the next generation of technologies are actually already being sold in America by my competitors and I can't even get access to it except for small research samples, because the global supplier has identified that they can't bring it into Australia without breaching their corporate guidelines and they are not doing anything wrong.

They have ethical guidelines that simply say, "If the jurisdiction has laws then we will not breach the laws," and we applaud that view. But it's all being biased by the 100 per cent cost recovery applied in this marketplace. There is no consumer benefit. There is no economic benefit for the country. In fact it's a very strong argument says it's actually economically disadvantaging Australia. The technology is not complex to make. It has continuing and ongoing consumer benefits. It will continue to be applied and sold in the Australian marketplace for as long as we can see forward. But now economically it's almost impossible to get the thing economically made in Australia purely because of the 100 per cent cost recovery.

MRS OWENS: I suppose it's a question of what's actually driving this decision to change labels. Is it the decision that they want to get more revenue, do more tests and so, "We'll change the labels," or whether they actually think that when you get that sort of level of concentration you really need to have more information and that's what's driving those choices?

MR WHITELEY: We don't know, it's undisclosed - totally non-transparent, no point of appeal.

MRS OWENS: You're presuming it's a cost recovery. You were saying just then you've made that inference.

MR WHITELEY: The economic reality of, you know, applying by the multinational to actually have some consideration, the cost of actually getting the inquiry and all that sort of stuff hits one of these cost recovery things where, you know, there's fees involved and the fee, by the time they take - and remember they're going to look to their bottom line, not their gross profit, and their true bottom line for the sales in Australia - you know, the sales in Australia are less than is the fee that's going to cost them into the marketplace.

MRS OWENS: They've got two things. They've got the fee and the costs of actually having separate labels for the Australian market.

MR WHITELEY: Yes.

MRS OWENS: I mean, there's a dual problem, not just the fee.

MR WHITELEY: Yes, and it's just ridiculous, it's economically ridiculous.

DR STEWARDSON: Our guidelines and our report are suggesting that there are some activities by the TGA, policy advice and that sort of thing, that shouldn't be cost recovered. We haven't tried to work out exactly what portion for any particular agency that is, but we are saying that proper activities can be cost recovered. With the examples that you've given us, particularly perhaps the last one, do you see our recommendations as being, you know, of a significant use to the problems that you've identified? Because it seems to me that part of the question before was that your problem is more the standard of assessment perhaps and that while cost recovery aggravates it, it's not perhaps the key part of your problems.

MR WHITELEY: They're fair comments. There is a large part of it which has to do with the whole way in which some of these bureaucracies operate in their own way and there is, as I think I made in my initial submission, an anti-competitive impact on industry, particularly small industry, just with the way they're managed.

PROF SLOAN: And the nature of the regulations.

MR WHITELEY: Absolutely. At the end of the day, however, we're a private business and we're trying to make a profit and the economic issues still drive our

process. That's where the cost recovery, you know, as that last anecdote from the NICNAS situation, that just becomes ridiculous because it has clearly not just any competitive impact but it's an anti-economic impact driven by the cost recovery. In the TGA area where, you know, the public health benefit is often more clearly definable TGA will rarely have trouble clearly defining an area of public health benefit. NICNAS have actually a lot more trouble doing that because their concerns are a lot more ethereal and go back to, as I think I said in a previous submission, the Captain Planet view of the world, of the chemical industry.

TGA don't have that problem. They can point to patients and statistics and try and link them together. In that area your guidelines, answering your question, are going to be, I think if they're implemented, very helpful to guide, you know, bureaucracies including the NRA into using the cost recovery in areas that are justifiable for both public health and commercial benefit, or economic benefit, to the country. For example TGA, how they manage to justify cost recovery of the development of the process I think is just a little bit unfair in biases, particularly with something like a disinfectant working party where they're recovering their fees out of the future fees they're going to obtain and industry just has to pay, pay, pay already to develop. Then you go to the disinfectant working group and there can be up to a dozen TGA staff members there for whole-day committees and the next meeting is actually a two-day process. So industry is going to fly into Canberra for two days. The staffers will be there for two days and there's copious volumes of minutes that need to be sorted through, and that's just going back into their consolidated revenue.

MRS OWENS: Yes, there are some perverse incentives I think working there. I think we might close now for lunch, so I'd like to thank you very much, Mr Whiteley, for coming today. We enjoyed the anecdotes. We will resume a little later than as on our schedule at 2.15. So we'll resume at 2.15.

(Luncheon adjournment)

MRS OWENS: The next participant this afternoon is MariTrade. Welcome, and could I ask you both to please give your names and your positions with MariTrade for the transcript.

DR BENDALL: Certainly. Well, I'd like to firstly introduce Stevie Kostacopoulos. Stevie is the research manager with MariTrade and in fact she's far more familiar with the analysis of trade data than I am. She's been using ABS trade data since I think she was at university doing some research projects. Stevie will later demonstrate the MariTrade database to you. The database was designed - - -

MRS OWENS: No, before we do this, what I need you both to do is just give your - each of you individually give your names.

DR BENDALL: Okay. Well, I'm sorry, I should really say that nobody probably knows as much about trade data as Stevie in Australia, so she is the trade expert.

MRS OWENS: The expert, okay.

DR BENDALL: Right. Now, I'm Helen Bendall. I'm a director of MariTrade but in a - I've got to be honest here, my full-time job is senior lecturer in finance at the University of Technology, Sydney. I am here because my husband who made the submission to the Productivity Commission is unfortunately overseas. Now, he feels very - I mean, this is a great pity because he considers the issue one of great importance for our company but for the community generally. So, I'm here to try and present some of those ideas.

MRS OWENS: Thank you. And Stevie, if you wouldn't mind just giving your name again. It's just for the transcript.

MS KOSTACOPOULOS: Certainly. You'll probably hear Dr Bendall refer to me as Stevie but I'm Stavroula Kostacopoulos. I'm the research manager at MariTrade, I beg your pardon.

MRS OWENS: Okay, thanks very much, and thanks both of you very much for attending today and for your submission, which I think we found very useful. We've been begging people to give us some feedback on their experiences with the ABS and we're very pleased that you've taken the trouble to do so. I understand you do have some opening comments to make, Dr Bendall, and then we're going to have a little presentation.

DR BENDALL: Just a little presentation, yes. I thought that firstly I would tell you something about MariTrade and then about the trade statistics and how they were developed. I would like to then talk about our relationship with the ABS and particularly since the cost recovery policy has been implemented. I thought then Stevie will demonstrate and then I'd just like to wrap up after that. So, that's what I thought the structure would be. So, MariTrade was established in 1982 as a consultancy specialising in marine transport. Now, part of the original concept was to develop a statistics database for exporters and those involved in international air

and sea transport for investment and market research purposes.

At the time, ABS provided a very limited service and in fact it was in print form only. Since 1982 MariTrade has grown and expanded its services to provide market research, air and sea freight statistics, investment analysis, and economic study supports shipowners, shipbuilders and governments. We run the training courses also for the Australian Chamber of Shipping all round Australia, so we're very much involved with the international transport industry. Now, the trade statistics - well, in fact we were the first to develop a PC-based database in 1982.

It was a multi-stage process at that stage and I don't know whether any of you - I tried to run this past Stevie and it was way before her time, but we achieved then what people said was impossible because we were then working PCs - I mean, we were working on the state of the art, the IBM XT, which had a chip of 8088 and so it was, you know, quite a feat to get all those records into a program that could be run on a PC. The original software was written in a mainframe mathematical language but of course we've revised this and now of course it's in C++, so the database has been improved by constant reinvestment and upgrades.

Now, this database enables users to analyse a tremendous amount of export data and compile quickly with a few key strokes meaningful reports sorted by air and sea freight components or by export commodity. In fact we'll be demonstrating just the flexibility of it. We're processing over 6000 commodity records and this is easily accessible form, it's updated monthly or quarterly for our users. Each update, it's not just raw data because we check to ensure consistency, reliability of the data since most of the clients use the databases for trend analysis as well as for basic research, and because we've been doing it for a long length of time we can, you know, do this.

Commodities are recorded by country of destination, state of origin, load port, discharge port, by value, weight and number, by air, by sea and by parcel post, and you can generate reports with any combinations of those or all. So there is a significant element of added value. So we receive raw data from the ABS and then it's checked for accuracy and then it's put into the - well, we put it into our database and check for accuracy. Now, there are coding errors in the export data that are not picked up by ABS and of course if researchers are using this, it's undermining the credibility of the data and their output.

Just to take, I guess it's an extreme example, but we do get regular ones like this. They recorded 15,000 tonnes of clinker, recorded as airfreight out of South Australia. Now, while we eliminated the mistake - - -

MS .....: That was for high value-added clinker, wasn't it?

MS .....: This was the justification for the Alice Springs-Darwin railway line. I won't have to supply that any more.

DR BENDALL: Well, we eliminated the mistakes from our records and we did advise the ABS but this consignment remains on the official records, as the ABS

apparently was unable to correct it we can only assume. So, in summary, MariTrade offers a value-added service to the international trade and transport community by providing the means to conduct trade analysis for policy decisions, for investment decisions and to assist in efficient resource allocation. ABS provides us with the raw data. Now, this is compulsorily required from exporters and importers and processed by the Australian Customs Service and then passed on to ABS. Now, customs sets the standards and the formats for the import and export records which they have to be compiled with. Exporters and importers receive no direct benefit or compensation for this community service. ABS's role is to strip out the confidential fields, such as names and addresses, before releasing the data.

We have always acknowledged ABS as the source of the raw data and so, I mean, it is ABS raw data. Now, I guess, it's relations with the ABS. Since we wrote the first database nearly 20 years ago, we thought we had a cooperative and cordial and mutually beneficial relationship with the ABS, and over the years many representatives of the ABS have visited us and inspected our operation. We've shown them our books, we have discussed matters of mutual interest, they even have a copy of our quarterly database. So, we've been terribly open with them. Now, this cooperative relationship again I'm saying we believed should be very positive because we thought that this was to encourage a free flow of information and improvement in data quality. It would help in future development and we could discuss or be prepared and be open on a wide range of issues of mutual interest which everybody would benefit from.

