

SUBMISSION

Submission to the

Productivity Commission Inquiry into Cost Recovery

made in response to the Draft Report

June 2001

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EXECUTIVE SUMMARY

The Australian Food and Grocery Council (AFGC) makes this second submission to the *Productivity Commission's Inquiry into Cost Recovery* in response to the Productivity Commission's Draft Report.

The fundamental basis for imposing cost recovery must be that it contributes to the efficient, effective and equitable resource allocation of both public institutions and the private sector.

The application of cost recovery for public administrative or regulatory activities should be tempered by the necessity to protect public confidence in the operations of Government departments and agencies.

The AFGC concurs with the major findings of the Draft Report that there is no clear, current Government policy on cost recovery, and there is a lack of transparency and accountability in current cost recovery arrangements.

The AFGC agrees that *"Imposing cost recovery on top of inappropriate or inefficient government or services will only compound their distortionary impact"*

The imperative is unequivocal for a structured, deliberate approach to cost recovery within well defined policy principles, according to a clear decision-making framework, and justified against fundamental agreed criteria.

The AFGC considers that this can be provided for through proposals outlined in the Draft Report, *viz.*:

- confirming the economic case for cost recovery, differentiating regulatory and information agencies, establishing the beneficiaries of government agency activities and determining the appropriateness of cost recovery for particular activities;
- developing detailed guidelines to determine when cost recovery should be applied and its form; and
- justification against clearly established criteria in the form of a Cost Recovery Impact Statement.

Not to establish a robust, systematic policy and implementation approach to cost recovery risks the imposition of unwarranted costs, particularly on Australian industries. This may undermine their competitiveness in domestic and overseas markets. Attempting to impose similar cost recovery provisions on manufacturers of imported goods risks running foul of Australia's obligations under World Trade Organization Agreements. These, and other issues identified by the Draft Report, require the development of a comprehensive framework incorporating numerous safeguards.

Cost recovery may, therefore, of itself require substantial bureaucratic processes, the resourcing of which may ultimately undermine the objective of more efficient, effective and equitable allocation of resources.

RECOMMENDATIONS

Policy Review

The Australian Food and Grocery Council strongly recommends that proposals requiring a Cost Recovery Impact Statement demonstrating the net benefit to the community to be prepared by regulatory agency prior to the imposition of cost recovery be carried forwarded to the Final Report of the Productivity Commission's *Inquiry into Cost Recovery*.

The AFGC recommends that the *Productivity Commission's Inquiry into Cost Recovery* notes that the benefits of some regulations are diffuse across the community and in these cases the funding of regulatory agencies is likely to be more efficient if provided directly from general taxation revenue rather than through levies, which would ultimately be passed onto the consumer.

The AFGC recommends that the Productivity Commission's *Inquiry into Cost Recovery* considers in greater depth the possible ramifications of imposing cost recovery options, and particularly broad across-industry levies, on international trade and on Australia's rights and obligations as a signatory to World Trade Organization Agreements.

The AFGC recommends, consistent with the Draft Report, that:

- cost recovery for regulatory agencies not be imposed in the form of broad industry levies; but rather
- the various activities of each of the regulatory agencies be reviewed to examine whether cost recovery should be introduced.

The AFGC recommends that the *Productivity Commission's Inquiry into Cost Recovery* clearly differentiates between *exclusive, capturable, commercial benefit* bestowed by pre-market product or process safety assessments and approvals from the granting of intellectual property rights or licences.

The Australian Food and Grocery Council recommends that post-market cost recovery arrangements be restricted to activities where the beneficiaries are clearly identifiable, consistent with arrangements for pre-marketing regulatory arrangements.

Implementation

The AFGC recommends that, in the interest of equity, charges imposed under cost recovery arrangements reflect as accurately as possible the real resource requirements of the regulatory agency in undertaking the particular regulatory activity, rather than being estimated based on proxy measures.

Periodic Review

The AFGC recommends Regulatory Impact Statements and the proposed Cost Recovery Impact Statements be used as a framework for the periodic review of cost recovery policies and implementation by regulatory agencies.

THE AUSTRALIAN FOOD AND GROCERY COUNCIL

The Australian Food and Grocery Council (AFGC), the peak body representing Australia's processed food, beverages and other grocery products manufacturers, welcomes the opportunity to make this second submission to the *Productivity Commission's Inquiry into Cost Recovery* in response to the Productivity Commission's Draft Report.

The AFGC has adopted a set of principles, which determine the broad framework under which the Council determines and implements policies conducive to a socio-economic environment necessary for strong and sustained investment, competition, growth and profitability.

The membership of the AFGC comprises more than 185 companies, subsidiaries and associates which constitutes in the order of 80% of the gross dollar value of the highly processed food, beverages, and groceries sectors. A list of AFGC members as at the date of this submission is attached.

