RESPONSE TO THE DRAFT REPORT ON COST RECOVERY IN GOVERNMENT AGENCIES

ACCI SUBMISSION
TO THE
PRODUCTIVITY COMMISSION

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The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. ACCI's members are employer organisations in all States and Territories and all major sectors of Australian industry.

Through our membership, ACCI represents over 350,000 businesses nation-wide, including the top 100 companies, over 55,000 enterprises employing between 20-100 people, and over 280,000 enterprises employing less than 20 people. That makes ACCI the largest and most representative business organisation in Australia.

Membership of ACCI comprises State and Territory Chambers of Commerce and national employer and industry associations. Each ACCI member is a representative body for small employers or sole traders, as well as medium and large businesses.

Introduction

ACCI has strongly supported the review by the Productivity Commission (PC) on cost recovery arrangements. ACCI wrote to the Government in 1998 and again in 1999 asking for a reference to be made to the Productivity Commission on cost recovery in regulatory agencies. A call for an inquiry also featured in our 2000 New Year requests to Government. We welcomed the reference to the PC last August and we warmly welcomed the Draft Report in April this year.

The PC Draft Report into Cost Recovery is thorough and extensive. It is the most comprehensive policy paper on cost recovery in Australia to date, as well as providing analysis and guidance on the broader issue of regulation reform. We expect that the final report will be the seminal work on cost recovery. The report should also be welcomed in the international arena as it will be useful to other countries which have cost recovery regimes.

ACCI's initial submission to the PC inquiry raised issues relating to the efficiency, transparency and equity of a number of practices which have been developed in Government regulatory, information and administrative agencies. We also called for the development of Guidelines on cost recovery.

In general, ACCI is highly supportive of the recommendations of the Draft Report. The report has recognised the ad-hoc development of policy in this field and the negative impacts it has

had on business in many different industries. However, there is a need to further clarify and extend a number of recommendations.

It is imperative that the Government responds to the final report in a timely manner and establish a clear, whole of government policy in respect to cost recovery in government agencies.

Our specific comments are outlined below.

Specific Comments

Attachment A provides ACCI's detailed comments about the PC's Draft Report into Cost Recovery in Government Agencies.

Essentially the Productivity Commission looked at three main issues:

1. A review of existing cost recovery arrangements by regulatory, administrative and information agencies.
2. The development of cost recovery guidelines on how and where cost recovery should apply; and
3. A review of cost recovery arrangements under the *Trade Practices Act.*

Our comments mainly relate to issues one and two.

ACCI's initial submission stated that the objectives of any Cost Recovery approach should be to:

- promote more efficient use of government services;
- introduce more business-like and client oriented practices in the supply of government services;
- ensure that the costs of services which *primarily benefit the general public* are financed through budget allocations;
- ensure that the cost of services *which primarily benefit specific subsets of the population* are recovered from those who benefit from or cause such services; and
- ensure consultation between agencies and their clients before introducing or amending user charges, and on a continuing basis thereafter.

The Productivity Commission has embodied our principles in its recommendations and findings in the draft report.

Overall ACCI is supportive of the recommendations. However we are concerned about the interpretation and application of two key recommendations, 6.8 and 6.9 which relate to who should pay for the cost of regulation. The combination of these two

recommendations is ambiguous and may cause confusion in application.

Who Should Pay

ACCI believes that cost recovery through fees and charges should only be initiated where there is a legitimate and necessary role for the Government, and one that cannot be provided adequately by the private sector. Currently there are a number of industries that compete directly with the Government to provide services such as mapping and statistical interpretations.

Furthermore, a 100 per cent cost recovery regime is only appropriate where individuals or a section of the community can be identified as the sole beneficiaries of the Government services.

The only *bona fide* justification for increasing or introducing cost recovery arrangements occurs when a Government department or agency introduces user charges for providing a good or service which benefits only an individual or a section of the community, rather than the community as a whole.

