SUBMISSION

Submission to the

Productivity Commission

Inquiry into Cost Recovery

November 2000

Contents

EXECUTIVE SUMMARY

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to make this submission to the *Productivity Commission's Inquiry into Cost Recovery*.

The AFGC considers the primary role of Government is to address market failure in the economy, resulting in the provision of public goods and services. These are resourced through a range of broad-based government funding mechanisms including taxes, levies and the management of government-owned assets. In general, there is no direct relationship between government income and expenditure, in keeping with the "public goods" nature of most government services.

The AFGC considers there are some government services where it may be appropriate to consider funding or part funding those services directly from their beneficiaries. The criteria to determine whether a cost recovery mechanism is appropriate are:

- there is an *exclusive, capturable, commercial benefit* to the beneficiary of the regulatory function or government service; and
- the cost recovery charged is proportional to the value of the service to the beneficiary and is based on the marginal cost of providing that service, cognizant that most government services are at best only partially non-rival and non-excludable.

The AFGC's also considers that policies relating to cost recovery seek arrangements which are equitable, efficient and effective are based on the following key principles:

- cost recovery should not transfer to industry the government's contingent liability for adequately funding regulatory functions or other activities that are in the public interest;
- there should be recognition that public and private benefit derived from government regulatory and policy functions provides the basis for "discounting" the extent to which cost recovery is imposed.

In application, based on the experience of the AFGC in relation to cost recovery measures applied by the Australia New Zealand Food Authority (ANZFA), the Office of the Gene Technology Regulator (OGTR) and the Australian Quarantine and Inspection Service (AQIS), the AFGC considers that cost recovery arrangements put in place by regulatory agencies should protect the public confidence by ensuring their:

- independence — assured by appropriate governance arrangements and funding;
- credibility — public good functions based on sound principles (that is, sound science and technology in the case of food regulation) and well established policy frameworks; and
- integrity — through following fully transparent, accountable processes.

With respect to the operation of ANZFA the AFGC recently negotiated the amendment to the ANZFA Act 1991 which provides for ANZFA imposing charges for processing application for amendment to the Australian Food Standards Code only when the applicant stands to gain *"exclusive, capturable, commercial benefit"*.

Provision is also provided for applicants to voluntarily pay for accelerated processing of applications. In both cases, however, ANZFA must employ additional resources rather than diverting resources from other activities.

Similarly, the AFGC has opposed the Commonwealth Government's proposals for applying full cost recovery to the operation of the Office of the Gene Technology Regulator (OTGR) on the basis that:

- public good outcomes (protecting public health and safety and the environment) are the primary objectives of the OTGR; and
- *"exclusive, capturable, commercial benefit"* is not easily identifiable at the point of undertaking research activities, although downstream activities may translate into a marketable product.

In the case of AQIS cost recovery has long history and benefits to companies charged for inspection services are readily identifiable. Notwithstanding that, there remain issues related to the whether the system is equitable in its treatment of imported products, domestically produced products and products for export markets. The absolute cost of AQIS inspections may require review given the clear public good outcomes related to the service provided.

The AFGC recognizes that cost recovery as applied to research and development support by the Government and education and training is peripheral to the scope to the Inquiry. Nevertheless, the AFGC considers that cost recovery policies in these areas have the potential to both benefit and disadvantage the food industry.

THE AUSTRALIAN FOOD AND GROCERY COUNCIL

The Australian Food and Grocery Council (AFGC), the peak body representing Australia's processed food, beverages and other grocery products manufacturers, welcomes the opportunity to make this submission to the *Productivity Commission's Inquiry into Cost Recovery*.

The AFGC has adopted a set of principles, which determine the broad framework under which the Council determines and implements policies conducive to a socio-economic environment necessary for strong and sustained investment, competition, growth and profitability.

The membership of the AFGC of about 165 companies, subsidiaries and associates constitutes in the order of 80% of the gross dollar value of the highly processed food, beverages, and groceries sectors. A list of AFGC members as at the date of this submission is attached.

The Council is thoroughly committed to ensuring that public and industry policy provides conditions, through minimum effective regulation, for Australia's food and grocery manufacturers to grow and prosper whilst providing affordable, high quality, safe, appropriately labelled and promoted food products, to Australian consumers, and many more overseas.

