

Mrs Helen Owen  
Presiding Commissioner  
Productivity Commission  
Level 28  
Telstra Tower  
35 Collins Street  
MELBOURNE VIC 3000

Dear Mrs Owen

**Draft Cost Recovery Inquiry Report**

IP Australia made a written submission to the Inquiry on 29 November 2001 and appeared before the inquiry hearing on 7 December 2001. It would now like to take the opportunity to offer some broad observations on the draft report.

Overall IP Australia supports the general approach of the draft report and in particular, the necessity for cost recovery agencies to be subject to open financial scrutiny and full accountability.

Having said that, IP Australia believes that some areas need further exploration. For example, the draft report recommends (6.4) that certain activities undertaken for Government such as policy development, ministerial or parliamentary services and international obligations should not be included in cost recovery arrangements. IP Australia believes this needs to be more clearly defined to determine what it constitutes in practice.

IP Australia's role encompasses the management of the whole industrial property system to ensure Australians benefit from the effective use of IP, particularly through increased innovation, investment and trade. Therefore, under its charter IP Australia undertakes non-fee generating activities which do not contribute directly to its cost recovery obligations. However, these activities are integral to the delivery of an effective IP system for users and intrinsically related to fee generating activities.

The activities of policy development, ministerial or parliamentary services, international obligations that IP Australia undertakes primarily relate to the operational and technical aspects of the IP system and are aimed at improving the system and assisting customers

make better use of the system. The activities include:

- preparing ministerial responses and briefings relating to problems, complaints or issues about the IP system that have been raised by IP right applicants or owners - and often concerning the handling of particular applications for IP rights;
- providing secretariat services for the work of the appointed advisory council which advises the Minister and IP Australia on IP administration and policy matters aimed at improving the IP system. This includes providing research and technical support to the advisory council IP working parties and preparation of discussion documents on IP issues for consultation with IP users.
- reviewing, monitoring and amending IP legislation to make it more effective for users. This includes consulting users of the IP system regarding any proposed changes to legislation.
- developing the IP system both in Australia and internationally to make it more effective for users and more effective in promoting innovation, investment and trade. This includes pursuing Australia's IP interests in the World Intellectual Property Organization (WIPO) and TRIPs WTO fora.

Although these activities are undertaken on behalf of the Government, they are of direct benefit to the users of the IP system. The activities essentially relate to the technical and operational aspects of the system to directly benefit users and they are integral to the delivery of the program objectives.

IP Australia believes that before any decision is made to transfer all or part of the costs of the selected activities for users of the IP system to all Australian taxpayers, via budget funding, that a deeper analysis is undertaken

The report takes the approach that agencies fall into one of two categories - that is they are either regulatory or information provider agencies (Recommendation 4.1). The draft report then makes recommendations on the basis of this divide. This approach does not necessarily fit comfortably with IP Australia's actual operations, as it has dual roles.

IP Australia has a regulatory role in that it is the organisation which registers patent, trade mark and design rights and it is the sole provider of this service in Australia. However, the registration of these IP rights is not compulsory - it is a voluntary decision made by IP right users and innovators. Innovators may rely on alternative means of protecting their IP rights (which do not involve any registration process) such as through the use of trade secrets or the common law rights of passing off, etc.

IP Australia also has a significant role as an information provider. As part of the *quid pro quo* of applying for a formal IP right information must be disclosed and readily available to other innovators; for example, making patent applications easily accessible on a website. IP Australia maintains information databases, which are available free of charge on the internet, as part of this requirement for disclosure of information to the public and it provides statistical information on request.

IP Australia supports full cost recovery on an accrual basis for its organisation. This allows IP Australia to be run along substantially commercial lines to meet its objective of ensuring that Australia benefits through the effective use of IP rights. In particular, it gives management flexibility to vary its processes to adapt to changing demand for services and to make delivery of these services more efficient and higher quality. Although IP Australia is the sole provider of IP rights in Australia, it is subject to a high level of accountability to government and to other government bodies as well as to competition from IP offices in other countries.

In conclusion, IP Australia welcomes the opportunity to comment on the draft report and hopes that the inquiry might find them useful.

Yours sincerely

Vivienne Thom  
A/g Director General

28 June 2001