In the case of determining who should pay for the cost of services provided by information agencies the issue is relatively simple. If there is a case for cost recovery there is generally an individual or entity that can be identified as being the sole beneficiary of a particular service. In this situation that individual should be charged the full marginal cost of providing that service. The issue of funding Government regulatory agencies however, is more complex.

The Productivity Commission has recommended two possible solutions to resolve the issue of funding of regulatory agencies. However, there is considerable ambiguity between these approaches and further clarification is required as to when these approaches should be applied. The two options are 'beneficiary pays' and 'regulated pays' approach.

Under the 'beneficiary pays' approach businesses 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.

ACCI supports this approach, however the key to the successful implementation of this policy is ensuring a clear and concise definition of 'beneficiary' of regulation.

ACCI believes that the fundamental role of regulation is to protect public health, safety and the environment, that is, the regulators perform a 'public good' role. However, there is also a benefit to business from efficient and effective regulation. Despite this the fundamental purpose of regulation is to provide a benefit to the community as a whole not to provide a benefit to business. This is clearly established in the Acts of Parliament that underpins these regulatory agencies. For example:

> *The Industrial Chemicals (Notification and Assessment) Act 1989 Section 3: Object of Act*
>
> > *The Object of this Act is to provide for a national system of notification and assessment of industrial chemicals for the purposes of:*
> >
> > a) *aiding in the protection of the Australian people and the environment by finding out the risks to occupational health and safety, to public health and to the environment that could be associated with the importation, manufacture or use of the chemicals; and …"*

Any business benefit which is accrued as a result of these regulations is secondary to the benefit which is gained by the community as a whole.

Finally, if the rationale for the establishment of these agencies was that they provide a 'seal of approval' and therefore a benefit to business then it would be consistent with Government policy that these agencies be operated by industry as 'self regulatory' agencies. This is not however the case. The role of these agencies is to provide a benefit to the community as a whole.

Alternatively the 'regulated pays' approach would see business paying for the cost of regulation where the main objective of the regulation is to minimise the detrimental effects of externalities such as pollution.

The 'regulated pays' approach is a suitable method of determining who pays the cost of regulation in certain circumstances. However, the Productivity Commission Draft Report does not provide sufficient guidance as to when the 'regulated pays' approach or the 'beneficiary pays' approach should be applied. Clearly it is not

possible to apply both approaches concurrently as only one method can be applied to a given situation.

We believe that the regulated pays approach does not have an application in determining who should pay the cost of regulatory agencies that provide certification and assessment services.

The Productivity Commission, in its final report, needs to provide a clear interpretation of when each of these approaches should be applied as well as providing an interpretation of 'beneficiary' to satisfactorily resolve the application of the first option.

Conclusion

The recommendations in the draft report, if adopted, will have a significant long-term impact upon the efficiency of Government regulatory and information government agencies, as well as to Departmental approaches to revenue raising and funding of activities.

Although, we have some minor concerns with two of the PC recommendations, if adopted the recommendations will provide a clear framework in which to guide future regulatory activities. The implementation of guidelines will address a public policy abyss that has existed for far too long.

DRAFT PRODUCTIVITY COMMISSION (PC) RECOMMENDATIONS AND FINDINGS	ACCI RESPONSE
Chapter 3: Legal and Fiscal Framework	
DRAFT RECOMMENDATION 3.1 ***All cost recovery arrangements should have appropriate and clear legal authority. Agencies, with advice from their legal counsels, should identify the most appropriate authority for their charges, and ensure that fees for service are not vulnerable to challenge as amounting to taxation.***	**Agreed.** It should be an axiom of good public policy, that all cost recovery arrangements have appropriate and clear legal authority. As stated in the Draft Report, there are two different legislative structures that can be used to establish and underpin regulatory agencies. These are either: • that there are two pieces of legislation with one a taxation act dealing with the recovery of costs and the other setting the role and functions of the agency; or, • a single piece of legislation dealing with the recovery of costs through fees and charges as well as the regulations setting out the role and function of the agency. Under the latter structure the fees must relate to the cost of providing the service or the charges may be deemed to be a tax and therefore the legislation would be unconstitutional. The Draft Productivity Commission Report provides extensive analysis of these two options but does not provide a recommendation as to which structure provides the best outcome for the community and the regulated industry. ACCI would welcome a recommendation from the Productivi ty Commission as to which structure future cost recovery agencies should be based. We recognise that one particular regulatory structure may not fit all situations. However, given that this draft draft report provides the most significant policy framework and analysis on the issue, it would be appropriate that it also include guidance for the establishment of any future cost recovery agencies.