Now, we, as I said, mentioned the case before but we advise or continue to advise the ABS when we discover errors in the data and we have actually a very cordial personal relationship with the people that we're dealing with within the ABS, and they work with us. But it's really on the corporate or bureaucratic level that our relations with the ABS began to slide downhill rapidly, particularly since the policy of cost recovery was first mooted and then implemented. We noticed that there was a significant increase in staff numbers apparently involved with the supply of international trade data. We were warned that the previous commercial relationship would end and that ABS would expect a significant increase in price for the raw data.

I think you've got some of the background. In David's submission I think he includes some of the correspondence which outlines this but the net effect of this change in relationship was an increase in the data cost over a period of a few years from two and a half thousand to more than 35,000 for the same service. Now, there's a couple of events that I just wanted to outline which shows our relationship with the ABS and the impact on our database. On 1 July 2000, despite strong opposition from a number of commercial associations and ourselves, ABS ceased identifying individual commodities with an annual FOB value below a quarter of a million and specific import commodities below 1 million. Now, we can't understand this because these are often the growth commodities that trade and transport researchers should be analysing.

So, valuable information for policy-makers in both the public and private sectors is therefore not available and that was - and another situation I think I should

highlight is over a period of years MariTrade has developed other databases, sophisticated databases, but one in particular was analysing international tourist traffic. Now, this database was developed for a number of tourist industry groups and state government departments who wished to analyse the national tourist industry. We worked in close cooperation with industry representatives, potential users and the ABS, which supplied the test data during the development stage. We were told at the time that the database was far superior to anything else then available and would become a valuable resource for industry investment, government policy and resource allocation.

The entire project was then crippled by a decision to withhold some data, and the ABS's new pricing policy meant that the cost of the raw data made the new service completely uneconomic. Now, just to possibly highlight some of those points. Now, we'd spent 18 months on this project, working closely particularly with Transport South Australia who in fact had purchased the data from the ABS. The ABS throughout the development period was aware that the database was being developed because, I mean, we were running things past them and using test data to test the integrity of the database. Now, you can imagine the disappointment by all parties awaiting the database when the ABS advised changes to the structure of the database delivery service and that valuable fields would no longer be available, they were just going to be removed.

Well, I will go on but we were told later - this is after our database was abandoned - that the ABS approached the South Australian Department of Transport with their own tourism database, which was not nearly as useful or flexible, but the South Australians of course have taken that because something is better than nothing. You may like to speak to Mike Milne from Transport South Australia, who would be able to fill you in on the details of that. Now, as far as cost recovery is concerned, I mean, we appreciate that government departments and agencies are under increasing pressure to reduce costs and so I guess we do understand the policy of cost recovery. But since the ABS began implementing this policy, the cost of the raw data to us, as I said before, has gone from two and a half thousand to more than 35,000 per year.

While this price increase may be absorbed by other government departments, a private sector service provider such as MariTrade cannot sustain it. MariTrade is required to pay two fees; one for the cost of the data and another, which is 15,000 plus GST, and another 25 per cent royalty on the prices we charge our end users. Now, we believe that this pricing structure is inappropriate to a value adding private sector provider, as it is having the unintended consequence of destroying a market and valuable service we have built up over many years. We have invested heavily over the last 20 years in the development of these databases and in the human resources to maintain the quality of personal service to our clients when they are processing and doing their own research. Obviously we cannot pass on the entire price hike to our clients but unfortunately several long-standing clients have been forced to discontinue the service since we've had to increase the price.

We have appealed to the ABS to review our situation and offered various alternatives in an effort to reduce the cost burden on us. Because of the flexibility of

our database and the quality of the service we have in fact - we view it as - we have created an additional market for the ABS trade statistics. As an information agency we believe that the basic charter of ABS is surely to disseminate information. I believe that we are helping them fulfil that role. We believe also that there are considerable positive externalities created as our users in the private and public sector make informed and timely decision on resource use. For instance, port authorities, airports, government departments and private sector marine and airline operators have used MariTrade's database for many important infrastructure development decisions.

The ABS receives it information from the government regulatory body, the Australian Customs, which in turn compulsorily acquires the data free of charge from importers and exporters. We contend that the raw data has the nature of a public good and that the supply of data, after confidentiality processing to value added organisations such as ours, does not violate the non-exclusivity or the non-rivalrous characteristics of the public good. We accept that non-core and value added activities should bear some contributions to incremental costs incurred, however, the raw data received by MariTrade from the ABS has little of what could be classed as value added. Indeed, their main function appears to be stripping out the confidential fields and preparing and posting CDs monthly.

In effect, ABS use of monopoly power has imposed undefined cost recovery charges on us. As we are being charged a royalty as well as a flat fee, it would appear that we have been arbitrarily classified as a simple non-value adding on-seller which is not appropriate. Such a category does not recognise the value adding input that MariTrade provides to users. We are not simply on-selling the raw data. So it appears that the arbitrary pricing structure and the level imposed on us could be viewed as violating competitive neutrality, which I think that the case before of the South Australian also demonstrates that.

ABS's view of MariTrade appears to have change from a partner and cooperative service provider to that of a competitor since the new policy of cost recovery was introduced. This view is quite contradictory to the specific and detailed knowledge of our operations which ABS staff have gained over the years of working with us and visiting our office. We regret that and wish to continue the value working relationship we have enjoyed over many years which has benefited both parties, however, we cannot sustain the new pricing policy which we believe is both unfair and unrealistic in the commercial context in which we have developed a value community service. Now, I am going to ask Stevie to just demonstrate that. We will also like to show you what we receive, the raw data, and how we receive it and how it differs from that of what we're providing.

MRS OWENS: Thanks, Dr Bendall. What we might do is we might go and move over there and watch it so that means we won't be able to ask any questions or interrupt while this is going on but we will come back and we will ask you some.

DR BENDALL: I am going to sum up so possibly you could ask the questions when that is - - -

MRS OWENS: Fine.

DR BENDALL: I am just going through the main points, after you see what it does, because it's very hard to imagine it unless you've actually seen it.

MS KOSTACOPOULOS: The database that we've developed is used by a select number of our clients as a market research tool. It may appear to look like a generic product, however, there is quit a lot of tailoring in various files in order to create the output that each client requires. In order to do that there is quite a lot of consultation, educating the client about the data set from the ABS, how the data is collated, just getting them to appreciate how export data is recorded. Our clients are a select number of state government departments. They use the database to attract commercial services to their state by either identifying new and expanding export markets or by recapturing freight that's presently used by gateway ports in other states.

They use the database because it's fairly easy to manipulate. I would like to start that now. The database allows you to manipulate every field that the ABS will release relating to export data. So we have access to all export records. That amounts to about 54,000 records a month. So in order to manipulate and gain meaningful information from that, we have had to create databases in-house because commercially available packages were not available at the time. Now, when a client wants to view the data, they want to look at it at a very broad level of detail. However, because they are interested in the freight task of exports, they have to be aware that there are certain elements in the database that they have to be aware of before they can do that.

For instance, our clients need to be able to differentiate between pack type, between the logistics of exporting bulk cargoes are very different to those of exporting dry containerised cargoes. You can also differentiate in containerised cargoes between dry and reefer. So all these differences are very, very important to them. This database allows them to pick up those things, if that's what they are interested in. Firstly we will just look at data at a very broad level. For the purposes of the exercise I will just limit it to calendar year 1998 because that was what was available on the demonstration. Okay. This is a very broad query and it's exports by air listed by load port for calendar year 1998.

Now, there is an ability to drill down into the data and interrogate it using, as I said earlier, all the fields that are available from the ABS. I will just use a selection of them for the moment. Firstly we will look at destination country. We can sort exports by destination country. You will note that the largest export destination for air cargo out of Sydney, if you sort the data by gross weight kilos, is ships and aircraft stores. That's actually aviation fuel. Our clients would not necessarily be interested in that so we have developed techniques in order for them to suppress it but this just goes to demonstrate that the exports statistics, as they are available from the ABS, actually sort the commodities - the commodity classification, sorry, to begin again - is actually sorted by product.

It is sorted by raw material and then simply transformed manufactures into laboratorily transformed manufactures. This doesn't help our client because they are more interested in pack type. So we have actually got - rather than delete the information off the database, we keep the integrity of the data because we do indicate that it is ABS data. As the ABS has issued it, we can't delete it off the database, however, we can deal with it by using a query that will allow us to deselect ship and aircraft stores as a destination country. The time taken to process the data may seem a little lengthy to some of you, however, when you think that 12 years ago people were actually running queries on mainframes and running them overnight then this sort of thing might seem fine.

What we have done is we have been able to extract the aviation fuel from the database without actually corrupting the data as its published provided to us by the ABS. So that is one of the things. You will also note that we have descripter here and it has basically listed all the countries. That descripter changes, depending on how you run your queries. If I can just start up another query. I just want to show you very quickly how a researcher would try to identify cargo that is actually leaking from their states and being exported through interstate gateway ports. Now, what I've done is I've run a query for South Australia and I've listed it by load port. Now, we can see that the overwhelming amount of cargo is exported out of South Australian ports. However, if we look at Melbourne - just bear with me a moment, I need to disable one of these fields because it is not appropriate for the demonstration.

However, if we look at the commodity breakdown of South Australian cargo that is exported through Melbourne, and we scan it very briefly we can see that a lot of it - in fact, all of it is actually containerised cargo, and that can be used by a state department or by a port authority to demonstrate to attract commercial services to that particular state. Now, one thing that researchers want to do is track things over time. So if we were to run a - well, I only have four quarters on this so you won't be dazzled by a whole series of numbers and we won't be able to identify a trend, but over several quarters you would be able to see the impact of attracting commercial services and losing commercial services from a particular port or state.

