

Cost Recovery Review by Productivity Commission

IP Australia's Submission on Issues Paper

Introduction

This submission supplements the Agency Questionnaire (attached) which gives more details of IP Australia's cost recovery. It firstly gives a brief overview of the nature of the work performed by IP Australia; and then comments on some of the issues raised by the Commission's Issues Paper from this perspective.

Background to IP Australia

Nature of its work

IP Australia manages the Industrial Property Program of the Department of Industry, Sciences and Resources by administering the Patents Act 1990, the Trade Marks Act 1995, the Designs Act 1906, the Olympic Insignia Protection Act 1987 and the Sydney 2000 Games (Indicia and Images) Protection Act 1996. IP Australia is responsible for the registration of patents, trade marks and industrial designs. These rights provide assets which are fundamental to orderly marketing, technology transfer and investment in innovation.

As stated by the Ergas Committee in its recent report "Review of Intellectual Property Legislation under the Competition Principles Agreement" the effective operation of the patent, trade marks and designs systems is important for the competitiveness of innovative Australian companies in domestic and international markets. The benefits of the exclusive rights to society are the promotion and diffusion of innovation that is the major source of economic growth; the costs are losses in allocative efficiency and some secondary innovation, as well as administration costs. For the net benefits to exceed the net costs it is important that the rights only be granted after high quality examination against appropriately high tests.

It should be noted that none of these statutory intellectual property rights are mandatory and other non-legislative means exist for protecting innovation. For example, many companies use trade

secrets instead of, or in combination with, patents. Likewise, the common law tort of 'passing off' may be used instead of registered trade marks.

Part of IP Australia's role is to ensure that Australia benefits from the effective use of IP, particularly through increased innovation, investment and trade. IP Australia therefore undertakes awareness and education programs aimed at enabling Australians to develop a better understanding on how they can use IP effectively and highlighting the importance of appropriate strategies for managing IP. The programs are particularly aimed at SMEs and public research organisations. They include publication of brochures, seminar programs for SMEs and tertiary institutions, development of an interactive CD ROM and an Internet web-site.

At present, IP rights are territorial ie they are granted by each country independently and have effect only in that country. However, because both the goods and services embodying IPRs and the IPRs themselves are traded globally, IP Australia is also actively involved in the development of the international intellectual property system. This includes TRIPS (Trade Related Aspects of Intellectual Property Agreement), which requires minimum standards of IP protection for countries to become members of the WTO; and the World Intellectual Property Organisation (WIPO), where harmonisation of IP regimes is continually being negotiated. It ensures that Australians have access to strong IP protection when exporting to overseas markets; and that Australians benefit from diffusion of innovation from overseas countries. IP Australia particularly works to strengthen and improve industrial property regimes in the Asia Pacific region.

IP Australia is responsible for the registration and conduct of patent and trade mark attorneys. It does this by administering the Professional Standards Board for Patent and Trade Marks Attorneys and the Patent Attorneys Discipline Tribunal. These bodies accredit courses at tertiary institutions and conduct examinations for the registration of patent and trade mark attorneys, assess qualifications and receive complaints against attorneys.

Nature of its financial management

IP Australia comprises five business units having a total of around 800 employees (681 staff years) and revenue of \$74.6 million for 1999-2000 with a forecast revenue of around \$80m in 2000-2001.

It is a *prescribed agency* with a special Account operating under the *Financial Management and Accountability Act (FMA Act)*. IP Australia's Director General is a *Chief Executive Officer* under the *FMA Act* which helps IP Australia to be effectively managed and achieve better performance

overall for the economy, clients and the Government. IP Australia is required to be financially separate, independent and achieve full cost recovery. Details of the Financial Framework agreement between the Department of Finance and Administration (DoFA) and IP Australia are attached in Appendix 1. This agreement is currently being renegotiated.

The managerial independence and flexibility given by the *FMA Act* allows IP Australia to be run substantially along commercial lines. As evidence of this, IP Australia substantially met its timeliness, quality and financial effectiveness performance targets, achieving productivity improvements of 13.4% in 1996-97, 9.3% in 1997-98, 5% for 1998-99 and 4.2% in 1999-2000. This managerial independence and flexibility has enabled IP Australia to:

- pass on to IP Australia's clients through two separate reductions in charges in recent years (equivalent to 23% of revenue) the benefits of the organisation's strong performance. There have been no fee increases since 1994.
- undertake sound and forward-looking financial planning, particularly matching processing capabilities with demand for services leading to fewer backlogs through under-resourcing or higher costs through over-resourcing.
- develop a comprehensive business improvement framework based on principles of quality management, continuous process improvement and a strong productive culture. This includes an effective, independent Certified Agreement with its employees which has enhanced IP Australia's ability to further improve performance.

Currently under its outcomes/output framework IP Australia measures quarterly three performance indicators:

- price
- quantity
- quality.

Each of these indicators has a number of specific measures; for example, for price, full cost recovery on an accrual basis over time; fees to be competitive with comparable overseas offices; fee changes less than inflation.

More details of IP Australia's financial methodology and position are attached in the Portfolio Questionnaire.

It is also noted that IP Australia's financial operation is similar to other overseas offices such as the European Patent Office and the US Patent and Trade Mark Office that are fully fee-funded.

Issues

IP Australia has not had sufficient time since the release of the Commission's Issues Paper to examine in depth all of the many questions raised in it; therefore this submission does not explicitly answer all these questions. However, it does implicitly touch many of them in what IP Australia considers to be two of the key issues: how it sets its fees for full cost recovery; and how it is held accountable.

Accountability

Although IP Australia has sole responsibility under Commonwealth legislation for granting patents, trademarks and design rights, it is subject to a number of disciplines to keep its operations efficient and its costs and charges to a minimum, consistent with the need for the IP rights which it grants being of high quality. These disciplines include:

- *legislative control:*

Most of IP Australia's fees are set in the regulations attached to its legislation. Such fees are thus subject to direct parliamentary control. Any changes to these fees must also be agreed with the Office of Regulation Review in a regulatory impact statement before being submitted to Cabinet.

- *agreement with DoFA under the FMA:*

As part of this agreement (Appendix 1), IP Australia must review its fees every year and any fee increases must be less than CPI increases. In practice, IP Australia has not increased its fees since 1994 and there have been fee decreases in recent year amounting to 23% of revenue. As described above, the agreement with DoFA requires that IP Australia reviews its performance quarterly against various performance indicators, including price of its services.