This submission provides details of the AFGC's fundamental policies on cost recovery, particularly with respect to cost recovery in regulatory agencies of relevance to the food industry.

THE CASE FOR COST RECOVERY

The AFGC considers the primary role of Government is to address market failure in the economy, resulting in the provision of public goods and services. These are resourced through a range of broad-based government funding mechanisms including taxes, levies and the management of government-owned assets. In general, there is no direct relationship between government income and expenditure, in keeping with the "public goods" nature of most government services.

The criteria for the identification of public goods and services are that they are both:

- non-rival in consumption — that is, one party's consumption does not influence the ability of another to consume the good or service; and
- non-excludable, in that parties are unable to exclude themselves from benefits of the goods or service.

It is the recognised, however, that there are both public and private benefits accrued from Government services or activities which provide the basis for imposing no, or less than 100% cost recovery.

The AFGC considers there are some government services for which it may be appropriate to consider funding or part funding those services directly from their beneficiaries. The criteria to determine whether a cost recovery mechanism is appropriate are:

- there is an *exclusive, capturable, commercial benefit* to the beneficiary of the regulatory function or government service; and
- the cost recovery charged is proportional to the value of the service to the beneficiary and is based on the marginal cost of providing that service, cognizant that most government services are at best only partially non-rival and non-excludable.

The AFGC considers it critically important that Government policy regarding cost recovery should not be used simply as a means of generating funds to meet the resource requirements of a department or agency. The only basis for imposing user charges is the existence and, to some extent, estimate of private benefits associated with, or bestowed by, the activities of the Government department. This allows the charging of clients or parties who benefit from the services or activities beyond those benefits accrued by the community in general.

Balanced against this are situations under which parties are obliged to accept services as a condition of entry into a market. Cost recovery in these situations becomes difficult as parties do not have the option of excluding themselves from the service but Governments may well seek to recover the costs through charges (for example, food inspection by the Australian Quarantine and Inspection Service).

The fundamental basis for imposing cost recovery must be that it contributes to the efficient and effective resource allocation of both public institutions and the private sector.

Cost recovery seeks to transfer costs from one sector to another on the basis that this is not only fair but also leads to efficiencies in the allocation of resources. It is

critically important that efficiency gains in the public sector through the imposition of cost recovery are not offset by onerous burdens and inefficiencies being imposed upon the private sector to the extent that the effect is a less efficient industry and supporting regulatory system, to the net disadvantage of the community.

To ensure the efficient application of cost recovery, clear and unequivocal identification of users and beneficiaries must be possible, coupled with a robust and supportable estimation of the costs and benefits, preferably in dollar terms. Without such estimations, the justification for imposing costs becomes more difficult and, almost certainly, any cost recovery system will be inefficient.

COST RECOVERY — AFGC POLICY PRINCIPLES

Virtually, since its inception, the AFGC has provided the food and grocery industries' perspective on cost recovery arrangements to the Commonwealth Government across a range of areas. In particular, the AFGC:

- successfully negotiated appropriate arrangements for cost recovery for the food industry to partially fund the regulatory activities of the Australia New Zealand Food Authority (ANZFA);
- provided its views on fee charging for the food inspection services of the Australian Quarantine and Inspection Service (AQIS); and
- raised concerns about the 100% cost recovery proposals for the activities of the Office of the Gene Technology Regulator (OGTR).

The AFGC's underlying policy principles relating to cost recovery are:

- cost recovery should not be a vehicle for government to transfer to industry the contingent liability for providing adequate resources to undertake regulatory functions or other activities that are in the public interest;
- the user pays concept should be imposed only where there is an *exclusive, capturable, commercial benefit* to the beneficiary of the regulatory function or government service, if there are not to be externality effects creating a disincentive to business and a distortion to resource allocation;
- cost recovery should be imposed judiciously to address issues of significant concern where community confidence in the effectiveness of control measures is dependent on them being firmly under the auspices of government;
- governments should clearly differentiate between community service obligations, public good outcomes and *exclusive, capturable, commercial benefit* as the basis for "discounting" the extent to which cost recovery is imposed upon industry and recognising the benefit flows to the wider community;
- cost recovery charges need to be determined on either a fully distributed cost, marginal cost or incremental/avoidable costs depending upon the type of good or service provided and the anti-competitive effects on other commercial providers of equivalent services — for example, R&D institutions, analytical services, etc.;
- where appropriate, cost recovery arrangements should provide for additional resources within regulatory or other agencies over and above those required to perform core community service obligations, and not be allowed to divert resources from this obligation;

