



COMPLEMENTARY HEALTHCARE COUNCIL RESPONSE TO THE PRODUCTIVITY COMMISSION COST RECOVERY DRAFT REPORT

The CHC welcomes the Draft Report of the Productivity Commission as a significant contribution to community understanding of the implications of cost recovery by Governments.

The final Report will be valuable to Governments at all levels (and not only in Australia) in establishing fair, equitable and efficient cost recovery arrangements, and to the broader community in having confidence in such arrangements.

The CHC notes that the Council's own oft-expressed concerns about the cost recovery regime applying to complementary healthcare products are widely shared by the Commission and others in the community, and clearly merit priority action by Government.

The CHC strongly supports the view expressed by the Commission that activities that are not directly related to the agencies (TGA's) regulatory activities (such as internal administration, policy development, ministerial and parliamentary services, contributions to international organisations and obligations and public information) should not be recovered from regulated firms.

CHC urges the Government to act quickly to implement change on receipt of the final report in August.

COMMENTS ON SPECIFIC ISSUES

Operational Principles for cost recovery

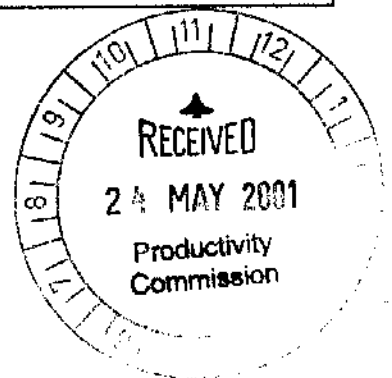
- CHC supports the Ops set out at pps XXVI - XXVIII.

Processes for assessing cost recovery

- CHC supports the paradigm set out at p XLIV for assessing cost recovery, as elaborated at p 199.

Classification of activities

- CHC supports the paradigm set out at p XLV for classifying cost recovery activities, as elaborated at p 211.



Implementation issues

- CHC considers that the inequities, distortions and inefficiencies imposed by current cost recovery arrangements - across the whole range of Government activities - are such that high priority must be given to the review of existing arrangements proposed at p XLV. Five years to undertake and complete such a review is unacceptably long. And the Council expects the Government to give this task priority.
- Given that such a review would presumably precede any fundamental change to current arrangements, agencies will simply put off changes because there is a review underway. The eventual changes will themselves take time to implement, perhaps years. In effect, the Commission is proposing the status quo for 6, 7 or more years.
- The council is concerned that during that time any commitment by Government to implement change is likely to evaporate. Governments may change, agencies may change, priorities will change and so will individuals involved in the debate.
- Harmonisation of many regulatory arrangements with New Zealand - in particular the complementary healthcare products sector - makes rapid action on improving cost recovery arrangements imperative.
- If the Report is to have any impact it must be received by Government with a sense of urgency and commitment. CHC notes that most of the groundwork has already been done and urges that any review be completed within twelve months. The momentum for change that has been initiated by this inquiry should be maintained.

TGA comment p68 - industry exists therefore TGA exists

- CIIC notes the TGA comment that 'all regulatory effort by the TGA is undertaken solely because the industry exists'. In the case of the complementary healthcare industry, it is not the existence of the industry which causes the regulation, but the inclusion of the industry in the legal definition of therapeutic goods. In the vast majority of other countries the same complementary healthcare products are regulated as foods, or within a subset of food regulation, are able to make health claims and are not subject to pre market evaluation and associated fees and charges.
- CHC has long argued that the products of its Member companies are inappropriately regulated as if they were higher risk pharmaceutical drugs.

COMMENTS ON THE DRAFT RECOMMENDATIONS, FINDINGS AND INFORMATION REQUESTS

Chapter 3 Legal and fiscal framework pXLVII - XLVIII

DRAFT RECOMMENDATION 3.1

All cost recovery arrangements should have appropriate and clear legal authority. Agencies, with advice from their legal counsels, should identify the most appropriate authority for their charges, and ensure that fees for service are not vulnerable to challenge as amounting to taxation.