The Council is thoroughly committed to ensuring that public and industry policy provides conditions, through minimum effective regulation, for Australia's food and grocery manufacturers to grow and prosper whilst providing affordable, high quality, safe, appropriately labelled and promoted food products, to Australian consumers, and many more overseas.

THIS SUBMISSION

This submission is the second presented by the AFGC to the *Productivity Commission's Inquiry into Cost Recovery*.

The AFGC requests that the policy positions presented in the previous submission are respected.

This submission presents views that are consistent with those positions and builds upon them in three sections, *viz.*:

- support for a credible policy framework for cost recovery — consistent with the imperative identified in the Draft Report and the AFGC fundamental policy position with regard to cost recovery;
- comment on the Guidelines to cost recovery proposed in the Draft Report; and
- specific comments in response to the Productivity Commission's requests for further information and other issues identified by the AFGC as particularly relevant to the fast moving consumer goods industries – processed foods and non-food groceries

A CREDIBLE COST RECOVERY POLICY AND IMPLEMENTATION FRAMEWORK IS REQUIRED

The fundamental basis for imposing cost recovery must be that it contributes to the efficient, effective and equitable resource allocation of both public institutions and the private sector.

Consistent with this underlying policy principle the AFGC considers cost recovery should:

- not transfer from government to industry the contingent liability for resourcing regulatory functions or activities in the public interest;
- be imposed only where there is an *exclusive, capturable, commercial benefit* bestowed by regulatory function or government service, to avoid externality effects creating a disincentive to business and a distortion to resource allocation;
- be imposed judiciously to address issues of significant concern where community confidence in the effectiveness of control measures is dependent on them being firmly under the auspices of government;
- be discounted when governments can clearly differentiate between community service obligations, public good outcomes and *exclusive, capturable, commercial benefit* recognising the benefit flows to the wider community;
- applied with charges determined on either on a fully distributed cost, marginal cost or incremental/avoidable costs depending upon the type of good or service provided and the anti-competitive effects on other commercial providers of equivalent services — for example, R&D institutions, analytical services, etc.;
- where appropriate, provide for additional resources within regulatory or other agencies over and above those required to perform core community service obligations, and not be allowed to divert resources from this obligation;
- arrangements should be fully accountable to the Parliament and fully transparent to the public and, more particularly, users of their services;
- be structured and implemented such that unfettered access to services by all interested parties is provided equitably;
- provide for protection of commercially sensitive information and/or other intellectual property to avoid disincentives to business and distortions to resource allocation; and
- be efficient — the bureaucratic cost of administering charging should not be large in relation to the cost recovered.

The AFGC also considers that any application of cost recovery for public administrative or regulatory activities should be tempered by the necessity to protect the public confidence in the operations of those Government departments and agencies. Particularly, with regard to regulatory agencies, it is important to protect their independence, credibility and integrity.

Current Arrangements are Inadequate

The AFGC concurs with the major findings of the Draft Report that:

- there is no clear, current Government policy on cost recovery; and
- there is a lack of transparency and accountability in current cost recovery arrangements.

With cost recovery being extended throughout Government agencies there is a critical imperative to ensure the cost recovery measures provide a net benefit to the community. The basis for

ensuring net benefit resides [at least in part] in examining the economics of cost recovery as discussed in the Draft Report.ⁱ

Market failure as a basis for government intervention is particularly relevant to the food industry. Food regulation, particularly providing for safe food, fits best under the definition of a “public good” although it differs substantially from other examples in that it is related to commercial transactions between food companies and consumers. **Requiring through regulation that food companies provide for safe food cannot be construed as constraining a negative externality or spillover.**

The comments made in the Draft Report are significant to the food industry, which is already highly regulated by a large number of jurisdictions (see later). The AFGC concurs strongly with the observation that:

“Imposing cost recovery on top of inappropriate or inefficient government or services will only compound their distortionary impact.”ⁱⁱ

Guidelines to Cost Recovery are an Imperative

The AFGC welcomes proposed Guidelines to cost recovery in the Draft Report. The experience of the AFGC in negotiating appropriate provisions of the *Australia New Zealand Food Authority (ANZFA) Amendment Bill 1999*, subsequently resulting in amendments to the ANZFA Act providing ANZFA with a renewed basis for imposing charges, highlighted the need for a rigorous and systematic approach to cost recovery for regulatory agencies.

In retrospect, the outcome was satisfactory — the basis of ANZFA imposing charges is highly constrained and entirely consistent with the principles identified and advocated in the Draft Report.