FINDING *There is a lack of transparency and accountability in current cost recovery arrangements. It is difficult to identify from existing sources the level of cost recovery by Commonwealth regulatory and information agencies. Publicly available data are incomplete and inconsistent, and the Department of Finance and Administration is unable to identify cost recovery receipts separately from other revenue.* *Moreover, at the individual agency level, it is difficult to establish the objectives, costings and revenue raising of many cost recovery arrangements.*	**Agreed.** This was one of ACCI's major concerns which prompted our call for a Productivity Commission inquiry into cost recovery. It is unacceptable that the Department of Finance and Administration is unable to identify cost recovery receipts separately from other revenue, and inexplicable that some individual departments and agencies cannot provide a rationale for cost recovery or report on revenues raised.
DRAFT RECOMMENDATION 3.2 ***Revenue from the Commonwealth's cost recovery arrangements should be identified separately in budget documentation and in the Consolidated Financial Statements. It should also be identified separately in each agency's Annual Report and in Portfolio Budget Statements.***	**Agreed.** Identification in budget documentation of revenue from cost recovery arrangements should be adopted by government immediately. The fact that data is incomplete, inconsistent and often unavailable is indicative of the problems with the current cost recovery arrangements. In the Draft Report, the PC could only make a best estimate of over $3B collected in cost recovery from Commonwealth departments and agencies. Departments and agencies should be in a position to report in Annual Reports and Portfolio Budget Statements their receipts from cost recovery as it should simply be part of good financial management practice.
FINDING *The absence of cost recovery guidelines has led agencies to rely on outdated publication such as the 'Guidelines for Costing of Government Activities' (DOF 1991), ad hoc reviews and consultants' advice.*	**Agreed.** This was another of ACCI's initial concerns. When ACCI commenced its study of cost recovery arrangements in 1997, we were surprised at the absence of operating guidelines for cost recovery.
FINDING *The Regulatory Impact Statement (RIS) is a*	**Agreed.** ACCI is very supportive of the RIS process. RISs are a very valuable tool, however the failure to

valuable tool for assessing proposed regulation, but has not dealt directly with many cost recovery proposals.	conduct a RIS at the earliest stage of policy development has undermined the success of the government's policy on RISs. This is evident from the Productivity Commission's annual report "Regulation and its Review" which shows that although RISs are becoming more common they are still not carried out in all instances.
DRAFT RECOMMENDATION 3.3 ***The Regulatory Impact Statement (RIS) process should be clarified to make it explicit that, where a regulation under review includes a cost recovery element the RIS should address cost recovery by applying the guidelines proposed by this inquiry.***	**Agreed.** As the PC reports, there have only been three occasions over the last four years where the RIS process was applied in a comprehensive way to cost recovery proposals (p 52). One of the examples cited is the cost recovery options for the Office of the Gene Technology Regulator. It is important to note that the cost recovery elements of the RIS were completed in October 2000 after the draft legislation had been introduced into Parliament in June 2000. This was not an example of the RIS process working at its best. We agree that the existing RIS process should be modified to make it explicit that where there is cost recovery element for a regulation that is under review, that the RIS must address cost recovery by applying the proposed new guidelines.
DRAFT RECOMMENDATION 3.4 ***A Cost Recovery Impact Statement (CRIS) process should be developed for application to all significant cost recovery proposals or amendments to existing cost recovery arrangements not covered by an enhanced Regulatory Impact Statement (RIS).***	**Agreed.** The outcome of the CRIS should be publicly available. We do not favour any particular method of undertaking the CRIS, but we do have a strong preference for some independent scrutiny of the CRIS. One of the major weaknesses of the RIS process is that for the most part, RISs have been written by the organisations advocating the regulation.
FINDING *International obligations can constrain the ability of some Commonwealth agencies to set cost recovery charges because:* • *Specific international agreements set fees for certain services (or require some services to be free); and* • *Harmonisation and mutual recognition of assessments can lead*	**Agreed.**