Comment

- CHC agrees with the Finding that there is a lack of transparency and accountability in current cost recovery arrangements, and that it is difficult to establish the objectives, costing and revenue raising of many cost recovery arrangements. CHC supports this Recommendation.

DRAFT RECOMMENDATION 3.2

Revenue from the Commonwealth's cost recovery arrangements should be identified separately in budget documentation and in the Consolidated Financial Statements. It should also be identified separately in each agency's Annual Report and in Portfolio Budget Statements.

Comment

- CHC agrees that the Regulatory Impact Statement (RIS) is a valuable tool for assessing proposed regulation, but has not dealt directly with many cost recovery proposals. CHC supports this Recommendation.

DRAFT RECOMMENDATION 3.3

The Regulatory Impact Statement (RIS) process should be clarified to make it explicit that, where a regulation under review includes a cost recovery element, the RIS should address cost recovery by applying the guidelines proposed by this inquiry.

Comment

- CHC supports this recommendation.

DRAFT RECOMMENDATION 3.4

A Cost Recovery Impact Statement (CRIS) process should be developed for application to all significant cost recovery proposals or amendments to existing cost recovery arrangements not covered by an enhanced Regulatory Impact Statement (RIS).

Comment

- CHC notes the Report's findings that international obligations can constrain the ability of some Commonwealth agencies to set cost recovery charges. CHC agrees that a CRIS process should be developed and supports this Recommendation.

Chapter 4 Current cost recovery arrangements p XLIX

- CHC has long argued that there is no clear, current Government policy on cost recovery, and that this has contributed to inconsistency in many aspects of cost recovery within and across agencies and portfolios, notably the TGA. CHC welcomes the Report's finding.
- CHC notes the Report's finding that the rationales for cost recovery for most information agencies are better developed and articulated than those for regulatory agencies.

DRAFT RECOMMENDATION 4.1

The Commonwealth Government should adopt a formal cost recovery policy for regulatory and information agencies. This policy should implement the cost recovery guidelines recommended by this inquiry.

Comment

- CHC notes the report's finding that cost recovery arrangements exist, to some extent, in most Commonwealth regulatory and information agencies and that there is little consistency in the application of these arrangements.

Chapter 5 Effects of cost recovery on agencies p XLIX - L

- CHC welcomes the report's finding that it is generally not appropriate for regulatory agencies to have, in effect, automatic access to cost recovery revenues for regulatory activities without proper budgetary and parliamentary scrutiny.

DRAFT RECOMMENDATION 5.1

As a general rule, the funding of cost recovered regulatory activities should be subject to the same budgetary and parliamentary oversight as budget funded government activities.

Comment

- CHC fully supports this Recommendation.

DRAFT RECOMMENDATION 5.2

The Government should address the effectiveness of the existing performance review processes and the need for a more performance based efficiency audit approach based on stakeholder consultation.

- CHC agrees with the finding that improving agency efficiency can reduce the cost burden on those subject to cost recovery and taxpayers alike. CHC endorses the exploration of mechanisms such as efficiency dividends, benchmarking, market testing and third party competition to improve agency efficiency. CHC also sees a strong role for harmonisation of standards and mutual recognition in encouraging regulatory agency efficiency by improving contestability of assessment and approval processes.

Comment

- CHC supports this Recommendation.

Chapter 6 Economic effects pps L - LII

DRAFT RECOMMENDATION 6.1

Cost recovery arrangements which are not justified on grounds of economic efficiency should not be undertaken merely to raise revenue for government activities.

Comment

- CHC strongly supports the finding that some agencies have been required to meet cost recovery targets on a whole of agency basis which has led to agencies inappropriately recovering costs for activities such as policy development, ministerial or parliamentary services and international obligations.
- CHC supports this recommendation.

DRAFT RECOMMENDATION 6.2

As a general principle, cost recovery arrangements should apply to specific activities, not to the agency which provides them.