The Commission proposes in the Draft Report that, *inter alia*, before cost recovery is imposed it should be considered:

“whether or not the benefits of the activity are captured directly by the individual or firm charged (or by the firm’s customers).”ⁱⁱⁱ

This goes to the heart of the issue of prime concern to the AFGC — namely, whether the imposition of regulations bestowed a particular benefit, to whom it was bestowed and whether that benefit was exclusive. From these considerations the concept of “*exclusive, capturable, commercial benefit*” as a key criterion for cost recovery for the setting of food regulation was proposed, and ultimately accepted into legislation.

Notwithstanding the AFGC’s commitment this principle, and much effort spent in having it included in the legislative framework for the operation of ANZFA through inclusion in the ANZFA Act 1991, a clear systematic approach for determining whether the *exclusive capturable commercial benefit* criterion is satisfied has not been developed.

The Guidelines for cost recovery proposed in the Draft report provide that systematic approach.

ⁱ Box 2.1, p.13.

ⁱⁱ Draft Report, p.31.

ⁱⁱⁱ Draft Report, p.197.

THE GUIDELINES FOR COST RECOVERY

The Commission has requested information on the usefulness of the guidelines contained in the Draft Report as a framework for deciding whether cost recovery should be introduced and for identifying the best approach for recovering costs.

The framework proposed for the Guidelines comprises four parts — initial policy review, implementation, ongoing monitoring and periodic review. The AFGC makes comment on each of these topics below.

1. Policy Review

A robust and justified policy framework must accompany the imposition of cost recovery by Government agencies. The Draft Report succinctly describes issues of particular relevance to the food industry which should be addressed before the imposition of charges for regulation setting.

Under the ANZFA Act 1991 (and confirmed by subsequent amendment) the primary objectives of ANZFA setting food standards are to:

- protect public health and safety;
- prevent fraud and deception; and
- ensure the provision of adequate information for informed choice.

These objectives are strongly supported by the AFGC.

In some cases, however, the Food Standards Code has regulated the industry in a manner that may occasionally over-zealously (and therefore inappropriately) pursue the objectives; at other times may only marginally reflect the objectives of the ANZFA Act; or, worse, may deviate from them significantly.

Particularly, the Draft Report states:

“...if standards set for a particular product are too onerous, and therefore higher than necessary to provide acceptable levels of consumer safety, firm’s compliance costs would also be higher than necessary. Introducing cost recovery would add to those costs and exacerbate the problem.”

and

“...if the level of regulation does not properly reflect the riskiness of the product, then cost recovery can exacerbate problems where low risk products, that also have a low return to the supplier, would be disadvantaged by high costs of regulation.”ⁱⁱ

Food companies operate in a highly competitive global market with very slim margins, relying on volume turnover to be profitable. Food regulations demand products are safe prior to being brought to the market and the Trade Practices Act demands that they are not misrepresented.

Notwithstanding this, a fundamental shift in regulatory approaches in Australia threatens costly case-by-case approvals for novel products, novel processes and novel claims — particularly health claims.

ⁱ Draft Report, p.202.

ⁱⁱ Draft Report, p.202.

Already Australia has witnessed products and processes which have regulatory approval overseas and some which have already been marketed in Australia — with no adverse affects — being forced through regulatory approval systems. In at least one case ANZFA sought to recover costs, although the justification based on the “*exclusive, capturable, commercial benefit*” criterion was dubious.

To impose cost recovery on an already costly regulatory system imposing substantial regulatory burden on the food industry is inconsistent with the policy of successive Australian Governments for **minimum effective regulation**, and undermine the competitiveness of the food industry.

The Draft Report states:

“The objective of this review should be to ensure that cost recovery charges are based on efficient levels of regulation”

A corollary to this critical point is that **cost recovery becomes particularly noxious when standards and regulations [setting] are not efficient**. Indeed, this was the very point made by the AFGC to Government as long ago as 1996 when cost recovery for ANZFA operations was mooted. The Government accepted the point and commissioned the Review of Food Regulation, which reported in 1998.ⁱⁱ

The AFGC agrees strongly also with the statement in the Draft Report:

“Similarly, it should avoid imposing standards that have only minor gains in reducing risk but result in high cost recovery.”ⁱⁱⁱ

Standards and standard setting processes of regulatory agencies, and particularly those for food such as ANZFA, should focus on real risk reduction rather than unnecessarily reviewing, with a view to approving, products and processes, which are highly unlikely to represent a significant threat to public health and safety.

While the AFGC supports the concept of Australia possessing a well resourced, credible and independent food regulatory agency, it would not support that agency unnecessarily second-guessing the findings (and approvals) of reputable regulatory agencies overseas, or creating unnecessarily high criteria for product or claim approvals under the guise of providing greater consumer confidence in the safety of products marketed in Australia, or simply to protect the agency from criticism.

