

**Submission to the Productivity Commission  
Draft Report**

**Review of Cost Recovery Arrangements of  
Regulatory, Administrative and Information  
Agencies**



**Plastics and Chemicals Industries  
Association**

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## **1. Overview**

The Plastics and Chemicals Industries Association Inc (PACIA) thanks the Productivity Commission for the opportunity to comment on the draft findings of its inquiry into the cost recovery practices of Government regulatory and information agencies. PACIA strongly supports the bulk of recommendations made by the Commission which are consistent with the plastics and chemicals industries arguments. The industry also believes that the guidelines outlined in the report would allow the Government to avoid many of the problems inherent with current cost recovery arrangements.

The draft recommendations in the report to move cost recovery away from total agency costs to specific activities will in PACIA's opinion remove many of the problems with current cost recovery systems. PACIA is also pleased to see the Commission discussing the practical application of concepts such as benchmarking, third party competition and mutual recognition of overseas regulatory schemes as a means to improve efficiency in cost recovery practices.

Our industry encounters numerous agencies which recover all or part of their costs in line with Government policies. The three most critical to our industry – The National Registration Authority (NRA), Therapeutic Goods Authority (TGA) and the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) – are all regulatory in nature. As a result this submission concentrates on the findings and recommendations in the report related to regulatory agencies only.

## **2. Recommendations contained in the report**

PACIA does not wish to address every recommendation individually, rather this submission will concentrate on those we believe critical to the report and to which industry expresses some concern, principally recommendations 5.2, 6.8 and 6.9. PACIA supports the remaining recommendations which it believes will work to improve the transparency, accountability and efficiency of Government agencies. PACIA was particularly pleased with recommendations 3.2, 5.1, 6.1, 6.2, 6.3 and 8.1 which address the key concerns raised in PACIA's original submission to the inquiry.

### **Emphasis on Draft Recommendation 4.1**

Draft Recommendation 4.1 supports the industry's concerns with the adoption of cost recovery mechanisms which produce inconsistency among Government agencies. Consistency within the legislation produces efficiencies by removing uncertainties, establishes benchmarks and increases accountability across regulatory frameworks. PACIA strongly recommends that this should be the leading recommendation from the Commission.

## Industry Concerns with Draft Recommendations

### **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.***

### **Information Request**

*The Commission seeks further views on the establishment of Efficiency Audit Committees to address the efficiency of cost recovery agencies.*

Whilst PACIA agrees that there is a need to address the effectiveness of existing performance review processes we are concerned that Draft Recommendation 5.2 does not provide a means to undertake this. The establishment of committees may not on their own deliver the improved efficiencies and PACIA recommends emphasis be placed on the criteria by which committees would operate. This emphasis should be on the use of benchmarks, third party competition and mutual recognition of overseas schedules as guides in the creation of efficiency reviews.

The Commission in the report notes that an Efficiency Audit Committee (EAC) “...would include both industry and consumer representatives appointed by the relevant Minister, and agency representatives” (Draft report page 107). The process and method used by a Minister must be transparent and establish a committee that is non-biased, accountable and inclusive of all affected stakeholders and agency representatives. The system must also ensure that the chair of such committees is independent and not from the agency involved.

PACIA supports the requirement that any recommendations made by EAC’s to the Minister be reported publicly to improve transparency and accountability. To ensure that the information is not open to misinterpretation or unjustified scrutiny, it is essential that publicly released information contains substantiation’s and contextual information on the recommendations made by the EAC to the Minister.

### **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.***

A key argument of PACIA’s original submission was that industry should only be subject to cost recovery for elements of regulation that it gains a benefit from. PACIA’s concern over draft recommendation 6.8 relates to the definition of ‘beneficiary’. For instance companies that receive approval under NICNAS or TGA gain benefit in the form of an ability to sell the product in Australia however, the consumer receives the benefit of better quality and safer final goods. The Commission needs to consider more closely what it means by beneficiary of the regulation and must ensure that it directs the Government to consult with stakeholders on this issue.

In this case there may need to be some comment or reference made in the recommendation and report relating to partial cost recovery of particular activities. For instance, if it is determined that from the assessment and approval of a chemical both the company and consumers benefit then the public benefit could be recognised through a reduction in the costs of regulation to companies. This could be achieved through the requirement for the agency to recover partial costs from the company with the rest coming from the consumers (via the Government's consolidated revenue account for instance).

This box repeats an example we raised in our initial submission and illustrates the potential for numerous beneficiaries of NICNAS approval decisions.

**Example: Australian Refinish Industry**

Low solvent paints are currently mandated in both the United States and European Union but are not used in Australia due to the large cost barriers imposed by NICNAS.