- *review by ACIP:*

The Advisory Council of Intellectual Property (ACIP) is established by Ministerial instrument to provide advice to either the Minister or the Director General of IP Australia on matters relating to Australia's industrial property system and the administration of the system by IP Australia. The council has up to 11 appointed members whose background and experience reflect the variety of users of the intellectual property system. The Council has an ongoing role in monitoring the performance, including the financial performance, of IP Australia and in

providing advice that will assist in improving IP Australia's performance outcomes. Their major recent work includes reports on IP Australia's international strategy; improving patents and the patent system; and IP Australia's awareness and marketing strategy. Their current work includes improving the trade mark system and benchmarking IP Australia's performance against other countries' IP offices.

- *periodic audit by ANAO:*

IP Australia is subject to periodic audit by the Australian National Audit Office (ANAO) on its productivity and client service. In its most recent report (Audit Report No.5, tabled 09/08/99) ANAO found "IP Australia's output performance information is quite robust, with a strong focus on cost efficiency, productivity and timeliness.....Improvement of business performance has been the focus of management attention for a number of years and has delivered significant benefits to IP Australia and its clients in terms of improved cost and timeliness of services."

However, ANAO also stated "IP Australia's clients have identified the quality and consistency of decision-making as of key importance.....While IP Australia has begun to address some quality issues, its overall approach has tended to focus on process characteristics, such as cost and timeliness, rather than on quality of the product as perceived by the client".

- *client feedback through its customer service charter and client surveys:*

IP Australia conducts regular surveys of its clients using private-sector specialist market-research companies to establish issues which are important to its clients, including those related to costs and quality. These surveys commenced in early 1996 with an examination of client perceptions of quality of service delivery. More recent surveys include identifying lack of knowledge of and skills in and use of the IP system, for example by business advisers and by tertiary education institutions, particularly by biotechnology. Other surveys asked clients how IP Australia's internet delivery could be made more effective; and what steps needed to be taken to improve the effectiveness and efficiency of its ecommerce proposals.

IP Australia launched its Customer Service Charter in 1998. This defines the level of service that its clients should expect and mechanisms by which clients can give feedback on the service they receive. For example, the Charter gives timeliness targets for its services: these are analysed quarterly so that any corrective action can be taken quickly. Likewise, customer complaints (and compliments) are logged continuously and the system changed where necessary.

In addition, IP Australia meets at least annually with major stakeholders including the Institute of Patent and Trade Mark Attorneys of Australia (IPTA), the Law Council of Australia, the Australian Manufacturers' Patents, Industrial Design, Copyrights and Trade marks Association (AMPICTA), and the Inventors Associations of Australia.

Much of this feedback has shown that stakeholders are more concerned with the value added by IP rights granted, including issues of quality and consistency, rather than simply reduction in fees.

- *review under the Competition Principles Agreement:*

The effects on competition of intellectual property legislation (which IP Australia and the Attorney-General's Department administer) is subject to a review at least every 10 years under the Competition Principles Agreement between the Commonwealth and State governments. The first review was commenced in July 1999 and recently submitted its final report which is expected to be released shortly. The review was given the highest level of importance by the Commonwealth government and an independent review committee headed by distinguished economist Henry Ergas was established. In its Interim Report, the committee concluded that an intellectual property system granting strong, enforceable rights was essential to Australia's economic well-being, both through promoting domestic innovation and by encouraging diffusion of innovation through Australia's membership of the world trading community.

- *competition with IP offices in other countries:*

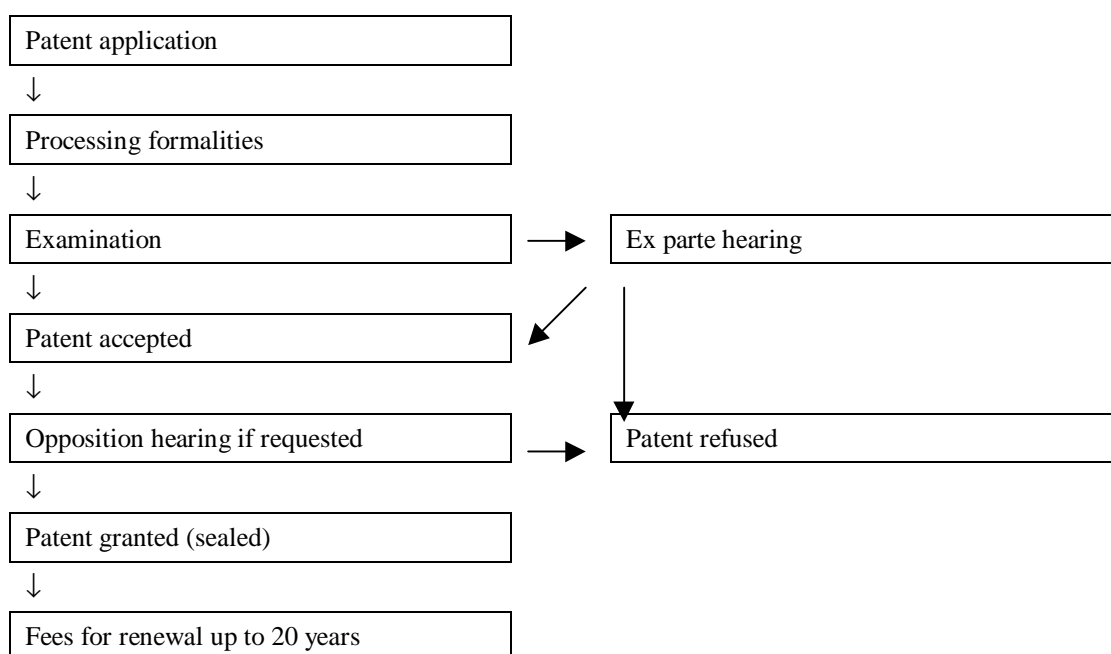
Intellectual property rights themselves are becoming increasingly part of the global market place, along with the commodities (products and services) incorporating the IPRs. Although a single patent with world-wide coverage is thought to be still some-time off, there is increasing harmonisation with 'full faith and credit' for work such as searching done by IP offices in other countries. This is leading to increasing competition between IP offices for such work. As part of its response to this competition, IP Australia has commenced bench-marking with offices in other countries, both in costs and quality of examination. For example, a recent analysis showed IP Australia was 6th lowest amongst 29 OECD countries in the official costs of filing, examining, granting and maintaining patents over a typical 7 year patent life (see appendix 2 attached).

Determining fees

Under its Financial Framework agreement with DoFA, IP Australia is required to fully recover cost; that is, at the aggregate level, its total revenue should equal its total expenses on an accrual basis.

The fees which it collects are used for processing the grant of IPRs, for maintaining the IP system and for educating potential users of the system. Major issues for IP Australia are the degree of aggregation of process steps/services for fee charges; and the time-span over which its cost recovery should operate.