An agency extending its regulatory role in a manner that provides insignificant or minor gains in risk reduction increases its own resource requirements which, if not met by an increased Budget allocation, puts pressure upon the agency to seek or extend cost recovery provisions.

The AFGC has already witnessed this in food regulations — ANZFA has raised concerns that relaxing the current prohibition on health claims would require an expensive approval process for health claims which might require cost recovery measures.

These issues should be addressed and resolved by the preparation of an adequate **Regulatory Impact Statement** (RIS). The AFGC welcomes the proposals of the Draft Report for an adjunct **Cost Recovery Impact Statement** (CRIS).

ⁱ Draft Report, p.202.

ⁱⁱ *Food: A Growth Industry*. Report of the Review of Food Regulation. Dr Bill Blair, 1998.

ⁱⁱⁱ Draft Report, p.202.

Both the RIS and CRIS provide a formal, systematic approach for examining the impact of regulation, and cost recovery, with the objective of ensuring that there will be net benefit to the community when both are imposed.

Recommendation.

The Australian Food and Grocery Council strongly recommends that proposals requiring a Cost Recovery Impact Statement demonstrating the net benefit to the community to be prepared by regulatory agency prior to the imposition of cost recovery be carried forwarded to the Final Report of the Productivity Commission's *Inquiry into Cost Recovery*.

Determining who should pay

The Draft Report addresses the issue of “who should pay” for regulatory activities by differentiating, at least for initial assessment, between a “beneficiary pays” approach and a “regulated pays” approach based on containing negative spillovers.

In the case of the food industry, the ANZFA Act clearly defines, through its objectives, that the community benefits from regulation. And it does so through direct intervention to correct market failures — but not through containing negative spillovers. Protecting public health and safety, for example, cannot be construed as a containing a negative spillover — it is directly addressing an imperative that all food marketed should be safe.

In this regard food regulations fall under the policy objective detailed in the Draft Report (Table 9.1):

“Enforce safety and quality standards to protect consumers”

The AFGC would comment, however, that “quality standards” are best left for the market with more reliance placed on the provisions of the Trade Practices Act to ensure products meet consumer expectations, rather than this being a function for food regulation (or, in the case of other industry, other specific product related standards).

Consumers are clearly the beneficiaries of food regulation under this framework. Moreover, all consumers are beneficiaries — consumers cannot [practically] “opt out” of consuming safe, regulated food in Australia.

This is an important point that is not reflected in the Draft Report. When the beneficiaries are “diffuse” across the whole community through the regular use of products being regulated, collection of fees or levies to recover costs is probably inefficient and therefore inappropriate. Such levies would be passed on to the consumer in any event. Thus, direct funding of the regulatory agency from general taxation revenue is likely to be more practical and efficient.

Recommendation

The AFGC recommends that the *Productivity Commission's Inquiry into Cost Recovery* notes that the benefits of some regulations are diffuse across the community and in these cases the funding of regulatory agencies is likely to be more efficient if provided directly from general taxation revenue rather than through levies, which would ultimately be passed onto the consumer.

With the benefits from regulatory activities diffuse across the community, as is the case with ANZFA's functions in setting food standards, levies imposed directly on the food industry are inappropriate. Furthermore, imposition of such levies may result in significant inequities, *viz.*:

- in the event of a substantial concern arising regarding the safety of food, and therefore effectiveness of food standards, due to the shortcomings of a single or small number of food companies, there may be political pressure to raise the prescriptiveness, coverage and depth of food standards. Concomitant increases in levies would penalise the majority of food companies for the poor performance of a few;
- levies may only be introduced practically for companies manufacturing in Australia. This would immediately undermine the competitiveness of food companies manufacturing in Australia. Attempting to impose the levies at importer level and attempting to strike the cost recovery levy at a level consistent with that on food manufacturers would be extremely problematic — and costly; and
- imposing levies on imported products to address the inequality of levying only domestically manufactured products may be viewed as a tariff barrier, or an unjustified technical barrier to trade (depending on how it was imposed). This may result in Australian products attracting similar [reciprocating] tariffs when exported to overseas markets, to their competitive disadvantage. Australia may be challenged as a signatory to World Trade Organization Agreements (as acknowledged by the Draft Report, p.57).

Recommendation

The AFGC recommends that the *Productivity Commission's Inquiry into Cost Recovery* considers in greater depth the possible ramifications of imposing cost recovery options, and particularly broad across-industry levies, on international trade and on Australia's rights and obligations as a signatory to World Trade Organization Agreements.

In making this recommendation, the AFGC notes that the Draft Report states:

*"Mutual recognition can also reduce firms' costs by removing the need for multiple approvals to sell in more than one market."*ⁱ

This may also alleviate the need for cost recovery options being imposed on imported products and the risk of retaliation against Australian products.