- cost recovery arrangements for public sector institutions should be fully accountable to the Parliament and their charging basis fully transparent to the public and, more particularly, users of their services;
- cost recovery arrangements should be structured and implemented in such a way that they provide unfettered access to all interested parties equitably, and are seen to be so. This is critical to ensuring that all stakeholders have access to and can observe framework arrangements, dispelling any notion of commercial engineering of regulatory outcomes or providing any foundation to 'conspiracy theories';
- cost recovery arrangements should provide for protection of commercially sensitive information and/or other intellectual property to avoid disincentives to business and distortions to resource allocation; and
- cost recovery arrangements should be efficient — the bureaucratic cost of administering charging should not be large in relation to the cost recovered.

The AFGC also considers that any application of cost recovery for public administrative or regulatory activities should be tempered by the necessity to protect the public confidence in the operations of those Government departments and agencies. Particularly, with regard to regulatory agencies, it is important to protect their:

- independence — assured by appropriate governance arrangements established through legislative frameworks and pursuant to regulations, coupled with adequate funding from governments (Commonwealth, State and Territory and resource management capabilities;
- credibility — basing the operations for public good functions on sound principles (that is, sound science in the case of food regulation) and well established regulatory policy frameworks; and
- integrity — adopting processes which are fully transparent, accountable and accessible to all interested parties irrespective of ability to meet cost recovery requirements.

The AFGC discusses cost recovery for regulatory agencies in greater detail below, where the operations of the regulatory bodies of most relevance to the food and grocery industries are addressed.

Recommendation

The AFGC recommends that key elements of a comprehensive policy on cost recovery for government services and functions include:

- **the concept of *"exclusive, capturable, commercial benefit"* as a critical criterion for imposing charges for government activities;**
- **recognition of public and private benefit for government activities as a means of equitably apportioning and recovering costs; and**
- **administrative costs of imposing changes being minimal compared to the revenue generated.**

ANZFA — BASIS FOR COST RECOVERY

Cost recovery for the activities of ANZFA has been a longstanding issue. From ANZFA's perspective the imperative for seeking cost recovery provisions derived from ANZFA's income being restricted to relatively inflexible Federal Budget allocations, while the Authority had a statutory obligation to process applications for amendment of the Food Standards Code within a given time period. This imposed considerable resource management problems on ANZFA.

December 1999 saw passage through Parliament of the *ANZFA Amendment Bill 1999* which established a framework for cost recovery by ANZFA. The AFGC was heavily involved in negotiating an outcome that was equitable for the food industry and maintained the independence and integrity of ANZFA as the primary food regulatory agency.

Since the beginnings of ANZFA (as the National Food Authority) the *Australia New Zealand Food Authority Act 1991* has allowed the Authority to charge for "services" with any recouped costs returning to Commonwealth consolidated revenue, and not ANZFA. The nature of the services was not specified.

Previously, however, ANZFA had not attempted to charge for processing applications to amend the *Food Standards Code* due to the clear inequities of imposing costs for specific applications by individual food companies when:

- benefits flow through to the wider community from the amendments to the *Food Standards Code*;
- other companies may experience "free rider" benefits without incurring costs;
- other parties making applications — that is, States and Territories — would not be charged; and
- the "public good" function of the *Food Standards Code* is incontrovertible.

In addition, as the ANZFA Act required ANZFA to process all applications within 12 months (subject to adequate information being supplied) irrespective of whether a fee is paid, there was no market force available to ANZFA to impose fees, and no incentive for companies to pay.