There is a graph in Dr Bendall's presentation later on and it shows a particular commodity. It's wine exported. It's sourced from South Australia and exported through Melbourne. South Australia recently attracted more services, more line of shipping services for Europe and you see that Melbourne's share of that cargo has gone down completely because it's actually going through the home state. Researchers love it because there is just such depth of information that they can get.

MS OWENS: We might go back over it.

MS KOSTACOPOULOS: Yes.

MS OWENS: Is it still going?

DR BENDALL: I am still going. It will only be a few slides. What we wanted to do was actually show you the contrast between what is - and just to reiterate some of the points. It's used by a select number of clients as a market research tool because it's our database. The objective of the research varies obviously with the client but it's mainly used by state government departments in order to attract commercial services to either a seaport or an airport or by identifying new or expanding export markets, which of course may lead to more exports for Australia, recapturing freight presently using gateway ports in other states, and I believe that this is healthy too because there's more competition between ports. Stevie talked about the graphs that you can do over time and there's an example of how the South Australians, after tracking their cargo, got in and did something about it. So we have been encouraging ship calls, and of course if you have a ship coming in, this encourages other exports and the trade and the state build up accordingly.

This is how the data comes from the ABS. You can see it bears absolutely no relationship to the sort of service that we are offering. The fields are listed as you can see down the side. In fact, if somebody comes to us, and they often do, and say, "We want the raw data. We want to do it ourselves," we actually direct them to the ABS because they can get this data themselves but generally they come back to us and sort of say, "We don't know. What does this mean, what is this?" because it's just - you have got to have a familiarity with the data. So our export data base is fast, it's provides easy access to an entire range of Australia's export commodity statistics They were some of the things that we couldn't demonstrate all of those but we could have grouped and done the combination of all of those down to eight-digit level so it really gets quite down to a very detailed level.

They are just some of the screens. You can't see them. I appreciate that from the distance here but it's a tailored service. As an academic I have actually sat in seminars where people have presented data that they have, and they have gone to the ABS and used their data, and they have got - you know, at the times the one showing the most growth is the confidential report, you know, and I have absolutely no idea of even how to make educated guesses as to what it's about because I haven't got that familiarity with the - so this is why Stevie's role, and she talks it through, and people are able to get a better grasp of what they need. Often academics and researchers, they want a data mind. They don't really know what they want before they start and I'm afraid looking back at the ABS, the way data is presented, they just don't even know where to start. So we're contending that we have a very tailored service. There is extensive consultation to ensure correct definition of what exactly they want.

We also refine our data all the time. We help the researcher with their reporting requirements and of course we have ongoing maintenance required to the changes in the ABS commodity classifications. That is the harmonised system. So why tailor? Well, an appreciation of the freight task of Australian exports requires aggregation of very detailed commodities. It allows users to mind data and extract meaningful information for analysis without having to consume time collating data. We have a very detailed knowledge of the harmonised system code and the change in practices of exporters is required to, for example, group commodities according to

pack type. Remember, when it comes from the ABS these commodities are not grouped in numeric order so this is something that we help them with.

This was just an example of - and you've probably seen it yourself - this is the information that's available for researchers on the ABS website. As I said, I've sat in seminars where people have tried to use this data, which turns out to be not very meaningful. It isn't the depth of data. People don't understand the categories. So basically the ABS publishes their analysis using the same database however the information does not assist the users in their research objectives. I would like to leave it there but we would be very happy to answer any questions.

MRS OWENS: Good. Thank you very much for that. We like slide shows. It gives us an opportunity to sit there and do something a bit different. I think in your earlier presentation, Dr Bendall, and what you have just been saying, you've made a few very powerful points. I don't know how much time we've got to discuss them but we will do our best because we are meant to be talking to the next participants half an hour ago. Now, one of the issues you raise in your submission - and raised very briefly before - was the price increase that you've incurred. I was wondering, with that price increase did the ABS at any stage justify to you the underlying rationale for that increase? Were they doing something different? Were their cost structures changing in some way or did you just get an increase?

MS KOSTACOPOULOS: No, it was undefined. How the increase and why the increase - we have to surmise, by trying to read their pricing policy - and that's how I said they must be classifying us an on-seller because that was the only way that we could make sense out of this. We have appealed on that classification. I mean, with the exception of them stating that it's due to their new policy of cost recovery, that's the only fault. That's the level of depth that we got from the question of how it was justified and why were we receiving this increase.

MRS OWENS: When you pick up problems with their data, do you charge them to provide that information back to them?

MS KOSTACOPOULOS: No. It is more a consultation process. It is not at all adversarial. In some instances we have our subscribers actually alert us to the fact that there are inconsistencies so we approach the ABS. We don't charge them for the service, however, about a month ago I discovered that they are going to start charging us for the service.

DR BENDALL: So if we raise a query for them to check they are going to charge $200 or something.

MS KOSTACOPOULOS: $280.

MRS OWENS: I think it would be within your rights to say, "Well, if that's the case" - this moves right away from that initial relationship you were talking about, being cooperative.

DR BENDALL: I know and that's why we're very distressed because we just saw that we were working as a partnership really and that we were helping our end users. The end users are coming to us. We have a look. I mean, we have already gone through it but the end users - say this may be a port authority and so that they would see something wrong from their own experience. I mean, we believe that we are helping everybody by alerting the ABS. I mean, I hate to think that we would say, "You lot are going to charge us, therefore we are going to not tell you," you know, it is not tit for tat sort of thing. I think that for the good of the community as a whole that I guess we will still continue.

MS KOSTACOPOULOS: That's right and if an error is reported and nothing - or what we perceive is an error is reported and there is no revision, we do not go back. We do not go back and physically change the data ourselves. We just make our clients aware of it. We have the ability to do that but we have agreed to not change the data as it is issued by the ABS, so we can only manipulate it, not delete it.

DR STEWARDSON: Is there a category of - I think you used the term "simple resellers without value adding" - words to that effect.

DR BENDALL: I don't know. I mean, overseas the way things are done in, say, the UK, their Bureau of Statistics there has, I think, some registered on-sellers who get the data and they virtually are doing it - some of them manipulate it, some of them are just on-selling but I'm not sure. I was just, as I said, trying to work out why we were being charged in this way. So I see that they had a category which said, on-sellers who would be charged a royalty on all their sales. So as we had a flat fee plus this royalty, I am making that supposition that's how we - so I don't know if they have any others. That is the nature of the material. I mean, we are using it and we are doing our value added and it's going to our clients and our clients like what we do, but our use of the data doesn't stop anybody else using it. So I would be very happy if they are on-selling it to others. It has no impact on us at all.

MRS OWENS: I think we can clarify some of those issues next week because we are talking to the ABS. I think it is on Wednesday. But it does raise the other question you have raised in your submission, which is having a flat fee to get access to the data and then having to pay a royalty and having this two-stage thing.

DR BENDALL: Double dipping.

MRS OWENS: Once you have paid for the data is it appropriate then to continue to pay - or for the ABS to get a share of your revenue you are getting?

DR BENDALL: We believe - I think I tried to make that in the submission and I hope it's come through - that what we are adding is definitely value adding. It is our experience. It is our knowledge of the data. That is what the clients are valuing. We don't believe that that is equitable in any way because I think they have miscategorised us. I think it is in their desire to fulfil a requirement of cost recovery and maybe not even understanding these categories themselves. I mean, they just thing, "They are on-selling, it's our data," as if we haven't done any value adding.

PROF SLOAN: I mean, in a sense the fact that you're still in business suggests you are value adding because otherwise the clients would have gone directly to the ABS and been done with it.

DR BENDALL: That's right, particularly as a lot of our clients - the majority of our clients - are government departments.

MS KOSTACOPOULOS: Can I just make a point. Our other activities in Maritrade actually support this service at the moment. The pricing structure has changed the economics completely. We actually absorb quite a lot of the costs. We don't pass them on to our clients because they will discontinue the service and we have an interest in maintaining that service for the reasons that Dr Bendall listed earlier. That is a point that I wanted to raised.

DR STEWARDSON: What do you think is the appropriate fee system for your payment to the ABS should be?

DR BENDALL: Looking at their pricing policy, I would have thought that we fitted into the incremental costs, as I said before, are - I mean, obviously because of confidentiality requirements, names and addresses for example are taken out. I mean the ABS has to actually do that and it's negligible the cost and also I mean they are just posting it out. So I would hope that we should fall into the incremental cost category, rather than this other category which you seem to have been put in where they are taking a flat fee plus this royalty, because I cannot see - I mean I have a feeling that we are paying for them to, well, expand their service. In their pricing policy they are explaining that if they do any consultancy, then it is and they very clearly state it's labour and this and that. I mean we have read that. But they are not doing anything of that for us.

DR STEWARDSON: Is there any category of on-seller of ABS material with value adding where a royalty would be appropriate? I would have thought that most people - - -

DR BENDALL: I would not see that - we have not understood and we have asked for clarification, because we don't feel, specially as we have had a relationship for 20 years that we necessarily fall into whoever has written their pricing policy. I can't sort of see that we do fit. So maybe this is a difficulty for them. But I really would like - I mean we always saw ourselves as I guess disseminating the information and helping the ABS in their role and rather than - we don't want to compete. Fair enough, if they want to do their consultancy service, but I don't think we should be paying for the development as they increase their staff.

MRS OWENS: I think it does raise a really important point of principle and that is what is the role of the ABS. I mean you seem to be quite happy with the fact that they can move into South Australia following in your tracks and then start having an arrangement with the South Australian Transport Department. They are really then competing with you on a commercial basis.

DR BENDALL: They are competing with us, but I feel in that particular case that, well, there is some difficulty in understanding that - this competitive neutrality issue I think actually should be raised and that's why I really would like if the commission could talk to the South Australian Transport Department yourselves, because they feel very strongly about this. As I say, competition - I believe even with their developments and they have developed greatly over the years, I don't think that they have the background. I think we have often a better understanding of the trade statistics than they do. They definitely haven't got the technical superiority over us over the data base. I think ours is by far technically superior and that's why the clients have used it.