The importance, however, of reducing trade restrictions and ensuring Australia's regulatory arrangements do not add to them cannot be overstated, and this is particularly important to Australia's food processing industry.

ⁱ Draft Report, p.59.

The corollary to the substantial concerns [raised above] which would accompany the imposition of “across the board” levies is that a more targeted approach is required. The Draft Report concurs, stating:

“the [policy] review [of agencies] needs to look at each of the activities undertaken and, in each case, assess whether cost recovery should be introduced ”ⁱ

Recommendation

The AFGC recommends, consistent with the Draft Report, that:

- **cost recovery for regulatory agencies not be imposed in the form of broad industry levies; but rather**
- **the various activities of each of the regulatory agencies be reviewed to examine whether cost recovery should be introduced.**

The AFGC supports the framework for the classification of activities outlined in the Draft Report Figure 9.2, p.209.

Pre-market regulatory activities

As stated earlier in this submission the AFGC has been a strong proponent for the concept of *exclusive, capturable, commercial, benefit*. The Draft Report reflects the path for determining *exclusive, capturable, commercial, benefit* accurately in Figure 9.3, p211.

Notwithstanding this, the text fails to capture the essence of *exclusive, capturable, commercial benefit* principle as applied to food standards setting.

Firms enjoy commercial exclusivity to a product or process through patent ownership, or holding secret intellectual property. ANZFA’s role in assessing product and processes is simply to assess whether the product is safe. In the future, regulatory changes permitting, ANZFA may also assess whether health claims made on, or about, products are accurate.

If a product is assessed as safe, or a claim associated with it is accurate, and that product is exclusive to the parties seeking amendment to the Food Standards Code, then ANZFA may impose charges for its services in carrying out assessments and amending the Food Standards Code.

It is important to recognise, however, that the term *exclusive, capturable, commercial benefit*, as developed for the basis of ANZFA’s charging, does not preclude other companies using the assessments and approvals provided by ANZFA if they overcome the exclusivity provided by the intellectual property ownership. **ANZFA does not provide a “licence” to companies for products or processes.**

Recommendation

The AFGC recommends that the *Productivity Commission’s Inquiry into Cost Recovery* clearly differentiates between *exclusive, capturable, commercial benefit* bestowed by pre-market product or process safety assessments and approvals from the granting of intellectual property rights or licences.

ⁱ Draft Report, p.208.

The AFGC is particularly concerned that where *exclusive, capturable, commercial benefit* cannot be demonstrated, attempts may be made to impose levies across the food industry. The arguments against such levies have been presented previously in this submission.

The AFGC notes that the Draft Report states:

“it is inappropriate to levy the whole industry if the benefits flow to a small group that cannot be individually charged”ⁱ

This is characteristic of the food industry. Approval to use a food additive, for example, may be sought by a food company for a range of products. Approval does not prevent other companies also using the additive. In such cases it would be difficult in the extreme to identify a part of the food industry which should be levied to cover the cost of assessing and approving the food additive.

Post market and other regulatory activities

In the area of food regulation there are three major post market activities:

- **monitoring and surveillance** — ANZFA routinely monitors food products and food labels in the market. This not to “enforce” the Food Standards Code as this is a function of the States and Territories. Rather, it is data gathering to ensure that regulations stay in step with, and relevant to, the realities of the market place. It is therefore critical to the effective operation of ANZFA as it not only ensures ANZFA is allocating its resources appropriately, but that resources are allocated to ANZFA commensurate with need and in the context of broader public health policy. **It is not appropriate that cost recovery be applied to this function;**
- **product recall** — ANZFA has responsibility for coordinating product recalls with States and Territories, which ultimately enforce the recalls. Recalls are not resource intensive for ANZFA (but may be for the industry) and given the clear public benefit it is difficult to argue a case for cost recovery; and
- **auditing and compliance with Food Safety Standards** — the new Food Safety Standards being adopted by the States and Territories require food companies to develop and operate to Food Safety Plans, and demonstrate this through periodic audit. Depending on the jurisdiction, audits will be conducted on a “fee for service” basis by State and Territory authorities and/or accredited third parties.

In the latter case the imposition of fees for service has been strongly supported by the AFGC as the systems being introduced provide for reduction in audit frequency (and so fee reduction) for companies which perform well — that is, are committed to producing safe food. It also allows the targeting of companies or food business operations that perform poorly in audit. Both have a desirable public health outcome.

Furthermore, the beneficiaries of the auditing services are clear — the company and consumers of their products. The cost of auditing can equitably be absorbed by the company, distributed between company and customer, or passed on in full by the company to the customer.

ⁱ Draft Report, p 212.

Recommendation

The Australian Food and Grocery Council recommends that post-market cost recovery arrangements be restricted to activities where the beneficiaries are clearly identifiable, consistent with arrangements for pre-marketing regulatory arrangements.