to price competition in regulation.	
Chapter 4: Current Cost Recovery Arrangements	
FINDING *There is no clear, current Government policy on cost recovery. This has contributed to inconsistency in many aspects of cost recovery within and across agencies and portfolios.*	**Agreed** – hence our call for a Productivity Commission Review of cost recovery.
FINDING *The rationales for cost recovery for most information agencies are better developed and articulated than those for regulatory agencies.*	**Agreed.** Most information agencies surveyed by the PC claimed expansion of services as the main rationale for cost recovery. However, we are concerned about aspects of competitive neutrality with respect to information agencies. We have addressed this in our response to recommendation 6.5.
DRAFT RECOMMENDATION 4.1 ***The Commonwealth Government should adopt a formal cost recovery policy for regulatory and information agencies. This policy should implement the cost recovery guidelines recommended by this inquiry.***	**Agreed.** As stated in the Draft PC Report and in ACCI's initial submission, cost recovery has developed in an ad-hoc way with little consistency across agencies. The PC examples in Chapter 4 demonstrate the magnititude of the public policy problem. This is a key recommendation in the draft report and ACCI urges government to adopt a clear, whole of government policy on cost recovery in government agencies. The guidelines proposed in the Draft PC report are totally consistent with guidelines put forward in ACCI's initial submission and we support them fully.
FINDING *Cost recovery arrangements exist, to some extent, in most Commonwealth regulatory and information agencies. However, there is little consistency in the application of these arrangements. Generally:* • *There is no uniform approach as to which activities are subject to cost*	**Agreed.** As we pointed out in our initial submission, the lack of consistency was of great concern to business. The examples in the Draft PC Report show the great variety of ways that cost recovery is applied in terms of to what activities, and how the level of cost recovery is determined.

recovery; and • *There are wide variations in the proportion of costs recovered for comparable activities undertaken by different agencies.*	
Chapter 5: Effects of Cost Recovery on Agencies	
FINDING ***It is generally not appropriate for regulatory agencies to have, in effect, automatic access to cost recovery revenues for regulatory activities without proper budgetary and parliamentary scrutiny.***	**Agreed.**
DRAFT RECOMMENDATION 5.1 ***As a general rule, the funding of cost recovered regulatory activities should be subject to the same budgetary and parliamentary oversight as budget funded government activities.***	**Agreed.** ACCI raised in our initial submission that Senate Estimates Committees took little interest in the efficiency of agencies whose funding was not from consolidated revenue.
FINDING *Improving agency efficiency can reduce the cost burden on those subject to cost recovery and taxpayers alike. Mechanisms such as efficiency dividends, benchmarking, market testing and third party competition can help drive agency efficiency. Harmonisation of standards and mutual recognition can also encourage regulatory agency efficiency by improving assessment and approval processes.*	**Agreed.**