Processing an application for an IPR involves a significant number of stages over a significant period of time. For example, the main stages in IP Australia for receiving and maintaining a patent are:



Each of these processing stages involves a number of sub-stages (as described in s. 4 of the *Patents Act 1990*) many of which attract separate fees. The process until grant can take up to 5 years; and the patent may be renewed for up to 20 years from the filing date, with a possible extension of 5 years for pharmaceutical patents. Applicants may drop out of the process at any stage. Similar processes occur for trade mark and design rights.

The fees charged by IP Australia for individual services are determined by a number of factors, some of which may be conflicting:

- *the cost of the process steps in providing that service:*

The primary consideration in setting a fee for an individual service is the cost of providing that service. In the past, these costs have been only roughly estimated but IP Australia is currently implementing activity-based costing to obtain more accurate estimates of costs of individual services. It is also undertaking a demand modelling project for its services. The results of these analyses will be used to more accurately apportion fixed and variable costs between various services over the long potential life of the IP rights.

- *efficiency considerations:*

Obviously, it is not efficient to collect a fee where the charge is less than the cost of collecting the fee. In the absence of other reasons, the service step may not be charged a fee in such cases - or it may be aggregated with other service steps so that the fee collection is efficient.

Aggregating services and fees may also lead to a simpler fee structure and so to reduced transaction costs for both IP Australia and its clients. On the other hand, frequently changing the fees can lead to significant costs: to clients for the costs of reprogramming their systems; and to IP Australia because its fees are prescribed by legislation and changing these fees requires considerable government administrative expense. In consultations, IP Australia's clients have expressed a preference for relatively infrequent fee changes and long lead times when they do occur.

- *quality:*

Other things being equal, higher quality generally means higher costs and so fees. ACIP in its submission to the Ergas Committee's Issues Paper stated "ACIP is particularly interested to ensure that the quality of intellectual property rights granted is not compromised by an over-concentration in fee reductions.....Granting quick, cheap but weak or unenforceable rights will not enhance innovation or competition" In its Interim Report, the Ergas Committee concurred saying that uncertain quality can introduce significant costs to applicants who will be unsure of the robustness and enforceability of the rights; costs to competitors who will be uncertain whether they are infringing a granted right and to society through the costs of type 1 errors (granting patents which should not be granted) and type 2 errors (not granting patents which should be granted), as well as through possible loss of confidence in the system by those both inside and outside it. Type 1 errors lead to costs of exclusion without the corresponding benefits to society; while type 2 errors undermine the incentives to innovate.

government policy considerations:

Part of government policy, as shown by the recent Innovation Summit, is to stimulate innovation through greater use of the IP system. In addition to directly stimulating innovation, the formal IP system also encourages its diffusion through the disclosure and publication which is part of the *quid pro quo* of applying for a formal IP right. The social benefits of this disclosure when applying for formal IP rights contrasts with other means of protecting innovation such as trade secrets and confidentiality agreements.

As in many other countries, Australia therefore encourages easier entry into the IP system, particularly by SMEs, by minimising the fees charged early on in the process when the commercial value of the innovation is uncertain and so funding may be difficult. Higher fees are then charged later in the IPR's life if the innovation is sufficiently successful commercially. Following recent US studies, the Ergas committee in its Interim Report recommended that IP Australia introduce even more steeply rising patent renewal fees as this would also encourage the effective life of less valuable innovations to be reduced and so the costs of these IPRs to society would be minimised.

- *non-chargeable activities:*

Incumbent in its role of managing the whole industrial property system to ensure Australians benefit from the effective use of IP, particularly through increased innovation, investment and trade, IP Australia undertakes non-fee generating activities which do not contribute directly to its cost recovery obligations.

These activities include:

- making the information disclosed as part of the *quid pro quo* of applying for a formal IP right readily available to other innovators; for example, making patent applications easily accessible on a web-site.
- education and awareness programs which promote the more effective use of the IP system by its stakeholders.
- developing the IP system both in Australia and internationally to make it more effective in promoting innovation, investment and trade.

- *stakeholders needs:*

As with corporate governance in the private sector, IP Australia must balance the needs of its various stakeholders; applicants for IPRs (who range from individuals through SMEs to large corporations), patent and trade mark attorneys, employees, ministers and society generally.

For example, rapid changes in efficiency of particular processing steps using IT have made possible rapid changes in fees that might be charged for these services, to the benefit of applicants. Although fee decreases are generally welcomed by clients, IP Australia's consultations with clients prior to recent fee decreases found that some clients expressed strong opposition to frequent fee changes because of the lead times needed to change their systems, including informing local and overseas clients.

- *international requirements:*

Fees relating to applications filed under the Patent Cooperation Treaty (PCT) are set by agreement with WIPO. Fees paid for applications under the Patent Cooperation Treaty (PCT) contain two components. IP Australia pays the first to the International Bureau of WIPO, IP Australia retains the second. IP Australia has no control over the level of fees it pays to the International Bureau. The Bureau determines them and IP Australia collects them on behalf of the Bureau. As these fees are set in Swiss Francs they are subject to variation in exchange rates. IP Australia can determine the second component of the fees. However, other offices provide very similar services, so IP Australia is constrained by benchmarking to charge similar fees to its competitors.

- *future development needs:*

As a full cost-recovery organisation, IP Australia must provide for investment in future development needs out of current revenue. For example, it is currently undertaking a major upgrade of its IT facilities, particularly for electronic searching of prior art databases by examiners and clients, as well as electronic filing of applications. Previously, much of IP Australia's work has been paper based. This expenditure on IT will increase future efficiency to keep IP Australia with cost competitive with other IP offices. Improved searching will also improve quality of examination and so lower the costs to Australian society of wrongly granted IP rights. In addition, improved access to IP Australia's databases of by clients will improve diffusion of knowledge and so encourage competition in Australia through secondary innovation.

The costs of such investments, which create significant long term private and social benefits, can be amortised over time using accrual accounting but are difficult to assign to specific services in activity-based costing, especially when demand for particular services is difficult to predict over the potentially long life-cycle of an IPR.

Conclusions

IP Australia strongly 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.

The most difficult issues for IP Australia relate to the time scale over which it should balance its cost recovery and how it should amortise its major redevelopment costs. In recent years IP Australia has accumulated a surplus, partly because it did not undertake major developments, especially in the IT area; partly because the demand for some of its services increased more rapidly than expected; and partly because of the greater than expected initial efficiency improvements in its processes. It has recently reduced fees to its clients by the equivalent of 23% of its income but concern has been expressed by a number of reviews that fee reductions should not be at the expense of quality as this would lead to greater costs to Australian society of the exclusive rights. IP Australia is also currently working to more accurately balance its cost recovery by more accurately modelling the demand for its services and by more accurately attributing costs to its individual services.