2. Implementation

The Draft Report clearly identifies the complexity in implementing cost recovery for government agencies. The challenge is to design regulatory arrangements which:

- **are equitable, efficient and effective** — cost recovery should reflect accurately the real and reasonable costs of the regulatory service provided. Cost recovery should not be significantly inflated by the resources required to “run” cost recovery arrangements;
- **provide overall benefit** to the community through improving regulatory arrangements that are consistent with Government policy and contribute to the economic activity of the country; and
- **are non-distorting of the market** providing neither advantage, nor disadvantage, to companies on the basis of business size, market sector occupied, domestic manufacture, export or import activities, or choices of business strategies with regard to innovation, or market entry or exit.

The AFGC is concerned that Draft Report states:

“Often it will be necessary to use a proxy for costs that are attributable to a particular firm in the industry.”ⁱ

The AFGC cannot support the “proxies” suggested as applicable in the case of food industry regulation and applications to amend the Food Standards Code.

It is an anathema to the food industry that cost recovery charges may be varied on the basis of riskiness of sectors of the food industry. All food should be safe and therefore of very low risk. Records show that food safety incidents can be associated with any type of food — including those considered to be low risk. Similarly, imposing higher charges on bigger companies cannot be justified on any equitable basis, if the costs incurred by the regulatory activity are the same.

It is also simplistic in the extreme to relate complexity of an application and the workload of the regulatory agency with the “size” of the application, such as number of pages.

Recommendation

The AFGC recommends that, in the interest of equity, charges imposed under cost recovery arrangements reflect as accurately as possible the real resource requirements of the regulatory agency in undertaking the particular regulatory activity, rather than being estimated based on proxy measures.

ⁱ Draft Report, p226.

3. Ongoing Monitoring

Government agencies should, as a matter of course, monitor all their functions, activities and management frameworks to ensure they are consistent with Government policy and are operating effectively.

With regard to cost recovery there is a critical need for close monitoring. As has been demonstrated by this Inquiry, while cost recovery potentially provides a means to more equitable funding arrangements of regulatory agencies, if not imposed judiciously sectors of the community may be severely disadvantaged.

Ongoing monitoring, however, adds an extra layer of complexity and resource burden on the agency, which may then add to the cost recovery requirements undermining the efficiency of arrangements.

Effective monitoring may be assisted by:

- open and transparent arrangements where the basis of cost recovery is clearly described;
- full consultative mechanisms with stakeholders, enabling charges to be explained and challenged; and
- stakeholder surveys to assess the impact of cost recovery — particularly regarding the extent to which they may be taken into account during the development of business strategies.

4. Periodic review

The AFGC supports the need for periodic review of cost recovery arrangements. In this regard, cost recovery is no different from other Government policy and regulatory activities — constant review is required to ensure relevance, effectiveness and overall benefit to the community.

The AFGC considers that the framework for monitoring is already established in the form of the Regulatory Impact Statements and the proposed Cost Recovery Impact Statements.

Both of these provide a systematic approach for justifying the need for regulation and cost recovery — and they can provide a similar framework for validating the effectiveness and the need for continuing, or amending, regulations and cost recovery.

Recommendation

The AFGC recommends Regulatory Impact Statements and the proposed Cost Recovery Impact Statements be used as a framework for the periodic review of cost recovery policies and implementation by regulatory agencies.

OTHER INFORMATION REQUESTS RELEVANT TO THE FOOD INDUSTRY

The AFGC has addressed some of the information requested by the Productivity Commission in previous sections. Responses to further requests are provided below.

Legal and Fiscal Framework — Cost Recovery Impact Statements

The AFGC provides in principle support to the concept of Cost Recovery Impact Statements as an adjunct to Regulatory Impact Statements.

The framework for developing Regulatory Impact Statements is well established and might, with some amendment, form a useful template for Cost Recovery Impact Statements.

The AFGC considers, however, that development of a robust framework will require careful and extensive deliberations, which may well be beyond the scope of the current Productivity Commission's Inquiry. Certainly, the AFGC has not had the opportunity to fully consider the proposals and would welcome more time and further opportunities to contribute to this fundamental policy issue.

EFFECTS OF COST RECOVERY ON AGENCIES

Parliamentary Scrutiny of Cost Recovery Receipts

The AFGC shares the concerns of others that cost recovery provisions may be subject to “regulatory creep”, “gold plating” and “padding.”ⁱ The AFGC would also agree that Parliamentary Scrutiny of Cost Recovery Receipts is appropriate but with the strong proviso that, in the case of regulatory agencies, and particularly statutory authorities, the independence of the agency is not compromised.