DRAFT RECOMMENDATION 5.2 ***The Government should address the effectiveness of the existing performance review process and the need for more performance based efficiency audit approach based on stakeholder consultation.***	**Agreed.** Efficiency dividends: Regulatory agencies with a sole purpose may find this an effective policy to reduce costs. However, reducing the funding of an agency whose objective is to protect public health and safety would need be done in a balanced and appropriate way. Benchmarking: International benchmarking of regulatory agencies may have limited use given different legislative underpinning across different countries. However, in particular circumstances it may be useful to benchmark the costs of regulation, and the cost of registering products in countries with similar regulatory frameworks. Market Testing and Third Party competition: Introducing competition for the provision of services in regulatory and information agencies was raised by ACCI and there is potential for efficiency gains to be achieved through these policies. For example the outsourcing of non-core activities such as personnel, purchasing, library services etc, in order to achieve economies of scale. Further still, providers of risk assessment services could be licensed or certified to provide a service in order to introduce competition. In relation to some information services, the Government is already competing directly with business and there is a need for urgent market testing of these services. Efficiency Audits: ACCI believes that an efficiency audit conducted by an independent auditing agency (which may include the Australian National Audit Office or private firms) of the efficiency of Government regulatory agencies would be extremely useful, particularly if the results were made publicly available, to lowering unnecessary costs.
Chapter 6: Economic Effects	
DRAFT RECOMMENDATION 6.1 ***Cost recovery arrangements which are not justified on grounds of economic efficiency should not be undertaken merely to raise revenue for government activities.***	**Agreed.** This Recommendation relates directly to recommendation 3.1. There are a number of examples where by hypothecated taxes have evolved over time to become general revenue measures. Cost recovery has acted to restrict innovation and competition in Australian industry. If current cost recovery arrangements were extended to become general revenue measures this would further exacerbate these inefficiencies. The main rationale for cost recovery must be to improve economic efficiency.

FINDING *Some agencies have been required to meet cost recovery targets on a whole of agency basis. This has led to agencies inappropriately recovering costs for activities such as policy development, ministerial or parliamentary services and international obligations.*	**Agreed.**
DRAFT RECOMMENDATION 6.2 ***As a general principle, cost recovery arrangements should apply to specific activities, not to the agency which provides them.***	**Agreed.** Recovering costs from industry through regulatory charges for activities such as internal administration, policy development, ministerial and parliamentary services, contributions to international organisations and obligations, and public information is unacceptable.
DRAFT RECOMMENDATION 6.3 ***The practice of setting targets that require agencies to recover a specific proportion of their total cost should be discontinued.***	**Agreed, though may be misinterpreted.** We believe that there could be some ambiguity about this recommendation. The context of this recommendation relates to regulatory agencies, however the recommendation itself is not explicit and can be interpreted to relate to agencies such as the CSIRO which has to recover 30 per cent of its budget through external earnings. ACCI is aware that the intent of this recommendation is in addition to recommendation 6.2 and 6.7 (charges should be equal to the marginal cost of the service), however when read in isolation this recommendation could be taken out of context.
DRAFT RECOMMONDATION 6.4 ***Cost recovery arrangements should not include the cost of activities undertaken for Government, such as policy development, ministerial or parliamentary services and international obligations.***	**Agreed.** It is not equitable to charge individuals for the cost of a service which is a 'public good'.

FINDING *Information agencies generally have attempted to tie their cost recovery arrangements to the objectives of the agency itself, through the notion of core and non-core activities. However, in some cases, it is difficult to define clearly the boundary between core and non-core activities.*	**Agreed.**
DRAFT RECOMMENDATION 6.5 ***Information agencies should carefully define the boundaries of their core and non-core activities. This should be a dynamic process, with core activities determined with reference to:*** • ***The agencies' broad public policy bjectives;*** • ***The public good characteristics of the activity; and/or*** • ***Any positive spillovers associated with the activity***	**Agreed**. Cost recovery through fees and charges should only be initiated where there is a legitimate and necessary role for the Government, and one that cannot be provided adequately by the private sector. There are clearly a number of services within Government agencies which are also provided by the private sector and their main competitor is the Australian Government. The spatial information industry is an example where private businesses are currently competing directly with the Government for clients. In these situations there is no role for government involvement. Examples have been provided to ACCI, whereby private companies have been commissioned to obtain information which required extrapolation of data collected by a Government information agency. When the private contractor sought the raw data from the Government agency, they were informed that it would be easier for their clients just to contact that agency and obtain the information from them directly. The Government agency then sought to obtain the contact details of the client seeking the information. Additionally examples have been provided whereby businesses have been required to purchase far more raw data, at an additional cost, than they required for their needs. Therefore, ACCI supports the recommendation made by the PC. It is important that Government agencies clearly separate their activities between the collection of raw information and the interpretive services which are open for competition. This involves separate budgeting with no cross subsidisation of activities such as training or advertising.

