

PRODUCTIVITY COMMISSION REPORT ON COST RECOVERY SUBMISSION FROM NICNAS

This Submission is made in relation to the application of the Productivity Commission Report to the National Industrial Chemicals Notification and Assessment Scheme (NICNAS).

REPORT RECOMMENDATIONS

Recommendations 3.3 and 3.4

In relation to the RIS and CRIS, it would be clearer to define two alternate paths, the RIS for activities not requiring cost recovery and the CRIS for cost recovery proposals. If significant cost recovery proposals require more or additional data, that could be handled via guidance on the CRIS requirements. As only some activities within a regulatory proposal may be cost recovered, the CRIS process will need to ensure that unnecessary additional information is not collected on activities that would normally only require RIS level information.

The finding that harmonisation and mutual recognition of assessments can lead to price competition in regulation is in theory possible. However, market access to products is unlikely to be simultaneous (mutual recognition is being discussed as feasible for hazard assessment, but not the following risk characterisation and assessment steps). Therefore a comparison of the differential in assessment fees (cost) against the opportunity cost of not selecting the best potential market first (product revenue) may indicate this is unlikely to occur in practice.

Recommendation 5.1

If additional budgetary and parliamentary oversight is implemented which requires additional work, this would require appropriation funding.

Recommendation 6.4

The report does not justify exclusion of all work that is an international obligation from cost recovery. Such obligations may not entail policy work and the obligation may post date and cut across broader national programs which are already cost recovered. Further comments and examples are provided below in the detailed comments on the Cost Recovery Guidelines.

Recommendation 6.9

NICNAS is currently cost recovered. NICNAS primarily operates to avoid negative spillovers arising from the introduction of chemicals. These arrangements are consistent with this recommendation.

INFORMATION REQUESTS

Chapter 3: independent mechanisms for reviewing CRIS

Separation of the review function (policy) from administration provides an independent mechanism. The process for NICNAS involves the Department of Employment Workplace Relations and Small Business (DEWRSB) undertaking the RIS with guidance and approval by the Office of Regulation Review (ORR).

Chapter 5: Parliamentary oversight of cost recovery receipts

It is not clear that all agencies are subject to the same processes, as it may depend on whether they are fully, or partially cost recovered. For example, NICNAS is required under its legislation to publish its own annual report to Parliament. Where possible, existing mechanisms/processes should be used to assist administration for agencies that have a combination of funding sources. Fee fluctuations could be reported to ORR.

Chapter 5: Efficiency Audit Committees (EAC)

The proposed EAC process would require additional funding. According to the proposed Cost Recovery Guidelines, we understand this would be appropriation funded, not cost recovery, as the EAC reports to the Minister. Costs would include provision of Secretariat and payment of sitting fees.

The Productivity Commission suggests that EACs would include industry and consumer representatives. The draft report also states that Board members should not be representative of constituencies to avoid conflict of interest with their required duties as Board members. Boards have audit and accounting responsibilities and frequently set up a subcommittee with this function. There may be some confusion between the roles of audit committees and their Boards with that of EACs. It raises the question as to whether there is a potential for overlap of activities or for conflict of views between these two processes/bodies.

The report needs to clarify what involvement the cost recovered agency would have in the EAC process versus involvement of the policy agency. We assume policy agencies rather than the agencies administering the cost recovered activity would be involved to avoid conflict of interest.

It may be preferable to define and provide guidance on the EAC functions, rather than requiring the establishment of standalone EACs. This would provide the flexibility for agencies to supplement existing processes, if appropriate, rather than creating new committees. This would minimise the cost impact.

Chapter 6: innovation and adoption of new technology

The impacts of cost recovery are only the fees and charges, and do not include the costs or other impacts arising from compliance with the regulations themselves. This is acknowledged by the Productivity Commission in places, however from the industry quotes included in the draft report, it is not clear that industry has made this

distinction. Simple inclusion of the comments without qualification may be misleading. The financial impact of cost recovery is specified in the fees applied for NICNAS (Attachment 1). The impact of meeting other regulatory requirements (such as generation and provision of health and safety information) is outside the scope of the enquiry.