MRS OWENS: But it's really a question of whether they should be doing it at all and if there is a competitive neutrality - - -

DR BENDALL: Well, I probably say that I don't think there was a necessity for them to get into that area when the market - but I don't want to appear that that's our domain and therefore we want a monopoly on it. I don't think the ABS should do it myself, if you want a personal opinion, no, because they are provider of the information, they disseminate the information, they are a provider for government, but they are a monopoly supplier.

MRS OWENS: The other issue is this one of competitive neutrality and there are other ways of approaching that problem and one is to put in a competitive neutrality complaint and the competitive neutrality complaints office sits within the Productivity Commission. Has anybody considered doing that?

DR BENDALL: No, and to be honest, we do not want to erode our relationship with the ABS. It has deteriorated in the last few years and this is a great pity and we do have a contract with the ABS which let's face it, we signed with (indistinct) because the commercial reality of it was that unless we accepted these conditions, as a monopoly supplier they would discontinue supplying to us. So this is a problem. I would like to say, on a personal level I think the relationship is there. It's just because they are trying, they have this cost recovery policy and at a bureaucratic level they are trying to impose - - -

MRS OWENS: Yes, muscling in on someone else's territory. I'm not sure it was so much a pricing issue as the fact that they decided to alter the - - -

DR BENDALL: In that particular case that was, but on the other I believe that they are competing on a pricing issue. By increasing our price and what we have to pay them, they are - in that sense I do think it's a pricing issue for the competitive neutrality. I think we have sort of seen it in two ways.

DR STEWARDSON: Has the ABS given you any reason why it is quite a large percentage figure of your selling price, your sales revenue? I mean I could see some logic in a royalty that was a percentage figure of your profit on this particular line. It's not quite so easy to see the rationale of the current arrangement.

DR BENDALL: We are quite happy for them to come and have a look at our books, everything like that. We have always been upfront with them. They know who our clients are. We have just never hidden anything from them and I agree with you - - -

DR STEWARDSON: They haven't explained it?

DR BENDALL: No, they haven't explained it. We have asked for explanations and we really have not had anything. My husband has been down face to face, we have had numerous - well, there has been correspondence, but I mean they are under cost pressures, so this is all we are told. It's part of the new cost recovery policy.

PROF SLOAN: I mean on the face of it I can't explain why they have both the fee and - - -

DR BENDALL: No.

PROF SLOAN: - - - the royalty. It seems to me it would be fairer to have one or the other.

MS KOSTACOPOULOS: There was also an establishment fee.

MRS OWENS: Establishing what?

MS KOSTACOPOULOS: Establishing the new commercial relationship between MariTrade and the ABS.

MRS OWENS: So you had to pay to establish the new relationship?

MS KOSTACOPOULOS: Yes.

MRS OWENS: Why? Can we just come back to the royalty for a minute. How does the ABS know what to charge you in the way of royalties? Do you then supply them with information about your revenue from your clients?

DR BENDALL: That's right and the contract we signed said that they would come and audit our books. Now, to be honest we have always been upfront with them as to who our clients are anyway and they are familiar with our pricing structure. They know this anyway, but they do have that right to audit.

MRS OWENS: So basically it's an honesty system, but they can follow it up.

DR BENDALL: Every 12 months - part of the contract said that there will be an audit of our books.

PROF SLOAN: But do you know whether you are being charged the same royalty rate as - - -

DR BENDALL: No, we have no idea.

PROF SLOAN: How do they get to that figure?

MRS OWENS: Why should there be any royalties at all for any on-seller? I mean they have already paid, why should there be a royalty?

DR BENDALL: I agree.

DR STEWARDSON: Well, there presumably would be an argument, I'm not saying I agree with it or disagree with it, but there would be an argument for basing it on share of profit. It could be sort of a two-part charge of a flat fee and then a share of profit. But it is hard to see how it can be as a share of sales.

DR BENDALL: We have offered at times also to work - I mean if they did want to go along this line of being partnerships in the dissemination, that we would work in partnership using our MariTrade database, but they have not - well, they have told us that they don't want to do that, which would have been the logical solution.

PROF SLOAN: I think we will follow up on these issues. I haven't got much to say because I probably agree with you

MRS OWENS: But we will be talking as I said with the ABS next week, so we have some interesting questions to ask the - - -

DR BENDALL: And we would be very happy if you came back and asked us for clarification or if there was anything else.

MRS OWENS: Thank you very much, both of you, for coming and we will just now have a very short break and we have the Australian Shareholders Association.

MRS OWENS: The next participant this afternoon is the Australian Shareholders Association. Could you please give your name and your position with the association.

MR ROFE: Ted Rofe and I'm chairman of the Australian Shareholders Association.

MRS OWENS: Thank you, and thank you very much for your submission which I think I received yesterday.

MR ROFE: Well, it really doesn't justify the title of submission. It's the sort of beginnings of some - a working copy.

MRS OWENS: It has got "draft submission" written on it.

MR ROFE: That's right.

MRS OWENS: So maybe there will be something following that.

MR ROFE: I hope there will, yes.

MRS OWENS: I think we've all read that and thanks very much for getting that to us, and you've raised quite a number of important issues in there which I think you would like to expand on.

MR ROFE: If I may, yes. First of all, thank you for inviting me to appear here today and I must say if Dr Lupaine hadn't rung me last week we would have been quite unaware of the review and of its relevance for us. So it was very timely. The second thing is that I'm glad that we were invited to participate after the issue of the draft report rather than before, because I certainly found it very helpful, particularly appendix F, in highlighting what the issues were and really helping us to structure what we wanted to say. In the document I sent you, in the introduction there, I say a little bit about the Australian Shareholders Association. I think it's probably fair to say that the ASA is recognised by both government and industry bodies as the national body representing the interests of individual investors in Australia.

As I've said, we've got a widespread membership throughout Australia. We are pretty active and, as I say, I think we are recognised as the spokesperson for individual investors. I suppose the other minor point to make is that the name Australian Shareholders Association is, in a sense, a historical accident because nowadays their activities do encompass the wider area of financial investment products in general. Probably the most important point I want to say something about today is this question of over-recovery of costs by ASIC. I think table 2 on page 2 of our notes really says it all and, in a sense, it's painting the same picture as that in table F1 in the draft report.

I also included there table 1 just to show the main sources of ASIC's collections and you'll see the major part there, over $300 million, comes from normal

Corporations Law fees and charges. But there is a significant component from income from information brokers and I'll come back to that a little bit later on. If I could go back then to table 2 for a moment, I think the key point there is that ASIC retains or, strictly speaking, is reimbursed less than 40 per cent of the fees and charges which it collects, or to express it in another way, as is done in table F1 of the report, the amount it recovers from its clients is nearly two and a half times its total cost of the services it provides, and we just think that this is completely unjustified.

The distribution of this surplus is shown in table 2. In the year ended 30 June 2000 $135 million, in other words slightly more than the Commonwealth government appropriation to ASIC, was paid as compensation to the states and the Northern Territory, and $9.6 million was retained by the Commonwealth government. In the past we have described this surplus collected by ASIC as a form of state company tax and I was interested to see that our layman's view seems to be supported by the Australian Government Solicitor in appendix I to the report. The quote from CLERP 6 at the top of page 3 of our draft submission, which is also summarised on pages F7 and F8 of the draft report, attempts to justify ASIC's charges.

MRS OWENS: Is this CLERP 7?

MR ROFE: CLERP 7, yes. But as I've said, we can see no justification for the continuing indexed payment of compensation to the states and the Northern Territory. It's clear that the revenue forgone by the states and the Northern Territory as a result of the establishment of the National Corporations and Securities Scheme, had not been used by the states and the Northern Territory to administer the state or territory corporations legislation and the regulation of the securities industry, but had been treated as part of their general taxation revenues. As I say, we can see no justification for taxing companies to support state general revenue.

Secondly, I think it's clear that the amount retained by the Commonwealth government of $93.6 million in the year 2000 far exceeds the cost of the national scheme related bodies such as the AAT, the Australian Federal Police, the DPP and the Federal Court. We acknowledge that those costs should be covered but I'm sure they're nowhere near $93.6 million. Let me make a few points about the benefits of regulation. Although it's true that a major part of the benefits provided by ASIC's regulatory activities are private benefits which flow to companies and their shareholders, to occupation licence holders and their clients, and to participants in the markets which ASIC regulates, I believe these regulatory activities do result in a significant public benefit at both a domestic and a global level, and of course this is picked up in appendix F1.

For example markets which are characterised by transparency and integrity lead to efficient allocation of resources and a reduced cost of capital. When I talk about markets there I'm not only talking about formal markets like the ASX and the SFE but also what one might call informal markets when an individual deals with a product provider, perhaps takes out an insurance policy or gets financial advice or takes out a superannuation policy or something like that. Again if we regard that as a

market, again transparency, integrity, I think are important. Secondly, I think Australia's potential role as a global financial centre is likely to be enhanced if our financial markets are seen to have transparency and integrity. You may remember during the 80s there was a certain amount of criticism of Australia as a place to invest because of some of the problems that were occurring there. I think a lot of those have been overcome and I think it's in the national interests that the Australian financial markets are seen to be transparency and run with integrity.

A third point, and this we were discussing briefly before we started, ASIC is increasingly encouraging individual consumers to use its registers, for example to check if a financial adviser is licensed or to check if a particular company is registered or is perhaps in liquidation or receivership, or even has been struck off. "It mightn't be too good dealing with soft apples but I think it is providing a consumer benefit." That's Bob Bastianon's comment, I think. At present it's only possible though to search names in the Internet register without paying a fee, but we would argue that the full database, including for example the address of companies, the names of the directors and so forth, should also be accessible without charge on the Internet and I mention the revenue that's received from information brokers. I suggested information brokers will be able to generate revenues from providing value-added services, as I know a lot of them do already. But the actual, in a sense, raw data from ASIC I think consumers should be able to obtain without charge via the Internet.

