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*Supplementary submission to the
Productivity Commission Inquiry into
the costs recovered by
Commonwealth Government
agencies*

12 December 2000

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Preface

This submission is being made in response to questions raised by the Productivity Commission Inquiry committee during its hearing with Avcare on November 30 2000

Avcare is pleased to have this further the opportunity to further present information.

A handwritten signature in black ink, appearing to read "Claude Gauchat".

Claude Gauchat
Executive Director

1. Comment on submission 39 from the NRA

Avcare agrees that the NRA is efficient and its performance orientated. While the costs recovery model does provide a predictable source of income it also brings with that attribute issues of cross subsidisation. Avcare believes that addressing longstanding issues of regulatory concern should have been done using government funds not industry. As we have previously stated there is considerable scope for public good funding in relation to agvet chemical regulation and the issues of regulatory concern revolve around community perceptions about our industry.

Players who want to participate in the industry but do not respect the regulatory requirements or accept the regulatory costs that go with it are prepared to go to considerable lengths to avoid them including the expectation that their business should be subsidised by their competitors. Cost recovery mechanisms should not perpetuate this situation.

It is not true to suggest that only small companies service niche, yet important agricultural sectors and hence small companies should be given fee relief. It is more important to consider the whole regulatory cost of providing products to the market. The magnitude of the regulatory costs are largely made up of data generation, ongoing sales levies and stewardship, NRA application costs by comparison are small even with full cost recovery. Business decisions to enter a market should not be made on NRA costs alone and hence the NRA cost recovery mechanism should not be used to address a fundamental problem for niche markets where the total cost of entry is too great for the return on investment.

Avcare agrees that cost recovery encourages industry to provide quality submissions, however using levies to subsidise applications can defeat this objective. The NRA has struggled to improve the quality of submissions and is currently running a pilot program to investigate ways of improvement.

Avcare does not agree that registrants are the major beneficiary of compliance and hence this is a legitimate activity to be paid for out of fees and levies. Compliance is crucial to the integrity of the National Registration Scheme (NRS) and as stated by the NRA its activity prevents products entering the marketplace or incorrect/unsubstantiated claims being made which may lead to damage to people, the environment, crops and livestock and unfair competition. The advent of the demand by consumers to know the quality of, and production method of, their food is forcing producers to implement quality assurance programs. Agricultural and veterinary chemicals are a significant feature of these programs and integral to their operation. Hence, the integrity of the NRS has considerable public good.

Avcare does not support the National Competition Policy Review recommendation that the sales levy cap be removed. The argument that a sales levy to subsidise application costs spreads the cost over the life of the product could be challenged in that it imposes an unfair lifetime burden on successful products and encourages inefficiency.

Comparisons with overseas Agencies

Timeframes comparison. The information in the table could be misleading because it is not clear if the timeframes are actual or statutory. The NRA data is statutory but the USA data appears to be actual. However within our industry the anecdotal perception is that the actual NRA timeframes are at the lower end of those from countries with similar regulatory requirements.

The budget comparisons show that the NRA is the only agency that fully cost recovers. This puts a cost burden on Australian farmers that is not present for farmers in some of our major trading competitors.

The application fees table is misleading because does not indicate whether the costs are actual or subsidised. For instance the NRA fees are the subsidised ones. The actual NRA cost for a product with new active, food use is in the order of \$100,000. Furthermore the table does not indicate what the reporting \$ are, presumably Canadian to be consistent with the previous table. When the annual levy costs are taken into account for the NRA the registration costs are considerably higher than other countries where there is no levy such as Canada and USA.

2. ERMA Fee schedule

A full explanation can be obtained from www.ermanz.govt.nz. Quick Guide No 11 on fees and charges is attached at appendix 1 to this document.

ERMA recovers services to organisations and individuals who apply for approval of a new organism or hazardous substance, use its services to set up delegations to other institutions and for approving test certifiers. The crown pays for other ERMA activities (which accounts for the majority of its total funding) such as policy advice, international work and the transfer of substances.

The level of fee charged varies with each application and reflect the amount of work necessary to provide the required service. The government is subsidising the cost of processing applications at least until January 2002. It is also subsidising the costs of public participation in the HSNO process.