The previous Labor Government in 1994-95 reviewed cost recovery opportunities from the food industry by way of fees for applications seeking amendments to the *Food Standards Code* and was forced to reject the proposals as inefficient and impractical.

In 1996 the Government introduced into the Parliament the ANZFA Amendment Bill 1996 which, if it had become law, would have allowed "fees for applications" for ANZFA outside an agreed "work program". This was rejected by the food industry, led by the AFGC (then the Australian Food Council), based on a number of arguments focusing on the adequate and equitable resourcing of the public good functions of ANZFA.

In addition, however, charging was considered inappropriate while the industry was regulated by an inefficient and unwieldy system imposing substantial costs.

Responding to AFGC assertions that Australia's regulatory systems were inefficient and imposed significant costs on the industry and Government, the Government, through the Prime Minister's Supermarket to Asia Council, commissioned the Blair Review of Food Regulation with the primary objective of reducing "*the regulatory burden on the food sector*". The Government deferred any decision on cost recovery pending the review's outcomes.

Following the review (*Food: A Growth Industry,* 1998) Dr Blair concluded *"…that any further cost recovery from industry is introduced only after full evaluation of the benefits and costs resulting from the new and improved regulatory arrangement".*

Dr Blair proposed that "…*any new cost arrangements should be guided by the following principles:*

- *there are no public interest or equity reasons not to attach charges to the goods or services being produced;*
- *the direct beneficiaries of the goods or services can be identified;*
- *charging for the goods or services is feasible and cost effective; and*
- *users are able to influence their level of consumption.*

These findings mirrored those of a previous review of revenue raising options for ANZFA ("*ANZFA: Possibilities for Revenue Raising"* M. Codd 1997) which rejected charging fees for applications due to "…*issues of equity and practicality of significance".*

The ANZFA Amendment Bill 1999 — Critical Issues

The Australia New Zealand Food Authority Amendment Bill 1999 was introduced to Parliament in June 1999. The Bill addressed a wide range of issues pertinent to ANZFA's function and operational processes including:

- implementing recommendations regarding ANZFA objectives, functions and regulatory impact arising from the National Competition Policy review;
- harmonisation of Commonwealth, State and Territory food laws;
- implementing recommendation 17 of the Food Regulation Review relating to making minor amendments to the *Food Standards Code*, fast tracking amendments, and providing flexibility in the consultation process; and
- case-by-case assessment of food products for safety and labelling (such as health claims, gene technology foods, irradiated foods).

Further, proposed amendments specific to cost recovery, according to the Second Reading Speech, would have enabled ANZFA to "…*charge for those applications which are outside the work program where there is a commercial benefit to the particular applicant inherent in the application".*

The AFGC had grave concerns with the manner in which the original draft of Bill provided for charges being levied against the food industry or others seeking applications to change the *Food Standards Code*. As "enabling legislation" the Bill would have allowed charges possibly being sought for a wide range of "services" from ANZFA, deferring to regulation for specific detail. **This would have given**

broad scope to ANZFA in the approach it used for seeking to recover costs for its activities from industry.

The AFGC's preferred position was for the Bill (and subsequently the Act) to restrict the conditions under which ANZFA could charge for its services against carefully defined criteria. The AFGC viewed this as critical, not only in maintaining equity for stakeholders in ANZFA activities, but also **to restrict charging to situations where changes to the *Food Standards Code* confer an identifiable *exclusive, capturable, commercial benefit*** to a single party.

The AFGC supported ANZFA's proposals to establish a work program as a mechanism for resource management. The AFGC recognised that development of the work program would directly impact on the business plans of food companies in the future (where applications are required to amend the *Food Standards Code)*. A critical issue identified was the need to ensure stakeholders are confident that the work program development is clearly defined, protecting ANZFA's independence and credibility.

Consequently, the AFGC argued that the ANZFA Amendment Bill should also require ANZFA to establish the work program and describe the basic operation of the work program in the Bill (and subsequently the Act) to provide certainty to all stakeholders, including the food industry, of the principles to which ANZFA would adhere in carrying out its functions.

The Public Good Role of ANZFA

The primary objective of the ANZFA activities in developing the *Food Standards Code* is to protect public health and safety. As such, consumers are the primary beneficiaries of ANZFA's effective operation and thus it is not only critical, but proper, for it to be funded largely from the public purse.