Turning then to the recovery of the costs of regulation I think it's fair to say that the fees and charges received by ASIC can be categorised as firstly, annual licence fees and secondly, fees for services. Some fees are expressly described as licence fees. Others, such as the periodic registration fees charged to auditors and liquidators or the annual return fee charged to companies, are also I would say, in effect, licence fees for the privilege of either carrying on a particular occupation or maintaining the status of a corporate entity. As I say, I think they can be put generally under the heading of Licence Fees. We would argue that the level of annual licence fees charged to these various entities should be sufficient to cover not only the cost of processing the annual fee and maintaining the data base but also the cost of regulating the particular industry sector.

On pages 7 and 8 I've made some suggestions as to a possible definition of sectors for that purpose and of course particularly following the enactment of the Financial Services Reform Bill there will be this new licensing structure for markets clearing settlement facilities and financial services providers, and so I think one could consider those as separate market segments and then for example there might be another segment might be auditors and liquidators, and another segment might be companies and other entities. Then I've suggested that in the case of companies it might be appropriate to further subdivide them, based on the potential costs of regulating the particular entities.

Essentially I've suggested there that an appropriate division might be between disclosing entities on the one hand and other entities like proprietary companies, possibly public companies that are not disclosing entities, on the basis that the

amount of regulation required and the volume of material to be processed is considerably less. Just one example I've picked out there, as at 30 June 1999 there were over 1.1 million companies on the ASIC register, of which just over a million were proprietary companies. The fee charged, the annual return fee charged to a proprietary company, was $200. So in effect proprietary companies were paying something like two-thirds of the total revenue generated by ASIC and I suggest that that is an unfair and unreasonable burden on small business, having regard to the amount of regulation required, particularly when we're told in the annual report that ASIC has been reducing its emphasis on small business and concentrating on other areas. To that extent I sympathise with Rob Bastianon.

Fees for services would include fees for lodgment of applications and documents and there I suggest the fee would be tailored to the particular application. For example an application for a licence would include the costs of examining and reviewing the application, particularly in the case of some financial service providers there's lot of detailed financial information, technical training requirement and so forth, which obviously take a fair amount of time to review. The application fee there would be larger. In some cases though, say incorporation of a company which can be done electronically, the application to register a company should be considerably less, and indeed in some cases where the costs of processing the document are minimal, for example, processing changes in registered particulars of proprietary companies, such as a change of address of the registered office or changes in names of addresses of directors, no charge is currently made if the document is lodged in time and the cost is then taken to be covered by the annual registration fee and I think that's an appropriate approach there.

On the other hand in other cases, as the CLERP 7 document acknowledges, such as the lodgment of prospectuses and takeover documents, the current fee is inadequate in relation to the amount of time and regulatory effort involved. I suggested earlier that all searches of the Internet should be free but that a fee would be charged for over-the-counter searches to cover the processing costs.

If I could just refer next specifically to the funding of the Australian Accounting Standards Board, the board is established under the ASIC Act and the CLERP 7 paper makes it clear that it's seen as an integral part of the ASIC regulatory framework. Also there are various references in the ASIC annual reports which confirm this: for example, note 18 on page 95 of the 2000 report says:

> Pursuant to certain sections of the ASIC Act, ASIC is required to support boards and a panel to promote activities which enable ASIC to attain its aims and among those is listed the Australian Accounting Standards Board.

For that reason we are particularly concerned at suggestions by Treasury that the ASB should be separately funded. There apparently is a suggestion that stakeholders should be required to contribute to the funding of the AASB and as I mention in the printed document, I think that would be a serious backward step which among other things would introduce questions of a perceived lack of

independence. If there was some implication that the weight given to the views of a particular member of the Financial Reporting Council was affected by the amount of the contribution which the organisation nominating that person had made, I think that would be a very undesirable situation.

I've referred in the notes there to section 292 of the Corporations Law which specifies the entities which are required to prepare accounts in accordance with accounting standards and I guess the main component there is disclosing entities. I think it's logical that the AASB should be funded by ASIC through the normal licensing fees charged, in particular for disclosing entities. There is of course under its new charger, the AASB also issues standards which apply to public sector bodies and some other bodies and there is an argument that perhaps there should be some contribution by the public sector to the functioning of the AASB. I think in practice the amount wouldn't be large and I wouldn't mind if AASB was totally funded by ASIC but I think the key point is that insofar as there is any public benefit flowing from either ASIC or the AASB it implies that there should be a contribution of public funds to ASIC and not the reverse situation of hundreds of millions of dollars being provided by ASIC to the state and federal governments.

I guess the final point I'd like to raise is a lack of accountability and transparency on the part of ASIC and the fee-setting mechanism. Unlike APRA, as I understand it, which has a consultation process with industry each year, so far as I'm, aware there has been no consultation with industry participants or their representatives in relation to the setting of fees for ASIC. Secondly, neither the CLERP 6 document nor ASIC's annual report provides any worthwhile information as to the cost of the various services provided by ASIC which would provide guidance for the establishment of fees. There are about three categories of services and there's total figures but, I mean, even those are inconsistent between different parts of the annual report. But there's certainly no detailed information about the cost of regulating the various sectors of the industry that are regulated by ASIC.

I couldn't even find any reference in the ASIC annual report to the $10 million which is said to have been transferred from APRA to ASIC which is mentioned in the draft report on page F6. So we believe there should be a consultative mechanism in setting the fees. We believe there should be accountability and transparency so that the relationship between the costs and the revenue recovery can be assessed and evaluated. We oppose the automatic indexation of ASIC charges for some of the reasons that are indicated in the draft report. It reduces the incentive for efficiency. In particular, for example, there must have been considerable cost savings in recent years in ASIC through electronic lodgment and processing of documents. There's no conscious allowance for that fact in the fee-setting mechanism.

We've referred there to the Wallis committee recommendations, in particular one or two that weren't mentioned in the report; one, the idea of having part-time non-executive commissioners. That certainly would be a mechanism for making ASIC more transparent and accountable to its clients and I think it would have other benefits which are perhaps not relevant in the present situation. Then finally, so far as I'm aware, ASIC has not made a submission to the commission and isn't planning

to appear before the commission. I think that's unfortunate because I think appendix F1 in particular has raised a number of issues on which it would be valuable to get ASIC's response. Okay, that's all I wanted to say. I'm sorry I've gone on a little bit long.

MRS OWENS: Thank you for that. Just on that last point, we can't actually - I suppose we could compel people appear before us but it's not really an ideal way of getting information.

MR ROFE: I acknowledge that. I note that APRA has made a submission and I thought it might have been appropriate for ASIC to do likewise.

MRS OWENS: Maybe they're just happy with what we've written.

MR ROFE: Who knows? I'll ask them next week.

MRS OWENS: We did go and see them early on in the process. We went and had a visit to ASIC in their Melbourne office which was a very productive talk at that stage, but obviously as inquiries move on, the issues move on and you get other people coming to talk to you and it would always be useful when people like yourself raise issues for the agency to be able to respond. So maybe we'll send the transcript from what we talk about today and see whether there's any response.

MR ROFE: I'll certainly raise it with them next week when I'm appearing before the PJC.

MRS OWENS: But I think they have had a few other issues to have to deal with just recently.

MR ROFE: That's very true. But I've mentioned also a possibility of a change in the management structure of ASIC to include a CEO and in particular a CFO because I do get the impression - I mean, it's run largely by lawyers and financial accountants. I feel that some of this management data about costs perhaps is not focused on as well as it could be for a large organisation like that.

MRS OWENS: Can I just clarify the status of the CLERP 7, and on the top of page 3 it argues that the cost of other bodies form part of the national scheme such as the AASB and the other bodies would be covered by the revenue. Is that in fact what occurs now or is this what CLERP saw as desirable?

MR ROFE: I think there's a little bit of uncertainty there about the AASB. That note that I mentioned from the annual report quotes a figure there of $1.4 million I think it was in round figures. Yes, that note 18 that I mentioned shows for 1999 and 2000 a figure of just over $1.4 million as going to the Australian Accounting Standards Board. But on the other hand in the annual report of the board itself from which I've extracted some details on page 4, there's no specific mention of that. There's a reference to appropriations from government of $648,000 and then contributions by various industry bodies. Of course that's for six months, so if we

multiply that by 2 I suppose it's about 1.2 or - I mean, that may be the $1.4 million that's referred to in the ASIC annual report. But certainly my impression is that Treasury has been trying to treat the AASB as an independent body in spite of what ASIC says in its annual report and in spite of the fact that it is, I believe, an integral part of the ASIC regulatory framework.

MRS OWENS: You think it's desirable, if there's going to be fees, that the fees go to ASIC and then ASIC passes some of those moneys on to the AASB rather than a direct funding from whatever - the stakeholders to AASB - - -

MR ROFE: Yes, that's right.

MRS OWENS: - - - because you want to keep some distance there because you were concerned about industry capture of - - -

MR ROFE: Yes, I think there are two aspects. One is the question of independence and industry capture which I think could at least be perceived to occur if there was direct contribution, either by industry bodies or even more so by individual entities to the AASB but, secondly, I think from the point of view of efficiency, ASIC is already collecting fees from the bodies which are customers, I suppose you'd say, of the accounting standards produced by the AASB - and I mention in particular disclosing entities. Now what I'm suggesting is that part of the fee collected from those bodies goes to fund the AASB and of course part for ASIC's general regulatory activities.

DR STEWARDSON: I understand your second point about efficiency. I don't quite understand the first point. I don't see the difference in terms of danger of regulatory capture, whether the corporations or whatever have a levy based on some formula that goes direct to the Accounting Standards Board or goes via ASIC.