A schedule of fees and charges is set each year and is used by ERMA staff to calculate or estimate the total charge for the service provided. Costs are billed to the applicant on an installment basis and if fees are not paid on time the processing of the application ceases. This method of setting fees and charges merit further consideration as it appears to avoid the potential for cross subsidisation and allows subsidies to be targeted to where they are necessary. It seems to provide reasonable certainty about costs which are necessary when making business decisions.

3. Economic Advisory Committee

Avcare first raised the use of an Economic Advisory Committee in the absence of a Statutory Board to oversight the operations of a regulatory agency in the context of the genetically modified organisms regulatory framework.

Developing this idea further we can see benefit in having such a high level Committee where there is representation from the key government and industry stakeholders in a regulatory scheme providing oversight of the schemes. The committee should:

- Be appointed by the Minister in charge;
- Oversight operational costs
- Advise on cost recovery mechanisms.

4. Comment on fees imposed under the Trade Practices Act

Concerns about the imposition of ACCC fees have not been raised by Avcare members, presumably because these tend to be one-off fees rather than regular business activity fees.

Appendix 1

A Quick Guide to ERMA Fees and Charges - Guide No 11

A QUICK GUIDE TO

OUR FEES AND CHARGES

December 1999

INTRODUCTION

We've written this guide to our fees and charges to help people who may be working with us under the Hazardous Substances and New Organisms Act 1996 (HSNO). It is part of our Quick Guide series.

Our aim is to provide a series of quick, practical guides to our operations, including the application process and other – often complex – aspects of our business. We want the Quick Guides to provide a straightforward outline of the whole ERMA New Zealand process: who we are, what we are here to do, and how we can help you.

So check this guide whenever you need some information on our fees and charges. It is designed to help you.

You can get more information by telephoning, writing to, or calling in at our Wellington office. Or visit our website at: www.ermanz.govt.nz

If you have any suggestions for improvements to these guides (or any of our other publications), please contact our communications staff at:

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ENVIRONMENTAL RISK MANAGEMENT AUTHORITY
NGĀ KAIWHAKATŪPATO WHAKARARU TAIAO



In a nutshell

After the Government set up ERMA New Zealand it asked us to recover the costs of providing our services to organisations and individuals. This is called cost recovery. It mainly affects people making an application to us for a new organism or hazardous substance. But it also applies to some of our other services such as setting up delegations to other institutions and approving test certifiers.

Cost recovery only applies to services of this type. Many of the functions we carry out are funded directly by the Crown and this accounts for the majority of our total funding. These other functions include policy advice, international work and the transfer of substances.

If you are an applicant you can expect to pay for most of the actual costs of processing your application. This means if your application is relatively straightforward our charges will reflect this. On the other hand, if your application is more complicated and we need to do more review and analysis work, the fee will be higher.

The Government subsidises the costs of processing applications, at least until January 2002. It is also providing an extra subsidy until 30 June 2000, which is aimed at the costs of public participation in the HSNO process. It is up to the Government to decide whether to continue to make these funds available.

What am I paying for?

The main direct cost is the cost of time spent by staff, Ngā Kaihautū (our Māori advisory committee) and by the Authority itself. Another direct cost is for any consultants or outside contractors who are brought in to help review or consider your application. The fee you pay includes the cost of:

- reviewing and evaluating your application
- gathering any extra information
- making a decision on your application
- ERMA New Zealand staff time spent with you before you lodge your application.

The total costs also include a share of overheads ie the cost of the infrastructure we have had to establish, including accommodation, the computer system and support staff. These costs will become lower for each application as the number of applications we deal with builds up.

There are some fixed fees in our pricing structure, but generally only where we expect the cost to be reasonably predictable.

How much do I have to pay?

The general principle is that we charge what it costs. The actual charge will vary from application to application – so if it costs more than usual to deal with an application, the fee for dealing with it will be higher.

We have published a separate schedule of fees and charges, which is updated when we review the level of fees. We'll do this at least once a year. If you don't have a copy of the schedule with this guide please call us and we'll be happy to send you one, or check on our website at www.ermanz.govt.nz for the latest version.

Our experience so far is that the costs vary considerably from case to case so it is not possible to fix standard costs for applications. At any time our staff will be able to estimate how long a particular application will take to process and how much it is likely to cost.

This guide explains how our set fees and charges will be applied in calculating or estimating the total fee (or price) for dealing with an application or providing a service. We have a separate information sheet available that sets out our current best estimates for dealing with different types of application. This is because this information may change as we gain more experience and have better information to work from.