NICNAS recently prepared a report on commercial evaluation practices for industrial chemicals, in order to evaluate its Commercial Evaluation Category Permits and make recommendations for any improvements. Data from this evaluation indicate there are a number of drivers for the introduction of new chemicals, a number of reasons why chemicals do not progress to full commercialisation (with government fees not being the major reason), a low level of planning by industry to facilitate the introduction of new chemicals, and that the introduction of safer chemicals is not an active consideration for the majority of companies.

Data include the following (total possible response 57, some questions allowed more than one option to be selected):

- The main reasons companies introduced new chemicals were: New product line (38: 67%); overseas parent company recommendation (34: 59%); new technology (33: 58%).
- Nine respondents (16%) said the CEC permit fee was a reason for not introducing a new chemical via the CEC process. The main reason a chemical did not pass through commercial evaluation stage to further notification to NICNAS and use, was customer acceptance (23: 40%) followed by performance of the chemical (19: 33%). Government fees and time for approval together accounted for 17 (30%). From analysis of notification figures, it is known that about one third of CEC chemicals continue in the market (ie are further notified to NICNAS under non-permit categories).
- In reply to a question on how companies ensure the safe use and environmental compliance of new chemicals during the commercial evaluation: 11 companies did not reply; 72% of respondents answering the question indicated they provided information however only 44% indicated that formal procedures were in place.
- 46% of companies have a plan for development of new chemicals, while 44% do not and 10% did not respond on this issue.
- When asked whether their new chemicals were intended to be introduced because they were safer or more environmentally compliant than existing chemicals the responses were: yes 28%; no 21% and 50% did not respond.

The Productivity Commission's draft report at p134 states that registration fees may have discouraged the importation of new industrial chemicals. It is not clear that the Productivity Commission has separated the financial impact of cost recovery from the financial resources required to provide the health and safety data requirements for introduction of new chemicals. The report provides the Plastics and Chemicals Action Agenda example of solvents in paint as support for the statement that new

chemicals might otherwise be available which are more efficient/less polluting, etc. NICNAS has formally requested the data supporting this example from the Department of Industry, Science and Resources on two occasions, and we have yet to be provided with the information. If the information is provided, we would be able to comment further.

Chapter 9: Comments on the proposed guidelines

Detailed comments on the proposed guidelines appear at the end of this submission.

Chapter 9: How the proposed guidelines would impact on NICNAS

NICNAS could generally comply with the proposed guidelines. Exceptions are in the area of international obligations, as the guidelines appear to include a broad range of international work beyond policy work (refer to our earlier comments on this issue). If all international work could not be recovered this could compromise NICNAS funding base, as the existence of a chemicals scheme is a component of the membership criteria for the OECD.

For the first year under full cost recovery, new chemicals fees are projected not to fully fund work on new chemical assessments (and therefore some cross-subsidisation has been identified) for the 2001/02 budget. NICNAS has advised industry of this and our intent to conduct a full cost recovery review for new chemicals in 2001/02 to determine if fee changes are required in 2002/03.

NICNAS has an Industry Government Consultative Committee (IGCC). This existing IGCC process would need to be augmented to provide the EAC function as described in the report, and would need to be balanced with non-industry NGO representation. Additional funding for this work would need to be provided.

ADDITIONAL COMMENTS ON SPECIFIC ISSUES

Mechanism for drawing on funds in excess of projected revenue

Budget and additional estimates processes are not sensitive enough in terms of timing (to match resource requirements with timing of work) and are not efficient mechanisms for the amount of funding sought (relatively small amounts). In practice, the Productivity Commission proposal that revenue above that foreshadowed in the budget be retained in consolidated revenue, may provide an incentive for agencies to generously estimate service demand (and hence projected revenue), to avoid the process. This would not be desirable outcome.

The proposed EAC process should provide sufficient oversight while ensuring transparent reporting of over recovery and consultation with stakeholders on how this should be spent. In addition, revenue collections are less likely to over recover if they are subject to periodic review.

Efficiency dividend

Application of efficiency dividends should take into account the size of schemes. In general, it may be more difficult for small schemes to continually achieve the same percentage efficiency improvement as larger ones. Schemes are already finding efficiencies to absorb pay increases under certified agreements. NICNAS has internally set efficiency targets driven by certified agreements. As the largest costs to agencies lie in staffing, this mechanism is a significant efficiency driver.

Efficiency gains should be reported in annual reports.