DRAFT RECOMMENDATION 6.6 ***The core activities of information agencies (which may include some defined level of dissemination) should be wholly budget funded and not subject to cost recovery.***	**Agreed.**
DRAFT RECOMMENDATION 6.7 ***Non-core activities of information agencies should be charged at marginal (incremental) cost or, where relevant, at prices in keeping with competitive neutrality principles.***	**Agreed.** There is a fundamental question as to whether or not the non-core activities should continue to be conducted by public agencies because they may impede the development of a competitive industry. If they do continue to exist they should structure their fee system to ensure they pass on the full cost to the beneficiary of the service. This includes the full costs of training, administrative costs and advertising. No cross subsidisation of costs should occur between the core and non-core activities.
DRAFT RECOMMENDATION 6.8 ***Where the main objective of regulation is to provide benefits to the users of regulated products, a 'beneficiary pays' approach should be adopted. Under this approach regulated firms would be charged for the costs of regulation only where:*** • ***It is not feasible to change beneficiaries directly;*** • ***Cost can be passed on to beneficiaries;*** • ***It is cost effective; and*** • ***It is not inconsistent with policy objectives.***	**Conditional Support. Further clarification required.** Recommendation 6.8 and 6.9 need to be read in conjunction with each other. ACCI has two concerns regarding this recommendation. The first is in what situations this recommendation should be applied (refer to recommendation 6.9); and the second is that there is a need to further define 'beneficiary' in regards to this recommendation. The text of the Draft PC Report states that the TGA, NRA and other health and safety agencies provide a benefit to the firms they regulate because they provide a 'seal of approval' on regulated products which provides a marketable return. *"Looking broadly across the range of Commonwealth r egulatory agencies, the most common objective for cost recovery appears to be in order to charge regulated firms and their customers for the benefits they derive from regulation. For example the IFSA stated that financial regulation increases customer confidence in their members products, and contributes to a 'level playing field' for products to 'compete on their merits'. The TGA, NRA and other health and safety agencies justified their cost recovery arrangements in a similar way, arguing that regulated firms and their customers benefit from having a government 'seal of approval' on the regulated products.*

It could be argued that, in most cases, the consumers of the regulated products are the main beneficiaries, and hence should pay for these benefits directly, through levies or charges. However, it is usually more efficient to charge the producer, who can then pass some or all of the incidence of the charge on to consumers." (pp124-125)

The fundamental role of most regulatory bodies is to protect public health, safety and environment, that is the regulators perform a 'public good 'role by restricting certain business practices.

Below are extracts from the *Acts of Parliament* which established selected regulatory agencies outlining the rationale for the establishment of these agencies.

The Industrial Chemicals (Notification and Assessment) Act 1989: Section 3, Object of Act

The Object of this Act is to provide for a national system of notification and assessment of industrial chemicals for the purposes of:

a) *aiding in the protection of the Australian people and the environment by finding out the risks to occupational health and safety, to public health and to the environment that could be associated with the importation, manufacture or use of the chemicals; and…*

The Therapeutic Goods Amendment Act 1991: Section 4, Object of Act

4. The object of this Act is to provide, so far as the Constitution permits, for the establishment and maintenance of a national system of controls
relating to the quality, safety, efficacy and timely availability of therapeutic goods that are:

(a) used in Australia, whether those goods are produced in Australia or elsewhere; or

(b) exported from Australia.

Furthermore, though none of the five regulatory agencies identified below provide a mission statement *per se*, the following excerpts contained in publications from these agencies frequently appear as *pseudo* mission