About the government subsidy

Up to \$1.7 million of Crown funding in the 1999/2000 financial year will be available to subsidise the cost of applications under the HSNO Act. About \$740,000 of this money is tied to the cost of public participation in the process. If there are fewer applications than expected or less public participation, then less government money will be needed. The rest of the money comes from ERMA New Zealand's baseline funding and reserves. We can't afford to continue subsidies at this level, so we'll review fees and charges next year.

In the current year (1999/2000) a large part of the subsidy is being used to deal with new organism applications that were made before July under a low price policy. Our charge-out rates for time are heavily subsidised. There is also a small fixed subsidy on most types of application.

Some of the government money is also being used to allow us to consider generic issues that may arise from several applications.

Determinations of whether or not an organism is a new organism (under Section 26 of the HSNO Act) are fully subsidised. This is because we see this as part of the process of establishing the bounds of the new Act.

How to keep our costs (and your charges) down

To keep your charges to a minimum you should:

- provide a complete application with appropriate supporting information and references
- check with us before lodging your application so we can advise you what should be included
- identify and address the risks, costs and benefits associated with your application
- identify and address relevant issues when preparing your application. For example, where Māori issues are involved, develop an understanding with your local hapu or iwi.

What else do I need to know?

Grouping applications

A single new organism application can cover a group of new organisms as long as there is a significant degree of commonality within the group, eg several varieties of one species with different genetic constructs inserted, or different plants being tested for

specificity to the same host. It is up to ERMA New Zealand's chief executive to decide how widely this provision should apply in particular cases.

A hazardous substance application may cover any number of substances, or a substance defined to include ranges rather than point concentrations of particular components, provided that the risks presented by the substances can be easily assessed. Again, it is up to the chief executive to decide on individual cases.

In general we'll try to minimise the costs for applicants. We'll think about whether a combined application will be easier or more difficult to deal with than separate applications.

Pre-application costs

You will be charged for pre-application discussions with ERMA New Zealand staff once you have formally lodged your application. We'll let you know when we start recording. If you don't lodge an application, we won't charge you for these discussions unless the application is revived within one year.

Estimating cost

We'll also give you an estimate, on request, of how much your application is likely to cost. This is on a 'best endeavours' basis and the final amount will depend on how long it has taken to assess and make a decision on the application. We can give you regular updates and estimates as your application goes along.

Instalments

Where variable charges apply, a first instalment must be paid before we formally accept your application. Any Crown subsidy or other rebates will be applied to the invoice for the second instalment or the final payment, whichever is sooner. Where there is a fixed fee, the whole of the fee must be paid when the application is lodged.

For time-based charges the Authority will periodically invoice you with an estimate of the outstanding cost of dealing with the application, and may ask you to make this payment before the processing continues. This may happen more than once depending on the complexity of the application. These additional instalments cover anticipated costs for no more than the next 30 days. When the actual final cost is known we'll send you a final invoice or a refund.

Rapid assessments

If an application for rapid assessment is declined and you decide to make a full application, any 'unused' portion of payments already made will be credited against the cost of the full assessment.

Chief executive-initiated applications

If ERMA New Zealand's chief executive is the applicant, then the Authority itself will meet all the costs. This may happen for some reassessment applications and where there are public good or public interest reasons for doing this.

Withdrawing applications

If you decide to withdraw your application, you'll need to let us know in writing and pay for the costs you have already incurred. We'll send you an invoice for any outstanding fees or give you a refund for any excess.

Unpaid fees

If you haven't paid your fees one month after the date of our invoice, we won't be able to continue processing your application until the fees are paid.

Here's how it works

The following examples are based on our pricing schedule of 13 November 1999. For the most up to date schedule please contact our office or check our website at: www.ermanz.govt.nz

The examples show how the overall charge is calculated based on 'made up' cases. You should not assume that these will be the actual prices for different types of applications. You'll need to talk to ERMA New Zealand about your particular case.

Example 1: A non-notified application

The structure of this example applies to applications to import a hazardous substance or new organism into containment, and develop a genetically modified organism in containment.

Case description

The application is not notified but the decision must be publicly notified. Some pre-application liaison is required. The application is complete when we receive it and no further information is required. It is a straightforward application with no significant issues. For calculation purposes this example is assumed to be importing a new organism into containment so the flat subsidy is \$1,000 and the initial fee is \$3,000.

Processing the application through to a decision requires 50 hours of staff time and 12 hours of Authority time.