WTO Issues

NICNAS does not differentiate between local and overseas suppliers in applying its fees, and therefore we cannot see how the Scheme would be in breach of trade rules.

Outsourcing of work (technical assessment and other)

At page 97 the report provides the PACIA suggestion that agencies should outsource the technical review aspects of their work. Outsourcing of technical assessment work is being considered under the Competition Policy review of the agricultural and veterinary chemicals scheme, and the Productivity Commission should defer to this more detailed consideration of the issue.

We understand no evidence has been provided to date that outsourcing costs less.

Outsourcing of non-technical work, such as corporate services, also occurs and it would be useful to cover this issue in the report. For example, where cost recovered activities (eg NICNAS) are provided with corporate services from their agencies/Departments (usually via a Service Level Agreement), there are no competition pressures. Cost recovered activities are not in a strong position to influence efficiency measures when decisions are taken on the basis of broader Departmental/Agency considerations. On the other hand, it may not be cost effective for small activities to “go it alone” for their corporate services.

Outsourcing, where it is implemented via interagency (or government to government) charging also needs consideration as it impacts on cost recovery agencies and potentially on the costs recovered. This is discussed below in our comments on the draft guidelines.

Corrections

A number of editorial corrections are at Attachment 2.

NICNAS COMMENTS ON PROPOSED COST RECOVERY GUIDELINES

General comment

The guidelines are useful, however we suggest some additional detail in some areas and these are identified in our detailed comments below. Over time, it would be useful if “case studies” could be shared between agencies considering the introduction of cost recovery or reviewing its implementation. This may allow a broader understanding of the “grey” areas for agencies implementing the guidelines.

Cost recovery mechanisms and legal instruments

The guidelines should include the pros and cons of the different types of cost recovery instruments that may be used. Information on this is currently spread across the PC report and the guidelines.

It would be helpful for the guidelines to advise on appropriate legal instruments for establishing fees. For example, inclusion of fees in legislation (rather than regulation), is inflexible not allowing for adaptation to progress (eg efficiencies may bring costs down for particular activities).

Does the Productivity Commission have a view on CPI increases? We note that there is not a uniform approach on this issue.

Cost recoverable v non cost recoverable charges

It would assist to further delineate those “policy” and other costs that should not be recovered. A list of examples of cost recoverable tasks and non cost-recoverable tasks should be developed and included in the report. We suggest that agencies be asked to submit their description/category list of policy tasks to the Productivity Commission to assist in development of this list.

Development of the cost recovery regime for NICNAS was transparent, with DEWRSB responsible for policy establishment, and involving industry in the consultation process. A copy of the agreed cost recovery regime is at Attachment 3. This has been in place for five years. As a result of this experience, we would further delineate the category “legal opinion and interpretations” on the basis of whether this is related to policy (appropriation funded), compliance (for NICNAS 50% cost recovery) or implementation (cost recovery). Comments on the difficulties of the 50% cost recovery regime for compliance appear later in this submission.

International obligations

The report indicates that some activities which are international obligations cannot be cost recovered, eg because the agreement states the service shall be provided free. However there is no justification in the report for the blanket guideline that all such activities should not be cost recovered. Such a blanket policy, which does not take into account the individual circumstances could cut across good national policy.

- For example, in a field of work there may be a range of existing national activities that are cost recovered. As a result of an international agreement, a small part of this work may become an obligation. The guidelines currently would indicate that the cost recovery arrangement for the international part of the work would have to be removed. In the case of chemicals, where international work focuses only on the worst cases, this could create perverse incentives, in favouring hazardous over less hazardous chemicals.
- A specific example relevant to NICNAS is the Existing Chemicals Program. NICNAS selects chemicals for review based on national priority and to meet international obligations to contribute a certain number of assessments. It does not seem consistent to only cost recover assessments not contributed to the international process, particularly when involvement in the process provides access to other reports which reduces the overall cost of the activity subject to cost recovery.

“International obligations” is not necessary as a general category in itself, as the issue should be whether the activity is “policy work” or not and this is already covered in the proposed guidelines. A proviso could be added that where international obligations preclude cost recovery that this would have to be honoured to avoid Australian non-compliance.

Administration charges

The report raises the issue of administration charges, but does not provide definitive advice on the application of these charges. This advice would be helpful.

Administration charges should be kept separate to fees, as is the practice in NICNAS.