MR ROFE: Well, as I understand it, the sort of proposal which is being raised is not a levy in the sense that there is a levy for APRA that applies to all entities based on something like their capitalisation or something like that. I mean, first of all we have specific industry bodies, such as the ASX, CPA Australia, the Institute of Chartered Accountants, voluntarily funding the AASB but, secondly, as I say, there has been at least a suggestion that individual large corporates might fund the AASB in a similar manner to what I understand occurs in the United States with the Financial Accounting Foundation. My argument is that that's not an appropriate approach; that a separate arm's-length fee which, as I say, is already being collected by ASIC should be used to fund the AASB.

PROF SLOAN: Because that's clearly a case where the independence of that board is incredibly important. What you're saying is - - -

MR ROFE: I think it is.

PROF SLOAN: - - - that the nature of the funding is beginning to - I mean, presumably in theory rather than practice.

MR ROFE: Yes, well, I think historically one of the reasons for the establishment of this new structure of the Financial Reporting Council and the AASB is that there was a concern among both some producers and users of financial statements that the old Accounting Standard Board was unduly dominated by the accounting profession and by the big five audit firms. I think there is a potential conflict of interest, because obviously the auditing firms do have an interest in satisfying their clients and I think that can sometimes be in conflict with the interests of in particular users of financial statements. So I think it should be quite an arm's length independent process.

PROF SLOAN: I suppose the most radical suggestion of your draft submission is the idea that you might base the ASIC fee on the kind of potential costs of regulating the firm, rather than the kind of basically flat fee they have at the moment.

MR ROFE: No, I'm not suggesting on the basis of an individual firm, which I think was raised as a possibility in appendix F1. No, I would say it by sectors of industry. I wouldn't suggest one charges a higher annual return fee to HIH Insurance or OneTel for example. I mean the thing is that you really can't predict in advance completely where the problems are and I think it would be unreasonable to impose a burden on the regulator in charging fees to assess the risk perceived in individual companies.

PROF SLOAN: I take your point particularly about those incorporated bodies that are limited by guarantee and which are really kind of sporting bodies and the like.

MR ROFE: I wouldn't have a separate category for them. I would suggest if the fee for a let's say non-disclosing entity were $200 or even better still, $100, then you don't really need to give them a concession, because if you are going to have the benefit of incorporation, I think you should be able to pay $100.

PROF SLOAN: The point I was going to make, to the extent that even if you were to build a segmented fee based on sort of some view about the differences and costs of regulating different sectors or different types of firms, you might find that in fact it's some of the smaller firms that would end up having to pay a higher fee, because some of the smaller firms may well pose higher risks - - -

MR ROFE: No, I'm only basing it on very broad categories. For example I would suggest that proprietary companies or perhaps even public companies that were not disclosing entities would pay the minimum fee, whereas disclosing entities which are typically, although not universally listed public companies, should pay a higher fee, because of the increased amount of regulation and supervision required there.

MRS OWENS: That increased amount of regulation is an indicator of the degree of risk that is potentially involved?

MR ROFE: I think it's partly, yes, the result of risk, but I think also it's just a question of the amount of effort involved. I mean with a million proprietary

companies on the register, only a small percentage of them really need active regulation. On the other hand, with disclosing entities which are dealing with often a large number of shareholders, a large number of customers and creditors and what have you, I think there is obviously a greater complexity, a greater volume, quite apart from the question of risk in a sort of narrow statistical term.

PROF SLOAN: It's really where the predominance of passive investors are. Isn't that the point?

MRS OWENS: In fact the risk might be, I mean as long as the risk in a sense is internalised by family members or something, I'm not sure - - -

MR ROFE: Yes.

MRS OWENS: You don't really care, but it's when you have passive investors who can get hoodwinked and face information problems, that's when there is a strong case for public regulations.

MR ROFE: I think that is really the philosophy underlying the definition of a disclosing entity, that it's an entity in which there is a significant number of passive investors who don't have a direct control or ability to monitor the activities of the organisation.

PROF SLOAN: That issue of the payment to states, that's an interesting one, isn't it, because on the face of it it's very hard to disagree with what you are saying. I thought there was a view that it was going to be phased out.

MR ROFE: There is no indication in the corporations agreement, no sunset clause and it's indexed. So every year it is going up.

PROF SLOAN: Because in a sense it's even worse than you might think, because when this was administered by the states, because they did actually bear costs, but now the regulation - - -

MR ROFE: That's right, but I mean I think the calculation of the compensation was based on the profit that they had effectively been making. Indeed, that was one of the criticisms of the state system and the reason for it being replaced by a federal system, because certainly some of the states weren't very effective policemen so far as - - -

DR STEWARDSON: That really is an interesting one, because what your criticism really is about is the fact that the states used to use it to make - - -

MR ROFE: That's right.

DR STEWARDSON: - - - a profit, rather than to charge a cost. Given that situation existed in the past, if this arrangement is what it cost the Commonwealth to buy the states out and get a more effective uniform one regulatory system, you could

almost argue that assuming they negotiated efficiently, that it is part of the cost.

PROF SLOAN: Well, once off maybe I could see, but to pay forever and a day is a bit - - -

MR ROFE: That's right. If you are going to pay $102 million in 1991 dollars, indexed in perpetuity, that's a very big price to pay for having a national regulatory scheme.

MRS OWENS: But I suppose if we are thinking about beneficiary pays as a principle, I mean to the extent that the industry may benefit from having a uniform national scheme, you could say there is some benefit perhaps. I'm just trying to think of the rationale for the ongoing - - -

MR ROFE: I think that is too high a price to pay and I hope that - I mean I believe it's a price that really shouldn't need to be paid, because I would hope that the states would recognise and I believe in a sense they have recognised through this latest referral of corporations powers to the Commonwealth, I hope that states and most clear-thinking people in Australia would realise we must just have a national corporation scheme.

MRS OWENS: So the states should have paid the Commonwealth to do this.

PROF SLOAN: That issue you raised too about the cost of information on the Net, that is one that I think we are going to have to take with a current broad view, because that is an issue - and in this case of course ASIC is not so much performing the role of regulatory agency, but as information agency.

MR ROFE: Yes, but I would - - -

PROF SLOAN: It seems a bit strange to be putting kind of hurdles there.

MR ROFE: Yes, in a sense that is a sort of self-help form of regulation. If ASIC says to you, "Before you pay your cheque to this bloke that wants to fix your gutters, check that the company is in fact registered and it's not in liquidation." I think as I say, that is a sort of self-help regulation. If ASIC says, "Don't pay your money over to the financial adviser unless you know that is he a properly licensed financial adviser." That is self-help regulation.

PROF SLOAN: It's the issue of who should be paying for that.

MR ROFE: I would say that the - - -

PROF SLOAN: They are really doing that as part of their important public function.

MR ROFE: I would say that the industry participants and their customers are already paying by the licence fee they paid. That certainly pays for the costs of

maintaining the register, putting the data on the register and what I would suggest is the marginal cost of making that available over the Internet is fairly small and one could justify covering that by the normal licensing fee, the extra marginal cost because of the public benefit element involved in it.

MRS OWENS: I suppose with the licence fee it really depends to the extent to which that licence fee is reflecting the costs more generally and it is very hard to pull all that apart and see, but to the extent that that licence fee - you are assuming that it does include that collection of data and so on.

MR ROFE: Well, we know at the present time that ASIC is breaking even. We know that the money it's receiving is sufficient to cover its costs. What we don't know though is whether there is cross-subsidisation from one licensed identify or one group of licensed entities to another and I believe there is a very strong case for saying that small business through the annual return fees paid by proprietary companies is in fact subsidising the big end of town.

MRS OWENS: That's very interesting. This is the first discussion I think we have had with this round of hearings on ASIC or APRA, so I think it has been very useful and you have raised some issues from another perspective. So hopefully we will be able to - - -

MR ROFE: Thank you.

MRS OWENS: - - - absorb into our final report - - -

MR ROFE: I'm delighted that there is somebody somewhere that is considering these issues, because as I have said, it's been a concern of ours for some years and we have felt there has been really no forum where one could raise these issues.

MRS OWENS: Thank you very much.

MR ROFE: Thank you.

MRS OWENS: We will now have a short break and I think our next participant is here, but we might just have a break for five minutes.

MRS OWENS: Thank you. The next participant this afternoon is the Australian Geoscience Council. Would you like to give your name and your position with the council for the transcript.

MR SMITH: Thank you. My name is Mike Smith and I'm the chairman of the Australian Geoscience Council which is a group of nine professional and learned societies, geoscientific societies, throughout Australia, and I'm actually the past president of one of the professional societies and one of the learned societies. I'm also a board member of the Federation of Australian Scientific and Technological Societies, which meets in Canberra. A bunch of scientific people sort of get together.

MRS OWENS: Good, thank you and thank you for coming and thank you very much for the submission. I think this may be the first submission that you've put to us, based on the draft report.

MR SMITH: I believe, so yes.

MRS OWENS: So we are very pleased to get a new participant at this stage in the process and I see from what you've said in your submission that you support some of the recommendations that we have made in relation to defining the boundaries between core and non-core activities and that the core activities should be budget funded and our recommendations exploit seven or non-core activities being charged at marginal cost. But anyway, apart from that you would like to make some opening comments which maybe will stray into some of that territory.

MR SMITH: Yes. The council is very focused in its contribution. We really want to address cost recovery by government agencies. I'm a geologist and most of our members are geologists, geophysicists and geochemists who are involved in the mineral and petroleum industry in Australia. That individual has been the foundation of our export income in Australia for many, many years and with the decline of the Australian dollar it is very important that that industry is sustained because we can solve a major part of the balance of payments problem that Australia will develop through imports at high cost we export and most of our products are sold in US dollars to the US or North America to Europe. So our contribution is very, very significant and we often feel a little bit under-appreciated.