Appendix 1

IP AUSTRALIA

FINANCIAL FRAMEWORK

PREFACE

This Financial Framework sets out the key matters agreed between the Department of Finance and Administration (DoFA) and IP Australia concerning its finances and operations as a prescribed agency under a special account.

1. BROAD FRAMEWORK

1.1 Status of IP Australia and Special Account

IP Australia is part of the Department of Industry, Science and Resources and administers the department's intellectual property program. The Director General is the Chief Executive Officer of IP Australia and reports to the relevant Minister on the financial management of IP Australia under the Financial Management and Accountability Act 1997. The Director General reports to the Secretary of the Department of Industry, Science and Resources under other legislation, such as the Public Service Act 1999.

The outcome required of IP Australia, subject to amendment by the Minister for Industry, Science and Resources from time to time, is that:

Australians benefit from the effective use of intellectual property, in, particular through increased innovation, investment and trade.

Under the Financial Management and Accountability Act 1997, IP Australia operates a special account, known as the *IP Australia Account* with the following purpose:

For expenditure related to the development and administration of intellectual and industrial property systems, including the provision of property rights in inventions, trademarks and designs and matters incidental thereto; and

for expenditure comprising payments of moneys to the Official Public Account, as agreed from time to time by the Minister for Finance and the relevant Minister, in addition to payments expressly required to be paid to that account under legislation.

1.2 Corporate Plans

IP Australia will produce each year a corporate plan, comprising a strategic plan and a business plan, covering, at a minimum, the forward three years. The corporate plan will include the organisation's objectives, strategies and financial and non-financial performance targets.

A corporate plan will be submitted to the Department of Finance and Administration (DoFA) by 30 June each year.

1.3 Investment Powers

IP Australia does not have authority for investment of funds with external parties. In lieu, a quasi investment arrangement has been negotiated with DoFA (section 2.4 refers).

1.4 Accounting Policies

Accounting policies are to conform with the Financial Management and Accountability Act 1997, the Finance Regulations and Orders, Finance Directions and the Minister for Finance's *Guidelines for Financial Statements for Commonwealth Authorities*.

IP Australia will maintain a corporate accounting manual covering accounting policies and procedures.

1.5 Ownership of Land and Buildings

The arrangements applying to the Australian Public Service in respect of land and buildings will continue to apply to IP Australia.

1.6 Charging Policies

Charges for services provided by IP Australia will be reviewed at least annually and will be set so as to recover, on an accrual basis, the full costs of IP Australia.

1.7 Role of Department of Finance and Administration (DoFA)

DoFA will have a continuing role in monitoring, assessing and advising Government on the operations of IP Australia and will seek supplementary information on reserve account operations as necessary. Quarterly financial statements and reports against performance targets should be copied to DoFA.

1.8 Role of Australian National Audit Office (ANAO)

ANAO will have a continuing role in undertaking performance and regularity audits of IP Australia, including the audit of the financial statements of the IP Australia reserve account.

1.9 Performance Reporting

Performance targets, agreed with DoFA, will be included in the IP Australia corporate plan and cover both financial and non-financial measures. Financial targets will include the recovery of full

costs both on an accrual basis, taking one year with another, and real term reductions in unit costs. Non-financial targets will relate to increases in productivity, time limits in relation to examination and improvement in quality of service.

The IP Australia annual report on the operation of the organisation will, inter alia, identify performance against these key targets.

Program performance information will continue to be reported by IP Australia under program headings for inclusion within the Industry, Science and Resources Portfolio Budget Statements.

1.10 Employment Conditions and Staffing Controls

Staff of IP Australia will continue to be employed under the Public Service Act 1922 and remain subject to relevant industrial award provisions and government wages policies.

APS position classification standards and SES budget requirements administered by DoFA continue to apply.

IP Australia will continue to report staffing levels in the Annual Report and in Industry, Science and Resources Portfolio Budget Statements.

2. FINANCIAL STRUCTURE AND FUNDING ARRANGEMENTS

2.1 Capitalisation and Initial Funding Arrangements

Initial funding will be for the purchase of non-current assets of \$4.783m. In addition, working capital of \$3.2m will be provided comprising \$1.2m for payment in July 1993 of 1992-93 pay period 27 and \$2.0m for ongoing working capital requirements. In recognition of surpluses from previous years operations having been taken into CRF, the initial working capital provision will be in the form of a grant.

The Commonwealth also agrees that a sum of \$3.372m will be available as a grant for use when required in the funding of agreed works technical new policy and will be treated as a receivable item in the initial Balance Sheet.

2.2 Management of Working Capital

Ongoing working capital requirements will be reviewed by IP Australia and DoFA during the first year of operation of the trust account and thereafter from time to time.

2.3 Capital Charge

A capital charge will continue to be included as part of IP Australia's full costs reflecting the opportunity cost of the capital employed in the organisation. It will be assessed at the Government's opportunity cost of capital applied to the current average value of capital employed, less any interest payable to the Commonwealth on loans. For the purposes of assessing opportunity cost, capital employed will be defined as total assets less total liabilities. The capital charge is payable to CRF but may be offset against notional interest credits (section 2.4).

2.4 Quasi Investment of Reserve Account Monies

In recognition of the absence of investment powers, notional interest credits will be earned on daily cash balances at a level determined by the rate earned by the Commonwealth on its balance with the Reserve Bank. The amount of accumulated interest standing to the credit of the reserve account will be offset against interest payable by IP Australia to CRF. Where interest credits exceed the sums payable for any accounting period it will be treated as an accrued entitlement to be realised in subsequent accounting periods. These arrangements will be reviewed by IP Australia and DoFA under section 2.2.

Both the gross interest earned and sums payable will be reported in the financial statements.

2.5 Community Service Obligations

A Community Service Obligation arises when a government specifically requires a public enterprise to carry out activities relating to outputs or inputs which it would not elect to do on a commercial basis, or which it would only do commercially at higher prices.

IP Australia will agree with DoFA any Community Service Obligations within this definition.

3. FINANCIAL MANAGEMENT

3.1 Asset Management

3.1.1 Control and Depreciation on Non-Current Assets

IP Australia will be responsible for the management and control of all non-current assets taken into account in the reserve account and will maintain a register of all such assets.

Non-current assets should be depreciated in accordance with normal practice, i.e. as indicated in Accounting Standard AAS4, with such amounts included in the full costs recovered by service charges.

3.1.2 Asset Valuation

Non-current assets will be transferred to the IP Australia reserve account at their net depreciated value at the date of transfer and should be revalued regularly. Valuation of non-current assets should be consistent with guidance given in the Minister for Finance's *Guidelines for Financial Statements of Commonwealth Authorities*.