Efficiency as criterion for cost recovery, and compliance and legal costs

The Productivity Commission should consider identifying additional certain activities (rather than just “small agencies”) which may not be efficient to cost recover. For example, ad hoc costs which cannot be predicted but which are significant in size should not be subject to cost recovery to avoid agencies having to build up significant reserves to fund an activity that may be only rarely drawn upon. Existing revenue collection mechanisms do not provide for funds to be collected for such activities up to a certain amount – they are either collected or not. The option the report canvasses of retaining funds in consolidated revenue is likely to be opposed by industry as it would be seen to be over cost recovery. Examples would be AAT legal expenses, or Customs charges for impounded goods.

Dealing with compliance and legal costs in a small scheme can present additional difficulties due to the potential for a one-off cost to be significant compared to the overall budget. The 50% recovery target for NICNAS increases administrative complexity (eg in a small scheme it is not possible to seek additional funds via the usual budget processes because the amounts are too small). The Productivity Commission could assist by investigating further the issues around cost recovery of compliance activities and the associated legal costs. The cost recovery regime should not act as a disincentive to compliance activity/review of decisions by the AAT.

Cross-subsidisation

The guidelines should support exploration of the full range of policy options in cases where it is judged that full cost recovery of particular services would have an undesired impact on the client base. These would include: funding from consolidated revenue; full funding from a levy type approach; or part payment via the levy approach. Partial cross-subsidisation may be preferable to full funding of activities via the levy approach.

Timing of payments

The guidelines need to address the issue of timing of payments. The guidelines should indicate that the choice of cost recovery instrument must ensure that the funds are made available before the work is required to be conducted. The only alternative would be advances from appropriation, which would be returned when companies paid. It is possible that post-payment may create new compliance issues (and hence increased costs) in following up unpaid fees. Industry data indicates that pre-marketing approval fees are small in comparison to their overall costs. Details appear at the end of this submission.

Fee reviews

The guidelines should describe the nature of the information required to justify amendment of fee structures/levels. This is essential as information may need to be collected over significant periods of time, and there should be consistency in approach across agencies. A 10 year cycle is considered appropriate for mandatory fee reviews, with special reviews able to be triggered by changes in circumstances when these occur. Regarding special reviews, can additional funds be sought on the basis of a predicted shortfall, or will the process require an existing shortfall to occur with certainty.

Interagency (government to government) charging

Interagency charging is an important issue to consider, as agencies that are subject to cost recovery legislation may contract services from other government agencies which are not. In addition they may have no choice in the matter for legislation or policy reasons. The costs of these services can impact on the fees charged. The contracting agency must be able to apply the requirements of the agency's cost recovery regime to the contracted party.

Where competition policy applies, there needs to be clarification between providing a fee for service under competition policy and operating a cost recovery policy.

Levy based on hazard portfolio

p226 proposes that charges be based on an assessment of the degree of hazard of a companies chemical portfolio. This was investigated in the establishment of the cost recovery regime for NICNAS and was found to be unrealistic. The data is not available within industry to support such an arrangement and creation of adequate

data would involve significant cost to industry. In addition, many companies have large catalogues, but only import chemicals specifically ordered.

We presume this is only proposed for industrial chemicals and pesticides, as food would not be classified as hazardous and the proposal is not appropriate for therapeutics where the benefits would need to be considered as well as the hazards? The NICNAS category system, based on estimated risks for types of new chemicals, seems more appropriate at this time.

Further information on industry Costs

Information from the Plastics and Chemicals Industries Association (PACIA) 1998 performance survey indicates for their members that:

- The majority of costs lie in raw materials (55%) and payroll (12%). There were significant costs in intellectual property/services.
- 23% of raw materials were imported (up from 22% in 1997), with the larger companies relying less on imports. This indicates the level of exposure to currency fluctuations. This proportion could be greater in smaller, non-manufacturing companies.
- Environmental costs is a general survey category including a range of activities from compliance with state/territory/commonwealth regulations (such as emissions to air and water, and reduction/disposal of hazardous waste) to implementation of quality management systems. Environmental expenditure was approximately 1% of total costs, of which a proportion would be attributable to regulation.
- It is not possible to determine the fraction of the 1% which would be attributable to NICNAS, as environmental costs are not further broken down, and total costs cannot be compared to NICNAS revenue due to the small number of companies involved in the survey. However as costs associated with compliance with regulation are a fraction of the 1% spent, and significant costs are associated with such activities as emission and waste reduction, NICNAS would be a very small proportion of the 1%. Further, the proportion of total NICNAS “costs” which would be attributable to the costs of cost recovery (rather than compliance with the legislation) would be smaller still.