	statements: ***NICNAS:*** *To ensure the protection of the environment and human health and safety from industrial chemicals.* ***ANZFA:*** *To ensure a safe and nutritious food supply.* ***NRA:*** *To protect the health and safety of people, animals and the environment.* ***TGA:*** *To ensure the quality, safety and efficacy of therapeutic goods in Australia and at the same time ensure that the Australian community has access, within a reasonable time to therapeutic advances.* ***AQIS****: To work with our stakeholders to improve market access and to protect our animal and plant health systems.* It is clear from these quotes and the legislation underpinning these agencies that any business benefit which is accrued as a result of these regulations is secondary to the benefit which is gained by the community as a whole. Furthermore, if the main purpose of these agencies is to provide a 'seal of approval' then it would be consistent with Government policy that these agencies be operated as 'self regulatory' agencies. However, these agencies are established to protect the 'public good' and therefore it is the community as a whole that is the primary 'beneficiary' of the regulation. Undoubtedly, business can also be a beneficiary of effective and efficient regulation. In light of these issues it is not simply a matter of stating that the beneficiary of regulation should pay the cost of the regulation. The PC needs to make explicit its interpretation of 'beneficiary' to ensure that the recommendation is interpreted accurately.
DRAFT RECOMMENDATION 6.9 ***Where the main objective of regulation is to minimise the detrimental effects of external***	**Conditional Support. Further clarification required.**

spillovers, a 'regulated pays' approach should be adopted. Under this approach, regulated firms should be charged for the cost 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.***	This recommendation does not appear to be consistent with recommendation 6.8 and it is not clear when recommendation 6.8 or 6.9 should be applied. All regulation should be established to minimise negative spillovers. This recommendation could therefore be used to justify cost recovery from business of all regulations in all situations. It is ACCI's interpretation from the context of the draft report that this recommendation is intended to be applied in situations where an entity is imposing a negative externality on a third party, such as through the creation of pollution and not intended to be applied in situations where products/substances are assessed and certified. However, the recommendation could be interpreted to apply to the activities of all regulatory agencies. Their role is after all to minimise public health, safety and environmental threats (spillovers). This appears to make recommendation 6.8 irrelevant. Further work needs to be conducted by the Productivity Commission to ensure that this recommendation is clear in its intent and that the application of this recommendation will not create additional problems or inefficiencies.
FINDING *Cost recovery can be a useful tool for conveying price signals and reducing excessive demand for some regulatory activities, but it requires careful consideration due to potential conflict with other agency functions and objectives.*	**Agreed.** However, taken out of context this recommendation could be misinterpreted. Using cost recovery as a demand management mechanism where regulation is compulsory is inappropriate. Where a fee is charged to maintain products on register, even if they are not used, eg NRA, this can act to discourage business from continuing to register superseded products. While in that instance it is appropriate, regulatory agencies which use charges to help manage demand, need to be certain they do not reduce demand inappropriately.
FINDING *Barriers to entry for firms and products arising from cost recovery charges are difficult to separate from barriers arising from the regulations themselves (including*	**Agreed.**

compliance costs) or from general market factors.	
FINDING *Direct regulatory charges for generic products may give rise to 'first mover disadvantages' inhibiting the introduction of new products.*	**Agreed.**
FINDING *Some information and data services appear to be priced at levels which are higher then their incremental costs, and some information agencies are not taking full advantages of new technologies to lower their dissemination cost. These factors may be impending the progress of Australian research and industry development.*	**Agreed.**
FINDING *Australian consumers may be affected by cost recovery indirectly in that they may pay higher prices or have a smaller range of choices for some regulated products.*	**Agreed.**
Chapter 7: Cost Recovery under the Trade Practices Act 1974	
FINDING *The ACCC could improve public information on the costs that TPA fee are intended to recover.*	ACCI did not provide any comments in our initial submission about cost recovery under the *Trade Practices Act*. We do not disagree with any of the PC findings as outlined in Chapter 7.
FINDING *Where the TPA prescribes the level of fees,*	

they have been set at a level that recovers the lowest expected cost of performing associated activities. This helps ensure that the fees are not susceptible to challenge as amounting to taxation. Where the TPA gives the ACCC discretion in setting the level of fees, they are usually set at the cost of performing the service.	
FINDING *Fees charged under the TPA appear to have little affect in restricting access to the activities for which they are charged. Hence, their effect on competition appears to be minimal.*	
FINDING *The fees charged under the TPA do not appear to impose a significant burden on business as they are typically set at low levels, particularly when compared to the transactions costs associated with undertaking, for example, an authorisation application.*	
FINDING *Fees charged under the TPA may play a useful role by discouraging unwarranted applications.*	
FINDING *Overall, fees charged under the TPA appear to be broadly appropriate.*	