The Australian refinish industry uses approximately 15 million litres of paint annually, of which more than 50% is low solids acrylic lacquer that has a solvent content of 70 – 80% (based on the old technology). Adoption of these low solvent alternatives available internationally would reduce solvent emissions by approximately 2 million litres per year. It would also lead to world class finishes improving the competitiveness of final finished products.

**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.***

PACIA is concerned that this recommendation is a catch-all that could override other recommendations from the Commission. It could be interpreted that all Government legislation is designed to set standards and minimum performance levels that are established to prevent negative spillovers. In the field of health, safety and environmental management, it is even more evident. However, the means by which a regulation addresses these issues can vary significantly whilst achieving the same outcome. To simply invoke a principle that the legislation is designed to prevent negative spillovers and hence business should bear this cost as a normal cost of doing business could lead to complete disregard of the need for effective, efficient and accountable regulation and cost recovery. PACIA strongly recommends the removal of this draft recommendation or significant clarification of its application in an effective cost recovery framework which identifies its standing against other recommendations.

### **3. Proposed cost recovery guidelines**

#### *Information request*

*The Commission considers that these guidelines will need to address a number of the specific issues that are common in designing cost recovery arrangements across regulatory agencies. Therefore, it seeks further views on these common problems and how they should be addressed. Possible areas to consider include:*

- how to deal with cost recovery in agencies with a high proportion of capital and overhead costs;*
- the use of minimum and maximum levies and the application of formulae to decide on individual charges within that band;*
- establishing cost recovery arrangements for new organisations where the start-up costs are high and the regulated industry is small; and*
- the timing of cost recovery payments, particularly in the case of new product approvals, where the product is still to be marketed*

PACIA agrees that *“The process outlined [guideline development stages] should be applied to all new cost recovery proposals, significant amendments to existing cost recovery arrangements and existing cost recovery arrangements”*. (Draft report page 201). PACIA also supports a target of five years for the completion of the review of all existing cost recovery arrangements to be completed. The list as noted in the report needs to be prioritised, with industry consultation a necessary rather than an optional requirement for this exercise.

An important element not covered in the text on the guidelines was the involvement of industry. Based on the guidelines the Cost Recovery Impact Statement (CRIS) would be made public following stage 2 of the review. There is no comment or consideration given for industry feedback on the results of this statement. It is critical in stages 1 and 2 that industry is consulted in the development of the arrangement.

The preceding discussion on EAC's outlined PACIA's concerns over the independence of EAC's and these concerns would flow to the parties undertaking the CRIS and developing the legislation. By way of the guidelines, the Government should ensure that the creation of legislation is undertaken in a climate of comprehensive stakeholder consultation. The legislation establishing an agency if crafted inadequately has the potential to define a strict, narrow role for the agency, making cost recovery impractical and inequitable regardless of the review process in place. The guidelines need to build in some avenue for industry participation in the legislative development process.

In terms of classifying policy objectives and activities to determine the relevance to cost recovery PACIA supports all but one conclusion in Figure 9.2 of the report. PACIA maintains that companies should not have to pay for compliance and monitoring costs as these activities are clearly Government business. Companies complying with the regulation should not be charged the costs of an agency taking enforcement action against a non-compliant company. This is clearly an activity for the Government to fund

PACIA supports the commentary relating to stage 2 of the guidelines which ensures draft recommendations 6.1, 6.2 and 6.3 are adhered to and cost recovery is determined on specific activities. The guidelines need to be stringent in ensuring that costs are

based on the activity only and not cross subsidising other agency costs or infrastructure. Those capital and overhead costs relating to the specific activity only should be reflected in cost recovery charges. PACIA would strongly resist any suggestion that the entire capital infrastructure of an agency be included in the determination of cost recovery charges.

PACIA strongly supports the commentary on the need for costs to be based on efficiency costs. PACIA supports the use of fees rather than levies on the basis that fees can be changed relatively quickly compared with levies. Targets must also be set as part of the cost recovery creation process. The EAC for that agency must have the ability to examine agency performance against these targets and recommend changes to charges or activity on the basis of the efficiency review.

#### **4. Conclusion**

PACIA supports the majority of recommendations presented by the commission and the proposed guidelines contained in the report. Several of the recommendations directly address the concerns and issues PACIA raised in its original submission and public hearing. Our concerns with recommendations 5.2, 6.8 and 6.9 revolve around definitional and process issues which need further consideration before industry could give its full support for these recommendations. The key result of this inquiry must be a process which improves the transparency, efficiency and cost effectiveness of regulation and removes improperly designed and implemented cost recovery mechanisms that present unnecessary impediments to technological innovation and economic growth.