NICNAS FEES AND CHARGES

New Chemicals Assessment Fees (\$)

Standard Assessment Application	11,700	
Limited Assessment Application	9,800	
Polymer of Low Concern (PLC) Assessment Application		3,300
Commercial Evaluation (CEC) Permit Application	2,600	
Low Volume Chemical (LVC) Permit Application	2,600	
Application for Early Introduction Permit (EIP)	500	
Section 30 Permit Application	5,670	
Application for Extension of Assessment Certificate		2,100

Secondary notification of new chemicals, other than a synthetic polymer of low concern 6,480

Secondary notification of a new chemical that is a synthetic polymer of low concern 2,800

Foreign Scheme - Standard Assessment Application	6,480
Foreign Scheme - Limited Assessment Application	5,220
Alternate State Law Application	7,000

New Chemicals Administrative Charges \$

Confidential Listing of a New Industrial Chemical	1,000
Application to Retain Confidential Listing	1,350
Application to be a Holder of a Confidence	450
Variation of Schedule Data Requirements	900
Nomination of Foreign Scheme	4,680
Exempt Information	500
Application to Vary Report	500

Company Registration Fees and Charges \$

Initial Application Fee	300
Renewal Application Fee	300
Urgent Application Fee	200
Lower Tier Registration Charge	900
Upper Tier Registration Charge	6,700

Note: All NICNAS fees and charges are GST free.

CORRECTIONS

1. Page 128 Paragraph 2, sentence 3 should be amended to: “NICNAS’ New Chemical Assessment Program gives a 15 percent rebate to applicants who submit an acceptable written draft assessment report with their notification statement”.
2. Page 138, paragraph 3. Amend sentence: ‘For example, NICNAS does not charge an annual registration fee for companies with less than \$500 000 total annual import/manufacture of industrial chemicals (see Appendix D).’
3. Page B8, table B6. Stated rationale for Existing chemicals funding says ‘user’. This should be replaced by ‘policy’.
4. Page B11, table B9. For new chemical assessment fees change the ‘yes’ in last column to ‘1997’.
5. Page B12, table B10. Revenue collection for new chemical assessment fees should be ‘NICNAS’ instead of ‘NOHSC’.
6. Page D2, Box D1. The last sentence of the NICNAS entry should read: ‘NICNAS assesses the health and environmental risks of all new industrial and selected existing industrial chemicals being manufactured locally or imported.’
7. Page D4, Table D1, footnote d. Remove the second sentence commencing “In previous years....”. Due to the amended data presentation (compared to the format submitted) this footnote is confusing, and as it is not relevant to the time period reported in the table it should be deleted.
8. Page D22, paragraph 4, second sentence should be amended to: ‘NICNAS operates a company registration system, which requires that all persons or companies importing or manufacturing industrial chemicals valued at more than a total of \$500 000 must register....’

NICNAS ACTIVITY CATEGORIES

New Chemicals	Existing Chemicals	Scheme Support Activities	Compliance Activities	
INCLUDING:	INCLUDING:	INCLUDING:	50% cost recovered	
New Chemical assessment	Public call for nominations	Industry coordination	Scheme promotion	Inte / ch
Client Liaison	Screening and prioritising of concerns	Inquiries for inventory searches	Industry liaison	Min Cor
Development of procedures and assessment methodology	Data collection	Committees (Industry Consultative Committee)	State and Territory Liaison	Adv
Inquiries from potential notifiers	Development of procedures and assessment methodology	International harmonisation efforts which lead to improved efficiency	Enforcement	Com subm dep
Evaluation	Input into OECD existing chemicals program	AICS maintenance		Rev
Publication and distribution of reports	Site visits	Financial and Administrative reporting		Cab
Pre screening	PEC Assessment	Chemical Gazette		Inte com inte
	Scoping of assessments	Handbook for notifiers		
	Client liaison	Publications		Dev supp
	Evaluation	General inquiries about scheme		
	Publication and distribution of reports	Company registration		