Chapter 8: Improving Administrative Arrangements	
DRAFT RECOMMENDATION 8.1 ***Government equity or social objectives should be funded through direct cash transfers to users or direct funding of agencies, rather then through cost recovery arrangements.***	**Agreed.**
INFORMATION REQUESTS	
The Commission seeks further reviews on appropriate independent mechanisms for preparing or reviewing Cost Recovery Impact Statements.	Se our comments on recommendation 3.4.
The Commission seeks further views on how to improve parliamentary scrutiny of cost recovery receipts.	The existing mechanisms for management of Commonwealth public finance – including the Australian National Audit Office (ANAO), the Joint Committee of Public Accounts and Audit (JCPAA), Senate Estimates Committees and the Department of Finance and Administration (DOFA)- should all take greater responsibility for monitoring and reporting on how cost recovery is managed in all government departments and agencies. In their reports to Parliament, the ANAO and DOFA should give an audit and an aggeregate report respectively on agencies' cost recovery arrangements. Heads of agencies should be responsible for reporting in their Annual Reports, the receipts from cost recovery and on what services, operating activities etc, the monies were used. Appropriate compliance by heads of agencies should be taken into account in the performance pay process.
The Commission seeks further views on the establishment of Efficiency Audit Committees to address the efficiency of cost recovery	A one off Efficiency Audit on each regulatory agency conducted by an approved independent body may provide a clearer picture of the efficiency of regulatory agencies. This audit could then be useful in benchmarking Australian agencies' efficiency.

agencies.	Any Efficiency Audit Committees that are established should have the industries that are regulated well represented on the Committee.
The Commission seeks further views on the effect of cost recovery (as distinct from the effect of Government regulation or normal market factors) on firms (including small business) and consumers, particularly in relation to: • *The introduction of new and innovative products; and* • *Adoption of new technology.*	As outlined in our initial submission, we believe that NICNAS has negatively impacted the introduction of new and innovative products, and technologies especially by small businesses.
The Commission seeks further views on the usefulness of the guidelines contained in this draft report as a framework for deciding whether or not cost recovery should be introduced and for identifying the best approach to recovering costs. Also, it would be helpful if agencies could advice the commission on how well the guidelines apply to their own circumstances and the impact their application would have on revenue raising.	ACCI believes that the adoption by government o f the proposed *Guidelines for Cost Recovery* as outlined in Chapter 9 of the draft PC report will fill a major policy vacuum in Australia. We support the proposed guidelines as they are consistent with the guidelines that ACCI proposed in our initial submission. We agree with the proposed four stage approach for assessing cost recovery: • Stage 1: Initial Policy Review • Stage 2: Implementation • Stage 3: Ongoing Monitoring • Stage 4: Periodic Review. What is not clear from the draft PC report is the extent of consultation with effected parties. We expect that there would be full consultation with opportunities for business to provide input at every stage.
The Commission considers that these guidelines will need to address a number of the specific issues that are common in	As outlined in our initial submission, good public policy design and administration principles should be addressed: appropriateness, effectiveness, efficiency, accountability, transparency, impartiality, certainty, accessibility and equity.

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 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 organizations where the start-up cost are high and the regulated industry is small;* • *The timing of cost recovery payments, particularly in the case of new product approvals, where the product is still to be marketed.*	Full application of the Guidelines and the above principles should address any potential problems.
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 information agencies. Therefore, it seeks further views on these common problems and how they should be addressed. Possible areas to consider include: • *Charging for information services when the level of future demand for that service is unclear; and* • *Whether agencies should charge different users different prices to access the same*	As for above.

information.	
The Commission seeks further views on the key issues that are likely to emerge during implementation of the guidelines.	No comment.
The Commission seeks further views on the effect of Australian Communications Authority cost recovery charges on firms (including small business) and consumers.	No comment.