3.1.3 Replacement and Additional Assets

Non-current assets recognised in the Balance Sheet may be replaced or rationalised at the discretion of IP Australia and additional assets acquired subject to the purpose of the reserve account.

IP Australia will be expected to meet non-current asset requirements from monies standing to the credit of the reserve account, which will include proceeds from disposal of reserve account assets. The proceeds of any non-reserve account assets, i.e. funded directly from an annual appropriation, will be returned to the CRF.

IP Australia may approach DoFA for additional funds which would be considered in the Budget process taking into account the organisation's business plan and performance, and the overall budgetary position. Any additional funding would generally take the form of a repayable loan on which interest would be charged at a rate agreed with DoFA (generally the long term bond rate).

ADP acquisitions will continue to be subject to Acquisition Council arrangements applicable to the APS.

3.2 Management of Liabilities

3.2.1 Employer Liabilities

Employee liabilities other than superannuation (e.g. long service and recreation leave) are to be disclosed in the IP Australia Balance Sheet as a claim on assets. Employee entitlement payments will be funded from reserve account monies.

The Commonwealth remains responsible for employee liabilities in relation to long service leave that existed before the establishment of the IP Australia trust account on 1 July 1993 (\$4.944m). The Commonwealth will reimburse IP Australia each year for the amount of long service leave which relates to pre trust account liabilities IP Australia has paid out during that year until that liability is extinguished.

Any staff redundancies will be funded from reserve account monies.

3.2.2 Employer Superannuation Contributions

Employer superannuation contributions in respect of IP Australia employees will be made fortnightly direct to the Retirement Benefits Office (RBO) at a rate agreed between RBO and IP Australia.

3.2.3 Unearned Revenue

For certain services significant revenue is received in advance of the work on those services being performed. IP Australia will therefore defer recognition of such revenue until the relevant work is performed and the costs incurred. The revenue recognition policies, as agreed with DoFA, will be reported in the annual report and to support the revenue recognised in the financial statements, IP Australia will maintain a management information system to enable the tracking of those fees for which the revenue has been deferred.

3.3 Insurance and Worker's Compensation

As from 1 July 1998, Comcover will perform the role of insurer for all business risks other than workers' compensation. IP Australia will pay a premium at a rate negotiated with Comcover.

Comcare will perform the role of insurer in respect of worker's compensation for which IP Australia will be required to pay a premium at a rate negotiated with Comcare.

3.4 Allocation of Corporate Management Expenditure

All IP Australia expenses should be allocated to program headings for reporting within the Industry, Science and Resources Portfolio Budget Statements.

For setting and reporting against the unit cost performance targets referred to in section 1.9 it will be necessary to identify separately the allocation of corporate management costs so as not to distort interpretation of such performance measures.

4. FINANCIAL REPORTING

4.1 Form of Annual Financial Statements

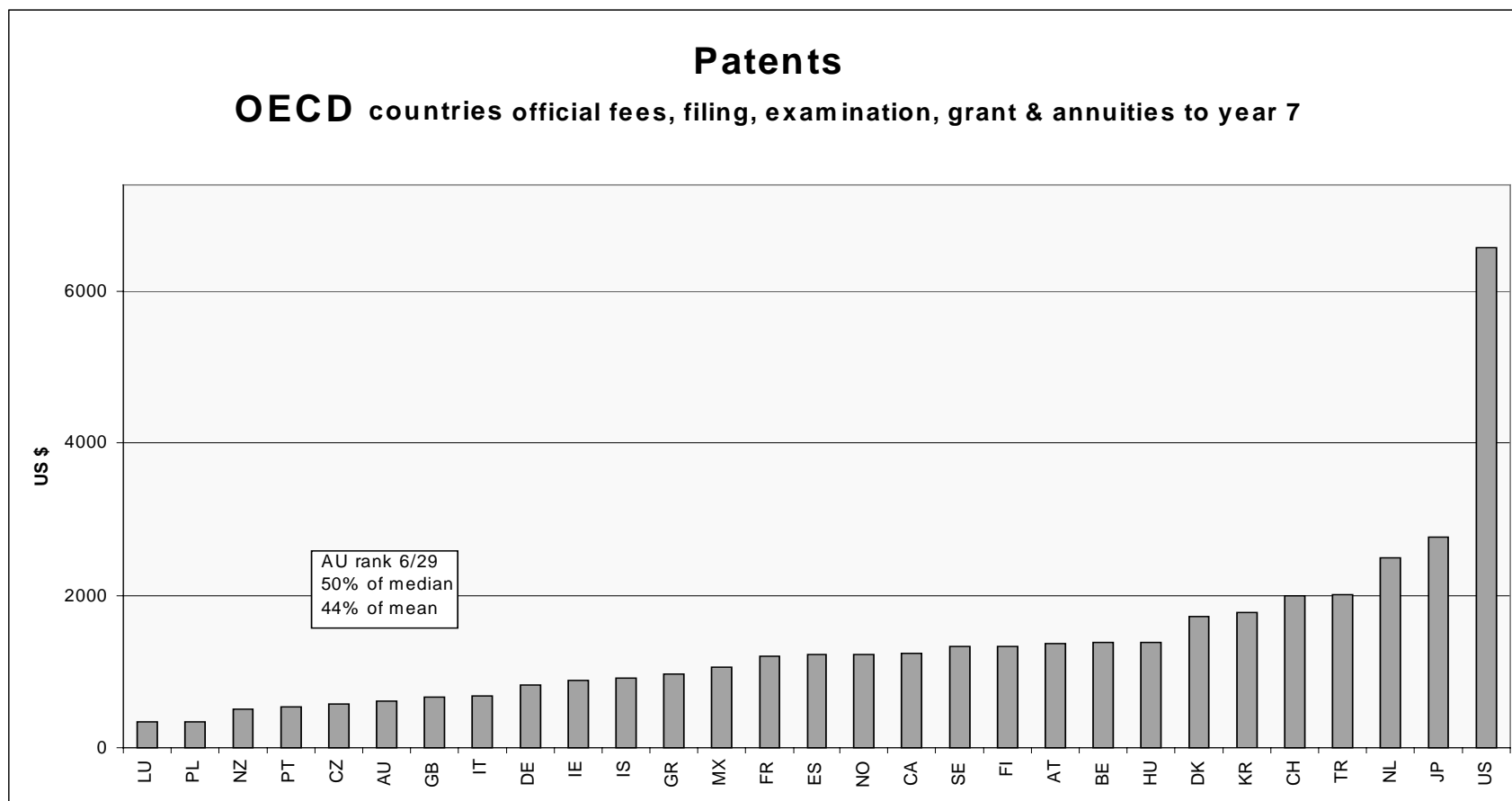
As part of its annual report, IP Australia will prepare financial statements for the reserve account consistent with determinations made by the Minister for Finance under Section 49 of the Financial Management and Accountability Act 1997 requiring the financial statements to accord with the Finance Minister's Orders.