Comment

- CHC supports this Recommendation as a general principle.

DRAFT RECOMMENDATION 6.3

The practice of setting targets that require agencies to recover a specific proportion of their total costs should be discontinued.

Comment

- CHC strongly supports this recommendation.

DRAFT RECOMMENDATION 6.4

Cost recovery arrangements should not include the cost of activities undertaken for Government, such as policy development, ministerial or parliamentary services and international obligations.

Comment

- CHC strongly supports this Recommendation.

DRAFT RECOMMENDATION 6.5

Information agencies should carefully define the boundaries of their core and non-core activities. This should be a dynamic process, with core activities determined with reference to:

- **the agencies' broad public policy objectives;**
- **the public good characteristics of the activity; and/or**
- **any positive spillovers associated with the activity.**

Comment

- CHC notes the finding that information agencies generally have attempted to tie their cost recovery arrangements to the objectives of the agency itself through the notion of core and non-core activities, but that in some cases, it is difficult to define clearly the boundary between core and non-core activities.
- CHC supports the Recommendation.

DRAFT RECOMMENDATION 6.6

The core activities of information agencies (which may include some defined level of dissemination) should be wholly budget funded and not subject to cost recovery.

Comment

- CHC supports this Recommendation, which recognises the importance of Community Service Obligations in agency programs.

DRAFT RECOMMENDATION 6.7

Non-core activities of information agencies should be charged at marginal (incremental) cost or, where relevant, at prices in keeping with competitive neutrality principles.

Comment

- CHC supports this Recommendation.

DRAFT RECOMMENDATION 6.8

Where the main objective of regulation is to provide benefits to the users of regulated products, a 'beneficiary pays' approach should be adopted. Under this approach regulated firms would be charged for the costs of regulation only where:

- it is not feasible to charge beneficiaries directly;
- costs can be passed on to beneficiaries; it is cost effective; and
- it is not inconsistent with policy objectives.

Comment

- CHC endorses this Recommendation as providing a sensible basis for the development of cost recovery regimes.

DRAFT RECOMMENDATION 6-9

Where the main objective of regulation is to minimise the detrimental effects of external spillovers, a 'regulated pays' approach should be adopted. Under this approach, regulated firms should be charged for the costs of regulation only where:

- those businesses are the source of the negative spillovers;
- it is cost effective; and

- **it is not inconsistent with policy objectives.**

Comment

- CHC supports this Recommendation.
- CHC also agrees with the finding that cost recovery can be a useful tool for conveying price signals and reducing excessive demand for some regulatory activities, but it requires careful consideration due to potential conflict with other agency functions and objectives.
- CHC notes that cost recovery can at times be deterrent to demands for services eg charges for maintaining listings on registers when product turnover is small. In this electronic age the actual cost of maintaining a listing on an electronic register is minimal.
- CHC does not agree with the finding that barriers to entry for firms and products arising from cost recovery charges are difficult to separate from barriers arising from the regulations themselves (including compliance costs) or from general market factors. CHC is aware of decisions taken by many companies not to enter the market because of the high direct regulatory costs imposed by Government.
- CHC agrees with the finding that direct regulatory charges for generic products may give rise to first mover disadvantages; inhibiting the introduction of new products. Complementary healthcare products are based on substances which are not patentable; the cost of seeking approval for use of a new substance, and the 'free-rider' effect, is a major barrier to development of new products.
- CHC notes the finding that some information and data services appear to be priced at levels which are higher than their incremental costs, and some information agencies are not taking full advantage of new technologies to lower their dissemination costs.
- CHC endorses the finding that Australian consumers may be affected by cost recovery indirectly, in that they may pay higher prices or have a smaller range of choice for some regulated products. This is the case with complementary healthcare products.

Chapter 7 Cost recovery under the Trade Practices Act 1974 pLIII

- CHC notes that findings in this Chapter.