The AFGC considers that cost recovery imposed within a rigid and robust framework as proposed in the Draft Report and justified through a Cost Recovery Impact Statement, would negate many of the concerns which would support the need for close parliamentary scrutiny.

Efficiency Audit Committees

The AFGC has no direct experience with audit committees for cost recovery arrangements of Government agencies. Notwithstanding this, the AFGC sees a role for such committees. These committees would be integral to overseeing the development of appropriate Cost Recovery Impact Statements as well as the monitoring and review of cost recovery arrangements.

The AFGC considers that the role of the Efficiency Audit Committees should be considered and defined through further development of the Cost Recovery Guidelines and the framework for Cost Recovery Impact Statements.

ⁱ Box 5.1, p.90.

ECONOMIC EFFECTS — INTRODUCTION OF NEW PRODUCTS AND INNOVATIVE PRODUCTS AND ADOPTION OF NEW TECHNOLOGY

In the food industry innovation in products and processes can be stifled by regulations through:

- overburdensome safety assessments;
- inappropriate restrictions on claims made about products; and
- excessive cost recovery provisions of regulatory agencies.

Excessive cost recovery may result simply from “gold plating” and “padding” effects described in the Draft Report, or from the failure to provide mutual recognition of assessment of products approved overseas.

The food industry operates in a highly competitive global market requiring efficient regulatory oversight and imposing the minimum of regulatory burden.

Once again, both Regulatory Impact Statements and Cost Recovery Impact Statements can provide critical mechanisms for ensuring undue costs are not imposed upon industry and innovation in industry.

The AFGC highlighted its concerns about cost recovery requirements for the Office of the Gene Technology Regulator (OTGR). The Government’s decision¹ to provide significant Budgetary allocations for the first two years of its operation vindicate the concerns expressed by many parties regarding the imposition of 100% cost recovery originally proposed for this agency.

The previous AFGC submissions to the Productivity Commission highlighted its concerns in detail. The AFGC considers that the case for significant cost recovery for the operation of the OGTR remains unfounded but that the Guidelines proposed in the Draft Report may well clarify which activities of the OGTR are appropriate for cost recovery — the same can be said for the imposition of cost recovery for other agencies which might influence the introduction of new products or processes or the adoption of new technologies.

CONCLUSIONS

Cost recovery for the operation of Government agencies is a complex issue — as highlighted by the size and number of issues identified and addressed by the Draft Report of the *Productivity Commission’s Inquiry into Cost Recovery*.

The Draft Report identified the imperative for a structured, deliberate approach to cost recovery within well defined policy principles, according to a clear decision-making framework and justified against fundamental, agreed criteria.

It is clear, however, that ensuring each application of cost recovery is made consistent with those criteria may of itself require substantial bureaucratic processes, the resourcing of which may undermine the objective of more efficient, effective and equitable allocation of resources.

The AFGC stands ready to provide further input into the Productivity’s Commission’s Inquiry into Cost Recovery.

¹ Federal Budget Statement, 2001-02.

Appendix 1

MEMBERSHIP

As At 31/5/01

AAB Holdings Pty Ltd
Ardmona Foods Ltd
Arnott's Biscuits Ltd
 The Kettle Chip Company Pty Ltd
Asia-Pacific Blending Corporation Pty Ltd
Australia Meat Holdings Pty Ltd
Australian Food Ingredient Suppliers Pty Ltd
Beak & Johnston Pty Ltd
Berri Limited
BOC Gases Australia Ltd
Boots Healthcare Australia Pty Ltd
Bristol-Myers Squibb Australia Pty Ltd
Bronte Industries Pty Ltd
Buderim Ginger Ltd
Bundaberg Sugar Ltd
Bunge Meat Industries
 Don Smallgoods Co Pty Ltd
Cadbury Schweppes Asia Pacific
Campbell Australasia Pty Ltd
Campbell Brothers Ltd
Cantarella Bros Pty Ltd
Carter Holt Harvey Tissue Aust Pty Ltd
Cascade Beverage Co
Cerebos (Australia) Ltd
Chisholm Manufacturing
Chr Hansen Pty Ltd
Christie Tea Pty Ltd
Clorox Australia Pty Ltd
Coca-Cola Amatil Ltd
Colgate-Palmolive Pty Ltd
Consolidated Foods Australia Ltd
Coopers Brewery Ltd
Cussons Pty Ltd
Dairy Farmers
Darling Downs Bacon Co-operative
 Association Ltd
Demicombe Pty Ltd
Derby Industries Pty Ltd
Devro-Teepak Pty Ltd
Douwe Egberts
Dragoco Australia Pty Ltd
DSM Food Specialties Australia Pty Ltd
Effem Foods Pty Ltd
 Mars Confectionery of Australia
 Master Foods of Australia
 Uncle Ben's of Australia
Farm Pride Products
Faulding Healthcare Pty Ltd
Fibrisol Services Australia Pty Ltd
Firmenich Limited
Fletchers Foods Pty Ltd
George Weston Foods Ltd
 Allied Foods Co Ltd
 Biscuit & Cake Division
 Tip Top Bakeries
 Watsons Foods
 Weston Bioproducts
 Weston Cereal Industries
Gillette Australia Pty Ltd
Golden Circle Ltd
Goodman Fielder Ltd
 Germantown International
 GF Food Services