We used to be highly regarded by the investment community and so many of the major companies were blue-chip shares. But I don't think anybody is a blue-chip share. Maybe BHP still is, but the investment community wants faster returns and the mining industry is a long-term industry. It's 30, 40-year, most of the projects. We suffered a great deal in the last 10 years through decline in commodity prices as a major factor, but a number of other factors - access to land. We have, as a council, submitted to the three major parties a nine-point kind of request for items to be addressed by all the parties prior to the election. We were planning to meet with those representatives in July.

Two of the issues are relevant to the cost recovery discussion. We're very strongly supportive of the Australian Geological Survey Organisation. We believe

that a national geoscience body is critical to the future of Australia and deserves strong support by government. It means funding, it means putting the right people in there and sustaining them. We also strongly support CSIRO and some of the other national bodies. But as geoscientists we particularly go to bat for AGSO. So we're very keen that AGSO remains funded. Partly the reason for the map is that government has seen the states having responsibility for the land and the states actually do a very good job in many respects. But states are selfish: they're focused on their own territory, and my map will show boundaries, coloured areas, which are geological provinces which unfortunately don't know about state boundaries.

So resources such as water, probably the most critical resource of the future for Australia, petroleum, many other commodities, transect these boundaries and there needs to be national coordination of the understanding of them, of the collection of data, instead of pushing the federally funded activities out to the oceans. That's what has happened in recent years. So we want AGSO brought back to the national role and in its function of course AGSO produces many, many products. It has a large team of geoscientists. It also receives data from the states. The states themselves collect geoscientific data and my aim here is to contrast the role of the states and that of AGSO. AGSO has a charging policy for most of its products which is a deterrent to investment.

This is stated very clearly in the AGSO submission to this hearing where they talk, as an example, on the fire sale that they had where they had a huge number of products sold at greatly discounted rates, clearly indicating that the people are interested in their products but don't have the funds to buy as much as they would like to. I have a printout of a large number of AGSO products and it's probably not appropriate to go through them all. But as an example, a set of preliminary gravity and magnetic maps from the Shell Timor project, a very prospective petroleum area, is $5028. Gravity, magnetic and bathometric maps grids, digital data, from a large number of separate areas, they're each $5395. Many other products sell for $4000. They go down to hundreds of dollars, $600, $700.

But for new entries into Australia, particularly in encouraging foreign investment in our resource area, it is very beneficial to make these products available to them at minimal cost, at almost no cost. The other value in having low cost for national geoscience product is that the Australian industry has changed tremendously. We used to have a range of company strengths from the typical BHP, Western Mining type companies down to the entrepreneurial companies. Over the past five years there has been a tradition of a merger of companies, most recently Billiton and BHP. So we have an Australian company, our company, the big ocker, joining with a South African company based in London and we're all very concerned that BHP is, despise all the assurances, likely to move to London and that has a detrimental effect on ensuing research. BHP is always a great supporter of research in universities and in combined programs and CRCs. As a more international company that will reduce and so on.

PROF SLOAN: Can I just clear something up about AGSO. The data and services they provide, is that all data they have generated themselves?

MR SMITH: In general, yes. They've contracted out so it's public money that has been used and in many projects take quite a few years to generate, yes.

PROF SLOAN: But you mentioned state data.

MR SMITH: Okay. I'm going to contrast - the states also collect data.

PROF SLOAN: No, you said the state provide data to AGSO.

MR SMITH: They do, usually in cooperative projects. The Broken Hill Exploration Initiative was a joint venture between South Australia, New South Wales and Victoria together with AGSO and that was an excellent acquisition of data involving states and federal government. But the states also go out and collect data in their own territory.

PROF SLOAN: Is it not true though - because I'm on the board of Santos and I was led to believe that when we are given, say, an exploration permit one of the conditions of that is that the data that we generate from that is actually kind of public - - -

MR SMITH: Is reported.

PROF SLOAN: Yes.

MR SMITH: Upon relinquishment of tenements all privately collected data in the state areas is delivered to the State Geological Survey and becomes a state asset, and becomes available as well.

PROF SLOAN: I thought there might be a bit of double-dipping going - I mean, I'm not opposed to - I think if you've given a permit to explore you should then make the - - -

MR SMITH: The data available.

PROF SLOAN: The data available. I've got no problem with that.

MR SMITH: Yes. The data is delivered to the states and the states administer the freedom of that data, so it is freely available. The role of the national government is often to collate these things. The company work programs are very, very localised, very focused, and the role of the government often is to bring all that data together to merge and synthesise it and to compile interpretations. So that would be a role of AGSO, of the federal government, in other words, inputting scientific time, producing a collated product. In contrast to the costing charged by AGSO - I've chosen Victoria since I've noticed two of you at least are strongly based in Victoria.

This is from the Web site of the Victorian DNRE and I don't know whether you can see it but it's a map of Victoria with a bunch of blocks broken up. In each of

those blocks there is a geoscientific data set available as a GIS package. An example of that package is this CD here and so you can go and order these, in both cases free of charge. That entire data set is free of charge. I have a compilation of what you can do with that data here. It contains drill-hole information, geochemical information, logging information, data which individual groups will use in different ways or focus on in different manners. So the Victorian government collects data, using state funds, makes it available free. The South Australian government does the same. The Northern Territory government does the same, the WA government to a lesser extent. New South Wales charges, Queensland charges. We would like the states that charge to reduce their charges and we would like AGSO to reduce or eliminate their charges.

PROF STEWARDSON: Are those charges sort of roughly in proportion though to the mineral prospectivity of the states? It sounded a little bit like it as you went through the different charges.

MR SMITH: Well, in other words that the less prospective states are offering more incentive? It's possibly true. I think the Northern Territory has been recognised as very, very prospective. In terms of gold production it has probably had the greatest increase of any other state. Victoria of course was famous for gold development and has relatively little mineral development at the moment. So it's certainly offering a greater incentive and it has received a great deal of interest. So I think the Victorian government's submission gave some figures about the increase in investment in Victoria, which they attribute in part to the data being made available free. Probably Queensland and Western Australia have more deposits. They also have less data to offer actually. They've been less proactive in collecting data.

PROF SLOAN: There's a very active policy in South Australia.

MR SMITH: Yes.

PROF SLOAN: I mean, they ran that - - -

MR SMITH: They were the leaders, yes.

PROF SLOAN: Yes. They ran that huge, whatever it was, survey, didn't they?

MR SMITH: Yes. They've almost completely covered the states and resources like Roxby Downs are revealed by that kind of exploration activity and Roxby Downs occurs under about 330 metres of just sand and barren, completely non-indicative rock. The signatures measured by ground and airborne surveys resulted in a comparison with mineral resources known in central southern Africa, Zambia belt, and courageous drilling occurred which resulted in a very large resource being developed and subsequently expanded. So it's that kind of data set that stimulates exploration. There's probably only one last point that I'd like to make before just letting you ask questions.

The other consequence of the downturn of the minerals individual over the last

four or five years has been very substantial retrenchment of geoscientists. They all set themselves up as consultants. They do drive taxis, they do take on other work. But they're normally very computer literate and they retain computer capacity at home. They know how to handle GIS data bases. They understand the geological, geochemical and geophysical signatures of Australian resources and they're capable of discovery. With free data they would work on data at home and we would like our unemployed or under-employed, as we like to refer ton them, geoscientists to have more opportunity to create exploration opportunities and thereby create new wealth for Australia.

PROF SLOAN: I mean, that's quite an important point. It has been made to us by another information agency, wrongly I think, that the skills available to manipulate the data are not widely available and they're only held in-house. Now, what you're telling me is that there are plenty of people outside AGSO - - -

MR SMITH: I think so now, yes. I think most of the middle to major companies would have trained people in those skills and, you know, I feel quite comfortable that I could go out and manipulate certain data sets with significant expertise. Others would handle other data sets more effectively and it's interesting that there is such wide range of data that different areas would be looked at for different reasons and people would use different bits of data. The key outcome would be new incentives to go out into remote areas and encourage a slightly larger company or a major company to fund the initial testing.

PROF SLOAN: Do you know what the situation is overseas with some more organisations?

MR SMITH: I don't have any figures on them and I'm not really sure.

PROF SLOAN: That might be worth following up.

MR SMITH: Yes, it would too.

PROF SLOAN: Probably your members would know that.

MR SMITH: Some may, yes.

PROF SLOAN: I just thought I'd comment - like the statistics services in America provide much more data free than is the case here, so there clearly are some international differences.

MRS OWENS: Presumably there is a kind of global story to this too?

MR SMITH: There is a consistency, yes, that's right. But the kind of data acquisition that's a sort of a national coverage of Australia is being emulated in many other countries, particularly in Africa, for example. Often they're aid-funded programs from overseas. I was personally involved with an aid program to Fiji where I was the manager of a survey program over all of the major islands of Fiji and

most of the offshore area was funded by AusAid. The data is given to the Fijian government by the Australian government and is made available from the geological survey of Fiji at extremely nominal prices. You can obtain the entire geophysical data set over Viti Levu for about $1000. Really it's a very nominal charge. The aid program was $6 million. So that is a great help to Fiji. If it didn't have coups and sovereignty - - -

PROF SLOAN: Not a great investment. Fine but otherwise - - -

MR SMITH: It would have been a huge help. Australia has conducted aid programs in other countries in the immediate neighbourhood.

DR STEWARDSON: You mentioned BHP a number of times in your introduction. I used to work for that company albeit not as a geologist, so I understand something of what you're talking about there. We had an earlier participant this afternoon who was representing what I take to be quite a small company obtaining data from the ABS and adding value to it and then selling that data for profit and they had just had their pricing arrangement from the ABS changed to quite a substantial royalty on sales and they were making a similar sort of argument to the one that you're making. You're representing or speaking for a rather wider range of organisations from the BHP large company at one end down to your unemployed geologists who might stop driving their taxis at the other end, so you're looking at a wider range.