The obligation on the Commonwealth (and agencies which are a part of it such as IP Australia) to pay Long Service Leave entitlements to persons employed under the Public Service Act is taken to be an enactment for the purposes of clause 25(2) in the *Guidelines for Financial Statements of Commonwealth Authorities*.

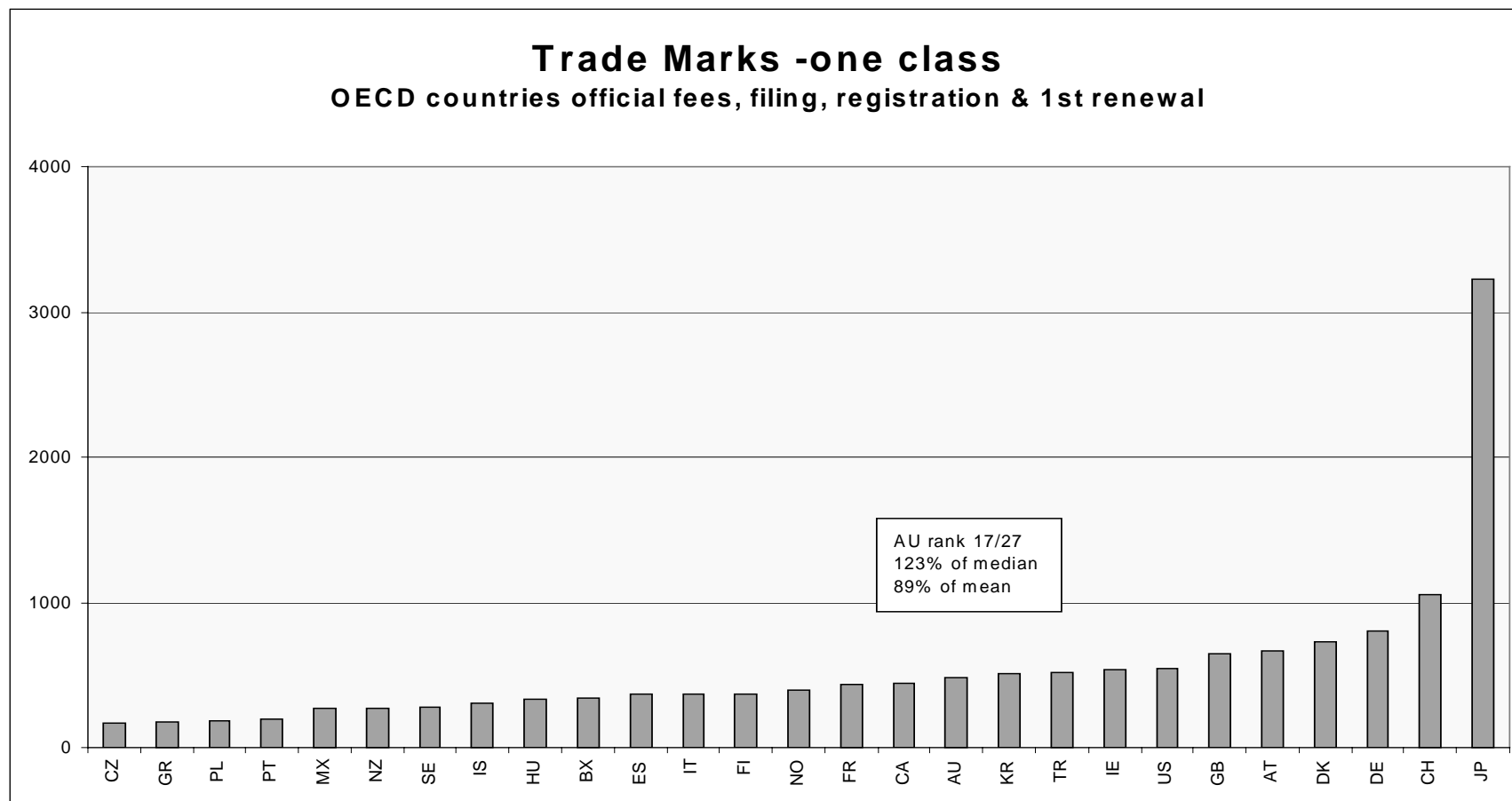
The financial statements will be audited by ANAO and a copy of the annual report forwarded to DoFA.

Finalised: 6 September 1995
Updated: 1 January 1999

Appendix 2 Fee comparison with other OECD countries



- Notes:
1. Date of analysis - Jan 2000. Planned to update analysis annually unless substantial changes to fee structures occur.
 2. Fee comparison based on the assumption that a typical patent application comprises 20 pages, 8 claims and 5 extra pages of drawings, and will have an effective life of 7 years.
 3. US patents do not have annual renewal fees, renewal fees are paid at the 3rd, 7th, and 11th years. Using for this analysis the 7th renewal payment covers up to the 10th year which consequently leads to the figure for the US being much higher than other countries.



- Notes:
1. Date of analysis - Jan 2000. Planned to update analysis annually unless substantial changes to fee structures occur.
 2. Fee comparison based on the assumption that a typical trade mark is renewed only once
 3. While Australia allows for multiclass applications, a significant number of OECD countries do not so the analysis is based on single class applications.
 4. Fees for Japan are significantly higher across the board than in other countries.

PART I**ALL AGENCIES ARE REQUESTED TO COMPLETE PART I.****If you cannot answer a question, please indicate whether the question is NOT APPLICABLE or if INFORMATION IS NOT AVAILABLE.****Section 1: Contact details**

1.1 Agency	<input type="text" value="IP Australia"/>	
1.2 Reporting and financial arrangements are governed by: (Please indicate with a 'X' whether one or more of the following Acts apply)		
<i>Financial Management and Accountability Act 1997</i>	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
<i>Commonwealth Authorities and Companies Act 1997</i>	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Other	<input type="text"/>	
1.3 Contact Officer	<input type="text" value="Kay Collins"/>	
Position	<input type="text" value="Director, Strategy and Projects"/>	
Phone	<input type="text" value="02 6283 2402"/>	
Fax	<input type="text" value="02 6285 1048"/>	
Email	<input type="text" value="kay.collins@ipaustalia.gov.au"/>	
Address	<input type="text" value="P.O. Box 200, WODEN ACT 2606"/>	

This section asks about your agency's total revenues, charges and expenses. All agencies should complete this section, whether or not you consider you undertake cost recovery.