GF Ingredients Group
GF International
Goodman Fielder Milling & Baking Group
 Bunge Defiance Pty Ltd
Goodman Fielder Mills Ltd
Leiner Davis Gelatin (International)
Meadow Lea Foods
Quality Bakers Australia Ltd
Serrol Ingredients
Starch Australasia Ltd
 The Uncle Toby's Co Ltd
Green's Foods Ltd
H J Langdon & Co Pty Ltd
Hans Continental Smallgoods Pty Ltd
Harvest FreshCuts Pty Ltd
Heimann Foodmaker Group
Heinz Wattie's Australasia
 Southern Country Foods Pty Ltd
Henry Jones Foods Pty Ltd
Herron Pharmaceuticals Pty Ltd
Hoyt Food Manufacturing Industries Pty Ltd
International Flavours & Fragrances
 (Australia) Pty Ltd
Johnson & Johnson Pacific Pty Ltd
Kellogg (Australia) Pty Ltd
 DSM Group
Kimberly-Clark Australia Pty Ltd
Kraft Foods Ltd
La Famiglia Fine Foods Pty Ltd
Madura Tea Estates
Mainland Dairies Pty Ltd
McCormick Foods Australia Pty Ltd
Merisant Manufacturing Australia Pty Ltd
Mother Earth Fine Foods Pty Ltd
National Foods Ltd
Nerada Tea Pty Ltd
Nestlé Australia Ltd
 Nestlé Beverages Division
 Nestlé Confectionery Division
 Nestlé Dairy Products Division
 Nestlé Foods Division
 Friskies Pet Care Division
 Foodservice & Industrial Division
Novartis Consumer Health Australasia Pty Ltd
Nutricia Australia Pty Ltd
Nutrinova (Australasia) Pty Ltd
Ocean Spray International, Inc
OSI International Foods Australia Pty Ltd
P B Foods Ltd
Paper Converting Co Pty Ltd
Peanut Company of Australia Ltd
Pfizer Warner Lambert Consumer Group
Pillsbury Australia Pty Ltd
Procter & Gamble Australia Pty Ltd
Quality Ingredients Ltd
Quest International Australasia Ltd
Reckitt Benckiser
Regal Cream Products Pty Ltd
Ridley Corporation Ltd
 Cheetham Salt Limited
Roche Vitamins Australia Pty Ltd

S C Johnson & Son Pty Ltd
Sanitarium Health Food Company
 Longa Life Vegetarian Products Pty Ltd
Sara Lee Bakery (Australia) Pty Ltd
Schwarzkopf and Henkel
Sharpe Laboratories Pty Ltd
Simplot Australia Pty Ltd
SmithKline Beecham International
Snack Brands Australia
Specialty Cereals Pty Ltd
Spicemasters of Australia Pty Ltd
Sugar Australia Pty Ltd
Sunbeam Foods
Tetley Australia Pty Ltd
The Smith's Snackfood Company Ltd
Unilever Australasia
Universal Foods Corporation (Aust) Pty Ltd
Wella Australia
Wyeth Australia Pty Ltd
Yakult Australia Pty Ltd

Associate Members

Accenture
Amcor Fibre Packaging
Australian Dairy Corporation
AWB Limited
Cap Gemini Ernst & Young
Chep Australia
Clayton Utz
CROSSMARK Asia/Pacific
DiverseyLever Consulting
Ernst & Young
Focus Information Logistics Pty Ltd
Food Liaison Pty Ltd
Foodbank Australia Limited
Foodsense
Huhtamaki Van Leer (Oceania) Ltd
IBM Australia Ltd
Korn Ferry International
KPMG Chartered Accountants
Maddock Lonie & Chisholm
Manassen Foods Australia Pty Ltd
Meat and Livestock Australia Ltd
Michels Warren
Monsanto Australia Ltd
MPG Logistics Pty Ltd
Nationwide Food Brokers Pty Ltd
Novozymes Australia
PricewaterhouseCoopers
Protein Technologies International Aust Pty Ltd
Queensland Sugar
Ronald L Cossen & Associates Pty Ltd
Strategic Horizons Pty Ltd
TMP Worldwide eResourcing Ltd
viaLink
Visy Board Pty Ltd
Weekes Preston