Chapter 8 Improving administrative arrangements pLIII

DRAFT RECOMMENDATION 8.1

Government equity or social objectives should be funded through direct cash transfers to users or direct funding of agencies, rather than through cost recovery arrangements.

Comment

- CHC strongly supports this Recommendation.

INFORMATION REQUEST pLIV

Chapter 3 Legal and fiscal framework

- CHC considers that the Office of Regulation Review, and where appropriate the portfolio Department, should play a role in the preparation or review of Cost Recovery Impact Statements. This already happens in some instances eg. ANZFA, where ORR initially assisted ANZFA to develop appropriate procedures for embedding the RIS process into its work, and then assists in commenting as necessary on individual statements. All CRIS' should be presented to the appropriate overseeing body, whether Statutory or Advisory and should be made available publicly, for example on the Internet.

Chapter 5 Effects of cost recovery on agencies

- With regard to improving parliamentary scrutiny of cost recovery receipts, CHC considers the Minister for Finance should have overall carriage of cost recovery policy within Government, and be responsible for coordination of a consistent, principled system across all agencies. All agencies should set out their cost recovery arrangements and activities in their Annual Reports. Agency Budget Papers should set out estimated receipts. The overall Budget as presented to Parliament should aggregate those receipts to give a whole of Government estimate and actual receipts.
- CHC considers that Efficiency Audit Committees should be established to address the efficiency of cost recovery agencies. Such Committees should be consistent across all agencies, to encourage best practice and sharing of experience. The Department of Finance should be represented on such Committees, to ensure central agency involvement and oversight and encourage consistency in approach, principles and procedures as well as a strong whole of Government monitoring and understanding of cost recovery activities.

Chapter 9

Guidelines for cost recovery

- CHC considers the guidelines contained in the draft report provide a sound framework for deciding whether or not cost recovery should be introduced and for identifying the best approach to recovering costs.
- CHC notes the Commission's view that the guidelines will need to address a number of the specific issues that are common in designing cost recovery arrangements across regulatory agencies. CHC welcomes a whole of Government approach to cost recovery, based on consistency and clear principles which recognise Community Service Obligations in agency activities.
- Some flexibility will be needed in regard to the timing of cost recovery payments, particularly in the case of new product approvals, where the product is still to be marketed. The actual cost of the service to be recovered, the recurrence of costs to be recovered - are they a one-off, or regular interventions - will vary markedly across different agency activities.

Chapter 10 Implementation

- The key issue is that of timing of any comprehensive policy review by Government. As noted at the outset of this response, the review should be given priority and urgency. Much groundwork has been done. To delay is to lose momentum. The review should be completed within twelve months.

Chapter 6 Economic effects pLIV

INFORMATION REQUEST

The Commission seeks further views on the effect of cost recovery (as distinct from the effect of Government regulation or normal market factors) on firms (including small business) and consumers, particularly in relation to:

- **the introduction of new and innovative products; and**
- **adoption of new technology.**

It is worth noting that there is no other complementary healthcare market in the world regulated in the same way as Australia and there is no international comparison.

The Council offers the following anecdotal evidence of the negative impact of 100% cost recovery on small businesses which characterise the complementary healthcare industry.

1. Since the introduction of the full cost recovery on therapeutic goods, there has been an explosion of innovative healthcare food products in the Australian market using the same

ingredients as in CHPs. These products are not subject to the costs that apply under the therapeutic goods regime- both regulatory and cost recovery .

2. The Council is aware of many small businesses that have relocated offshore, with loss of jobs and revenue to the Australian economy. It is an attractive and economical option to set up mail order companies in New Zealand and other neighbouring locations and mail order back to Australia without incurring the regulatory and cost burden imposed in Australia.

3. US companies have indicated their interest in establishing an Australian presence as a stepping stone into the Asian market but have decided against it because of the associated difficulties and costs.

The Council trusts that these comments are helpful and would be pleased to expand on any points made. We look forward to positive government action arising from this important inquiry.