Section 2: Agency revenues, charges and expenses

(Please indicate with a 'X' which response applies)

- 2.1 Has your agency charged any cost recovery fees, levies or other charges in the last five financial years?

YES	NO
X	

Relevant charges include any fees, levies, taxes (including some customs and excise duties earmarked for specific purposes) or other charges which arise from the services, programs or business activities of your agency, and which are collected by your agency or by another agency on your behalf. For example, application fees, processing charges, consultancy fees, publication sales, special industry duties, excises or levies other than general taxation.

- 2.2 Were any of the appropriations allocated to your agency in the last five financial years linked (hypothecated) to revenue collected from fees, levies or charges (for example, levies paid to the Consolidated Revenue Fund but earmarked for allocation to your portfolio)? (Whether the revenue was collected by your agency or by another agency on your behalf).

YES	NO
	N/A

- 2.3 Has your agency considered introducing any cost recovery arrangements in the past that were not implemented?
(Please attach any relevant reviews, analysis or other information.)

YES	NO
	N/A

- 2.4 Is your agency considering introducing any cost recovery arrangements in the future?
(Please attach any relevant reviews, analysis or other information.)

YES	NO
	N/A

If you answered NO to questions 2.1 and 2.2, you need not answer any further questions. Thank you for your cooperation. Please return the questionnaire to the Commission (see front sheet for instructions).

If you answered YES to EITHER question 2.1 OR question 2.2 OR both, please complete section 3 below, and Part II on the following worksheet.

Section 3: Agency revenues and expenses

3.1 Does your agency classify revenues and expenses as agency and administered?

Agency revenues and expenses are those controlled by the department/agency (for example, employee and administrative expenses). Administered revenues and expenses are those which are controlled by Government and managed or oversighted by the department/agency on behalf of the Government (for example, social security payments).

YES	NO
	X

If your agency classifies revenues and expenses as 'agency' and 'administered' then please fill in both tables below. If your agency does not classify revenues and expenses as 'agency' and 'administered' then please put all revenues and expenses in the 'agency' table below.

AGENCY revenues and expenses (Please use \$'000)

	1995-96	1996-97	1997-98	1998-99	1999-2000
Agency revenue from cost recovery (a)					
3.2 Cost recovery revenue retained by your agency	59697	69968	73703	67742	72833
3.3 Cost recovery revenue paid to CRF and appropriated to your agency (or another agency for a specific purpose (ie. annotated, hypothecated or earmarked revenues)					
3.4 Cost recovery revenue paid to CRF and not specifically appropriated to your agency (or another agency)					
3.5 Total agency revenue from cost recovery	59697	69968	73703	67742	72833
Agency revenue from other sources					
3.6 Other appropriations					
3.7 Other sources (eg. asset sales, dividends, interest, funding from other government agencies)	1353	1320	1587	1615	1810
3.8 Total agency revenue from other sources	1353	1320	1587	1615	1810
3.9 Total agency revenue	61050	71288	75290	69357	74643
3.10 Total agency expenses	57931	61107	63556	68401	67270

CRF Consolidated Revenue Fund

(a) Include all revenue from fees, levies, excises and other charges which arise from the services or activities of your agency and which is paid to your agency to another agency or to the Consolidated Revenue Fund.

ADMINISTERED revenues and expenses (Please use \$'000)

	1995-96	1996-97	1997-98	1998-99	1999-2000
Administered revenue from cost recovery (a)					
3.11 Cost recovery revenue retained by your agency					
3.12 Cost recovery revenue paid to CRF and appropriated to your agency (or another agency for a specific purpose (ie. annotated,					
3.13 Cost recovery revenue paid to CRF and not specifically appropriated to your agency (or another agency)					
3.14 Total administered revenue from cost recovery	0	0	0	0	0
Administered revenue from other sources					
3.15 Other appropriations					
3.16 Other sources (eg. asset sales, dividends, interest, funding from other government agencies)					
3.17 Total administered revenue from other sources	0	0	0	0	0
3.18 Total administered revenue	0	0	0	0	0
3.19 Total administered expenses					

CRF Consolidated Revenue Fund

(a) Include all revenue from fees, levies, excises and other charges which arise from the services or activities of your agency and which is paid to your agency to another agency or to the Consolidated Revenue Fund.

End of Part I. Please complete Part II, which is on a separate worksheet.

PART II

If your agency operated any cost recovery arrangements in 1999-2000, please complete this part.

Please fill out a separate form for each sub-unit, cost recovery program or activity, or output or outcome for which you are reporting. Similar cost recovery arrangements may be reported in groups.

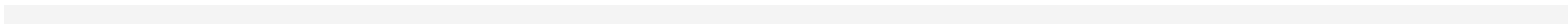
PART II(a)

Name of sub-unit, agency, program or activity, output or outcome

IP Australia

Section 4: Cost recovery arrangements in 1999-2000

Descriptive material	
4.1 Nature of cost recovery arrangement (eg. licence fee, service charge, hypothecated excise tax or levy etc)	Service charge
4.2 Basic description of arrangements: (Please attach any relevant documents.)	IP Australia operates on a full cost recovery basis and uses the revenue raised from charges for intellectual property services to fund its operations. IP Australia receives no funding from the Appropriation Bills. The standing appropriation for special accounts enables IP Australia to spend revenue received for intellectual property charges.
4.3 Who pays the cost recovery charges?	Users of the IP system - predominately applicants for IP rights (patents, trade marks, industrial designs)
4.4 Who benefits from the program or activity, output or outcome?	1) Primarily successful applicants 2 Business and industry; and 3) All Australians benefit from the effective use of intellectual property, particularly through increased innovation, investment and trade.
4.5 Do you attempt to measure these benefits? If YES, how?	Yes. Measures to monitor the effectiveness of the outcome mentioned in 4.4 are detailed in the Portfolio Budget Statements 2000-01
4.6 Are there alternate providers or substitutes for this program or activity, output or outcome? (Please describe)	Yes. Seeking an IP right is voluntary. A number of alternatives are available, such as: trade secrets and confidentiality agreements, maintaining a competitive advantage (in place of patents); and the common law tort of "passing off" (in place of registering a trade mark).
4.7 When was this cost recovery arrangement introduced?	1984 on a cash basis and 1993 on an accrual basis.