But I suppose there is the question of what sort of pricing is the optimal sort of pricing. Granted that the lower the cost - the basic geological data - the more incentive, particularly for the smaller firm to go out and use it and add value to it for the benefit of the country. On the other hand if it's going to be used profitably, is there perhaps not a case for a charge being made of some sort?

MR SMITH: Yes, I think if government data is being used solely to upgrade slightly and then make a profit and not really make use of the data, maybe there would be a case for some sort of return or profit-sharing by the agency that delivered the data. I guess in principle we're looking at the return to the federal government and to the state governments coming through the ultimate discovery of new resources; the development of new commodity operations, mining operations; the generation of employment in regional Australia, particularly in remote areas. That is a very important thing that we do. I think the environmental standards imposed on our industries are such that even Bob Carr confidently states that the mining industry is far less concern to him that agriculture, forestry and urban development. So we know when we go in we're going to have to reclaim it. When new suburbs are built there's never a plan to reclaim the driveways, they're just going to stay concrete forever.

DR STEWARDSON: Are there two sort of elements of degree that you're making a point about there: one is that ultimately if the geological material is used well it's going to lead to a new mine and new employment and investment and export earnings and so on. The firm adding value to the ABS material could have said the

same thing on a much lower scale. I think we had the one employee, whose job was there, with us this afternoon so a difference of scale but the same principle. But I thought you were going on to say that the difference you would make between perhaps the ABS case and the geological one was the degree of value adding that you were about to claim there was a lot more work and intellectual effort and so on that the geologist added to - - -

MR SMITH: Yes, I think that's true. I think there certainly would be. The intent is not to sell the data itself but to sell concepts derived from the data, to sell opportunities, a lot more conceptual interpretations. It would be a collation of multiple data sets using both state information, federal, national government information, the individual experience of the person in that particular area - because inevitably if you've worked in a particular province and then suddenly you're no longer with that company and you may form your own little company and you have very little money, there's no risk capital available, so you're going to work in that area. So you're contributing your own understanding of that region of the type of resource and then what acts as a boost is this data.

The data in a sense is not totally critical but it adds significantly to your knowledge base. It just may be that there's something hidden in that data, a particular signature that nobody else has even bothered to look at. So I think it is quite different if your goal is to buy this product and manipulate it with an algorithm of some sort in a computer and enhancer and then put a sale sign up on that data, that's completely different to what our people do.

PROF SLOAN: I mean, I wonder whether you even have to bother to exhort the spillover benefits of exploration anyway because in a sense that's why the government has decided to set up AGSO.

MR SMITH: Yes, that's right.

PROF SLOAN: I mean, if it were just a business, presumably they could sell it and there would be private prices charged and that would be the end of it. In a sense you're not just reiterating a point which underpins the existence of the organisation in the first place.

MR SMITH: Yes, we are, and we say that AGSO should be there and it should be funded well and we should maintain science. We want water put back into AGSO and taken from AFFA where it was inadvertently relocated later because water is a geoscientific resource; it's mostly held in reservoirs deep beneath the air and the contamination of water reservoirs is a geological issue. So AGSO ought to be there and having done its work and created the products with federal funding then we would like that scientific data to be made available at minimal cost; really the cost of CD duplication.

PROF SLOAN: When you were running through that price list from the $5000 to the (indistinct) can you understand the logic of that price structure? Does this sort of mean rules of logic and transparency and accountability?

MR SMITH: There's an inconsistency between the states collecting similar value data sets deciding to offer it at zero cost.

PROF SLOAN: But within AGSO itself it sounds as though they're a kind of different - some quite high prices and then some - - -

MR SMITH: Is there a logic?

PROF SLOAN: Is that price structure logical?

MR SMITH: Relatively, yes. Even though it's low resolution it's much less useful.

PROF SLOAN: We've come across plenty of price structures that aren't logical.

MR SMITH: But I think there has been a goal to recover some funds.

PROF SLOAN: It's the remainder table.

MR SMITH: Yes, and I think CSIRO tend to defend cost recovery. I didn't actually get through all of their submission. I had trouble printing it but they seem to be defending it. But they have been under a lot of pressure - - -

PROF SLOAN: It's quite interesting for us too because as economists we think of public goods, and public goods are ones that are non-rivalrous and non-exclusive. On the face of it this kind of information may potentially make this test, you know, the fact that you have the information doesn't preclude in any way me having the information.

MR SMITH: No, that's right.

PROF SLOAN: So the marginal costs of me having the information once you've got the information is nothing.

MR SMITH: Nothing, no; think of Killing Heidi CDs. I was sent a CD by the Victorian government and it's just an information thing and that's how they communicate these days. So the Internet and CDs are big factors in favouring cost recovery. I think delivery of data can be done very much cheaper than it used to be. Cost recovery was traditionally a consequence of the cost of rolling a map off a printer.

DR STEWARDSON: Does AGSO in fact do anything that you wouldn't really include in its core activities with perhaps the exception, as you've said, of the cost of printing off a CD?

MR SMITH: I have a bit of trouble with the boundary between core and non-core.

DR STEWARDSON: That's why I'm asking you.

MR SMITH: When I think about AGSO I think everything they do is core. I think their natural hazard activity is really important. I mean, we don't have all that many hazards but Newcastle showed we can have earthquakes which cause huge insurance claims, so there's a big commercial interest in understanding earthquakes - the type of buildings. But we also provide aid to our neighbours. Our neighbours are tremendously susceptible to natural hazards from tsunamis to volcanoes to earthquakes. We are experts in the natural hazard characteristics of our neighbourhood and so we can help PNG and the Solomons. It's really a very good sort of aid to be giving to our neighbours. AGSO has got to do that stuff. It's just great, it's core stuff and anything that relates to the natural hazard geoscientific research should be readily available and not charged for. A collection of data in relation to offshore regions where there's petroleum potential, I think that's a core activity; collecting of maps of physical parameters - magnetism, gravity - that's core activity, that's very valuable. It's not easy to use and requires an understanding of the principles.

What else do they do? They do educational things for schools, they produce materials for primary and secondary school classes, of that order. That's what a national geoscience body ought to do. They ought to have that capacity. Monuments - properly labelling the geoscientific characteristics of monuments, big rocks, cliffs, things like that, that's part of the tourism industry. It helps people understand what makes an area so attractive to come and visit. I find it a bit hard to think of anything that AGSO does that's not core actually.

MRS OWENS: I suppose some might say - and I'm just acting as a devil's advocate - one of the things they do is provide data and provide information to mining companies and some of those mining companies potentially could be very large multinational companies. There may be people out there that say, "Well, should that really be a core activity of a government agency to supply information to large companies who may be located offshore."

MR SMITH: Yes, I think it rates to the use of the data, those companies coming here are going to contribute income to the regions in which they go and do work. So there is a benefit to the community if they're successful and they're going to pay taxes, or they should pay taxes anyway.

MRS OWENS: There's a potential benefit to the companies as well.

MR SMITH: Certainly, that's why they're coming here, I mean, whether they pay for the data or not, whether they might come here and just use other data or collect their own. So the rules of mine development are the issue, not so much the data. If you want to close the doors and say "no foreign companies", that's possible but in general it's not a good thing.

MRS OWENS: I'm not suggesting that, I'm just playing the devil's advocate.

MR SMITH: Yes, I think it would be a short-sighted perception.

PROF SLOAN: But AGSO is in effect saving those companies from having to collect some of that information themselves.

MR SMITH: Yes. The data AGSO collects is not precise enough. It tends to collect regional data, it will fly surveys at wide spacing at 400 metres or 200 metres. I'm involved in a lot of surveys for private companies, typically at 50 or 100 metres. What happens is that the regional AGSO data stimulates foreign investment to collect high resolution data which becomes the property of the state government and when they walk away often the big foreign companies have these criteria of very large resources and if they don't find it they go away. The benefits of the investment become the property of the state and federal government. So I think we gain assets from those people coming. It is not all that often that they actually become participants. Every now and again the federal government steps in and says, "You can't take over our oil resource in the north-west," but in general we have a fairly free regime for foreign investment but they pay taxes and their employees pay taxes and they pay royalties to the states.

PROF SLOAN: Actually, as I understand it, in hard rock mining, a very typical model - bear with petroleum which is different because it is so expensive to drill but it has typically been small explorers that have found some of these very big iron ore bodies and then at that point it is sold to the big companies, that the industry has typically worked and so you have to kind of worry about the barriers to entry at the small level.

MR SMITH: I think that is much more important, yes.

PROF SLOAN: Even though it might be the big companies who ultimately develop the ore bodies or, almost by definition, it is the big companies.

DR STEWARDSON: The big companies are now primarily gaining resources, adding to their inventory by acquisition. They have almost abandoned exploration so they are relying on numerous entrepreneurial companies.

PROF SLOAN: It is, yes.

MRS OWENS: I am feeling reluctant to keep going with this because I can see you absolutely suffering - - -

MR SMITH: It's just a tickle there that - - -

MRS OWENS: It is awful if you are trying to talk through it. Have we covered everything?

PROF SLOAN: No, it's very clear anyway.

MRS OWENS: It is a very clear submission.

PROF SLOAN: I kind of agree with you, you know, it doesn't look on the face of it that there is too much non-core activity by AGSO.

MR SMITH: No, I would have to think about it. I mean, my first job was with AGSO, only for two years. It's a great place to start but everything I did I thought was core and my association with it - I have gone to bat in, you know, the Richards review of AGSO and others. There is some ancillary stuff that they do but I can't think of what it is.

MRS OWENS: Thanks very much for that, Mr Smith. We will now finalise today's proceedings and we will be resuming tomorrow morning in this room at 9.30 am.

MR SMITH: Can I just apologise and add one thing: I was reminded by a colleague that in saying we should minimise or eliminate cost recovery, we need to make sure that the budgets of those organisations don't suffer, that they are adjusted so that, you know, the loss of cost recovery doesn't actually impede the function of the body.

MRS OWENS: Yes, thank you. It is an important point there.

AT 4.52 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 8 JUNE 2001

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