Calculation of Crown subsidy, instalments, and price

Crown subsidy

General subsidy	1000.00
Notification costs	850.00
	<u>1,850.00</u>

Total costs

Notification costs	850.00
Staff time (50hrs @ 120)	6,000.00
Authority time (12hrs @ 120)	<u>1,440.00</u>
	8,290.00

Total costs less Crown subsidy

(8,290.00 - 1,850.00)	6,440.00
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Instalment payments

Initial (for new organism application)	3000.00
Final	
(costs	8,290.00
less Crown subsidy	1,850.00
less initial instalment)	3000.00
	<u>3,440.00</u>
NET COST (excluding GST)	6,440.00

Example 2: A notified application that does not attract submissions or lead to a hearing

The structure of the example applies especially to the import or manufacture of hazardous substances for which reduced information requirements apply. It could apply to the release of a new organism but only in routine or low risk cases.

Case description

A straightforward application to import a hazardous substance. The application and decision must both be notified. 50 hours of staff time and 3 hours of consultant time are required for pre-application liaison, and for processing the application before it is considered by the Authority. A further 10 hours of staff time and 12 hours of Authority time are needed for the consideration and decision.

Calculation of Crown subsidy, instalments, and price

Crown Subsidy

General subsidy	1,000.00
Notification (includes some staff time)	<u>2,800.00</u>
	3,800.00

Costs to completion of Evaluation and Review report

Advertisement costs	1,200.00
Staff time (50hrs @ 120.00)	6,000.00
Consultant time (3hrs @ 125.00)	<u>375.00</u>
	7,575.00

Final costs

Staff time (10hrs @ 120.00)	1,200.00
Authority time (12hrs @ 120.00)	1,440.00
Advertisement	<u>880.00</u>
	3,520.00

Total costs

(7,575.00 + 3,520.00)	11,095.00
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Total costs less Crown subsidy

(11,095.00 - 3,800.00)	7,295.00
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Instalment payments

Initial		2,000.00
Second	(costs to completion of Evaluation and Review report)	7,575.00
	less Crown subsidy	3,800.00
	less initial instalment	2,000.00
		<u>1,775.00</u>
Third	Final costs	<u>3,520.00</u>
NET COST (excluding GST)		7,295.00

Example 3: A notified application that leads to submissions and a hearing

The structure of the example applies especially to the import or manufacture of a significant hazardous substance, the field testing of new organisms (especially genetically modified organisms), and the release of a new organism.

Case description

For calculation purposes this is assumed to be for a genetically modified organism field trial. Both the application and the decision must be notified.

Five submissions are received and it is determined that a hearing is required.

Up until the hearing 170 hours of staff time, 12 hours of contractor time and 12 hours of Authority time are incurred, and this includes time spent dealing with submissions.

A one day hearing is held on the Authority's premises which incurs 55 hours of staff time, 4 hours of contractor time and 36 hours of Authority time.

Further information is requested which requires 10 hours of staff time and a further 12 hours of Authority time to reach a decision.

Calculation of Crown subsidy, instalments, and price

Crown Subsidy

General subsidy	1,000.00
Submission Subsidy (5 @ 424.50)	2,122.50
Hearing Subsidy (1 @ 15,040.00)	15,040.00
Notification (includes some staff time)	<u>2,800.00</u>
	20,962.50

Costs to completion of hearing

Advertisement costs	1,200.00
Staff time (225hrs @ 120.00)	27,000.00
Authority time (48hrs @ 120.00)	5,760.00
Consultant time (16hrs @ 125.00)	2,000.00
Hearing facilities (1 @ 800.00)	<u>800.00</u>
	36,760.00

Final costs

Advertisement costs	860.00
Staff time (10hrs @ 120.00)	1,200.00
Authority time (12hrs @ 120.00)	<u>1,440.00</u>
	3,500.00

Total costs

(36,760.00 + 3,500.00)	40,260.00
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Total costs less Crown subsidy

(40,260.00 - 20,962.50)	19,297.50
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Instalment payments

Initial		3,000.00
Second	(costs to hearing end less Crown subsidy less initial instalment)	36,760.00 20,962.50 3,000.00
		<u>12,797.50</u>
Third	Final costs	<u>3,500.00</u>
NET COST (excluding GST)		19,297.50

Need more help?

If you have any questions about our fees, which haven't been answered in this guide please get in touch. Our contact details are on the front of this guide.