PART II(b)

Name of sub-unit, agency, program or activity, output or outcome

IP Australia

Program or activity, output or outcome cost recovery arrangements in 1999-2000 (continued)
(Please use \$'000)**Program or activity, output or outcome revenues**

4.8	Cost recovery revenue paid to CRF earmarked for appropriation to same agency	\$			
4.9	Cost recovery revenue paid to CRF earmarked for appropriation to a third party	\$			
4.10	Cost recovery revenue paid to CRF and not earmarked for particular appropriation	\$			
4.11	Cost recovery revenue paid to CRF (subtotal)	\$	0		
4.12	Cost recovery not paid into CRF		\$	72833	
4.13	Total cost recovery revenue		\$	72833	
4.14	Appropriations not related to cost recovery			\$	
4.15	Other sources (interest)			\$	1810
4.16	Total program or activity, output or outcome revenues			\$	74643

Program or activity, output or outcome expenses

4.17	Direct expenses	\$	36 609
4.18	Indirect expenses (including corporate overheads) * plus IT & capital charges	\$	35 631
4.19	Third party expenses (a)	\$	
4.20	Total program or activity, output or outcome expenses	\$	72 240

Administration costs

4.21	What costs are associated with administering the cost recovery arrangements?	\$	
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CRF Consolidated Revenue Fund. Direct costs are those directly related to a particular program. Indirect costs include indirect agency overheads and general running costs. (a) Include third party costs where third parties are involved in a program or activity and their costs are being recovered as part of the cost recovery arrangements.

PART II(c)

Name of sub-unit, agency, program or activity, output or outcome

IP Australia

Section 5: Institutional arrangements

- 5.1 What was the rationale for introducing these cost recovery arrangements? (Please attach sources, eg. legislative objects clauses, press releases, second reading speeches.)
- The Patents, Designs and Trade Mark Offices have a long history of user pays. Before 1984, the Offices recovered all normal operating costs through fee charges. In 1984, Government decided that the Offices should recover all the significant cash costs. In 1993, IP Australia moved to cost recovery on an accrual basis.
- 5.2 What was the legal basis for establishing these cost recovery arrangements: (Please name and attach relevant documents.)
- | | |
|---|--|
| Legislation (eg. s.31 of the Financial Management and Accountability Act, tax or levy acts) | S.31, s.20 and Regulations of the FMA Act. |
| Subordinate legislation (eg. regulations, standards) | |
| Co-regulation or quasi-regulation | |
| Commonwealth/State/Territory agreement | |
| Voluntary arrangements (eg. codes of practice) | |
| Other | |
- 5.3 Who was consulted about introducing these cost recovery arrangements? (Please name relevant bodies and describe the consultation arrangements.)
- | | |
|---|---|
| Commonwealth government (DOFA etc) | DoFA, DISR, Treasury and PM&C |
| Other governments (state, territory, local) | |
| Industry | Australian Manufacturer's Patent; Industrial Designs; Copyright and Trade Marks Association; Institute of Patent and Trade Mark Attorneys; Law Council of Australia |
| Consumers | As above |
| Other | Industrial Property Advisory Committee |

5.4	What guidelines were consulted when establishing these cost recovery arrangements? (Please attach source of information, guidelines etc.)	DoFA guidelines on costing of government activities (current at that time). Trust Account guidelines.
5.5	Which agency is responsible for the following activities? (Please name relevant agency)	
	Policy setting	IP Australia, DISR, DFAT
	Price setting	IP Australia
	Administration	IP Australia
	Revenue collection	IP Australia
5.6	Is there any ongoing consultation about these cost recovery arrangements? With whom? (Please name relevant bodies.)	
	Commonwealth government (DOFA etc)	DoFA, ORR, DISR
	Other governments (state, territory, local)	
	Industry	Australian Manufacturer's Patent, Industrial Designs, Copyright and Trade Marks Association; Institute of Patent and Trade Mark Attorneys; Law Council of Australia
	Consumers	As above plus, Client surveys, Inventors Associations
	Other	Advisory Council on Intellectual Property
5.7	Please describe these consultation arrangements.	Regular discussions, correspondence, client surveys
5.8	Have the cost recovery arrangements been formally reviewed? What was the outcome? (Please attach copy of review)	IP Australia's cost recovery arrangements were reviewed by ANAO in 1999 - see www.anao.gov.au . The arrangements are also currently being reviewed jointly by DoFA and IP Australia.

PART II(d)

Name of sub-unit, agency, program or activity, output or outcome

IP Australia

Section 6: Price setting arrangements

6.1 How are these cost recovery charges determined? (Please attach any relevant documents)

- | | |
|--|--|
| (i) How are charges set? (eg. by formula in legislation or based on 'market prices') | At a level to achieve full cost recovery for services on an aggregate level. They are also structured to gain maximum advantage for Australian businesses, while at the same time complying with international agreements. |
| (ii) Are charges directly related to the costs of particular activities, outcomes or outputs, or charged on some other basis? (eg. levies on users' turnover, profits or assets) | Charges relate to the costs. |

6.2 If charges are directly related to the costs of particular activities, outputs or outcomes:

- | | |
|--|---------------------------------------|
| (i) What costs do charges aim to recover? (eg. only direct costs or indirect costs such as overheads) | All costs |
| (ii) What proportion of these costs do charges aim to recover? (%) | 100% |
| (iii) Does the charging regime require assets to be valued? (eg. to allow the calculation of user cost of capital or return on assets) | Yes |
| (iv) If 'YES' to (iii), on what basis are assets valued? (eg. historic, replacement, deprival or replacement cost) | replacement, deprival |
| (v) Do charges include a user cost of capital? | Yes |
| (vi) If 'YES' to (iv), how is it calculated? | This is performed by the valuer (AVO) |
| (vii) Do charges include return on assets? (eg. profit) | No |
| (viii) If 'YES' to (vii), on what basis? | |
| (ix) Do charges discriminate between types of users? | No |
| (x) If 'YES' to (ix), on what basis? | |

(xi)	Do charges allow for access and equity considerations (eg. waivers, discounts)?	No
(xii)	If 'YES' to (xi), on what basis?	
(xiii)	Other (Please describe other significant features)	
6.3	How are indirect costs allocated for cost recovery arrangements? (eg. activity based costing, according to share of direct costs or other rule.)	Allocation exercise based on cost drivers. Activity based costing currently being implemented
6.4	Are there any price controls on these charges?	Not directly, but the Financial Framework Agreement with DoFA under the FMA requires fees to be at least comparable with other countries; fee increases to be less than the CPI; and fees set to recover total costs.
6.5	How often is the level of charges changed?	Two fee changes since October 1994, both reductions, with no fee increases. Fees reviewed annually.
6.6	What happens if revenue recovered is greater than costs incurred?	Surplus is retained in IP Australia for future contingencies.

End of Part II. Thank you for your cooperation. Please return the questionnaire and attachments to the Commission (see front sheet for instructions)