ANZFA's public good functions require establishing an equitable balance between public funding and resources obtained through cost recovery measures. Historically, a great majority of ANZFA's activity (including as the National Food Authority) was focused on the development of a *Food Standards Code* which placed constraints on industry considered essential for the protection of public health and safety and to provide for "fair trading" in the market place, primarily by establishing Standards of product identity, definition and information requirements.

The Standards apply equally to all food manufacturers, conferring no particular benefit to any. The case of public funding of this public good function is therefore indisputable. **Furthermore, there is no justification for imposition of levies, fees or charges for ANZFA activities that provide for the public good through the development of Standards that apply across the whole, or broad sectors, of the food industry.**

Also, imposing charges on food companies seeking amendments to the *Food Standards Code* with broad application provides "free-rider" advantages to other food companies. This is clearly inequitable and may act as a "disincentive" to companies seeking changes to the *Food Standards Code*. Charging fails to take into account the substantial contributions food companies make in developing applications to ANZFA to change the *Food Standards Code* — a factor increasing the potential for

inequitable treatment of food companies if conditions for charging are not tightly defined.

ANZFA Independence and Integrity

Maintenance of ANZFA's independence and integrity as the primary food regulatory agency is critical. The AFGC consistently advocated for cost recovery provisions that do not undermine, or are perceived to undermine, the impartiality of ANZFA as it develops food standards. **Most importantly, cost recovery from individual companies, or other parties, must not result in ANZFA reprioritising its activities, particularly those considered of public health import**. This is essential to maintaining stakeholder (States/Territories, consumers, food industry) confidence in the regulatory system — the accusation that the "regulators can be bought" must be avoided at all cost.

It is therefore of paramount importance that ANZFA management systems are robust, operating to clear and agreed principles for the prioritisation of activities and subsequent implementation to established timeframes. Moreover, the processes must be transparent and accountable with extensive stakeholder consultation, particularly when activities of public health importance are prioritised.

Under the amended Act, ANZFA is now establishing a rolling three year work program, with priorities established through stakeholder consultations. The AFGC supports this approach in principle, subject to the detail of the work program (process and operation) being established to the satisfaction of all stakeholders, particularly in regard to protecting ANZFA's independence and integrity.

Conditions for Charging

During development of amendments to the ANZFA Act the AFGC considered there will be two conditions under which food companies might pay for ANZFA services. The first is when ANZFA might **demand** a fee for the "service" of processing an application for an amendment to the *Food Standards Code*. The AFGC considers that ANZFA can only reasonably make these charges when the service (that is, amendment of the *Food Standards Code*) confers an *exclusive, capturable, commercial benefit* (defined below) on the food company and cannot be included in the three year work program.

The second condition for charging is when food companies **voluntarily** enter into contractual arrangements with ANZFA to either expedite applications for amendments to the *Food Standards Code* or to pay for other ANZFA services. In these cases, the food company is in the best position to determine whether it will be receiving sufficient benefit from contracting ANZFA services and should be free to enter such arrangements.

Exclusive, Capturable, Commercial Benefit

During consideration of the cost recovery issue it was agreed that a legitimate case could be made for ANZFA charging for providing *exclusive, capturable, commercial benefit* as a unique advantage in the market available only to an interested party — that is, the party making application to ANZFA seeking amendment to the *Food Standards Code*.

Specifically ANZFA may bestow *exclusive, capturable, commercial benefit* by regulation through permitting:

- a novel product (that is, food, food ingredient, food additive) to be used in foods;
- a novel process (that is, irradiation, gene technology) to be used in food production or manufacture; or
- a particular claim (that is, a health claim) to be made about a food product.

ANZFA might also charge for providing information or advice through dietary modelling, monitoring and surveillance data, or access to expertise of ANZFA staff.

An "interested" party benefiting from ANZFA activities might be a food company, a consortium of companies, or a food sector. The most likely test for establishing *exclusive, capturable, commercial benefit* is whether amendment to regulation confers benefit to the marketing of products protected by proprietary rights.

Additional Resources, not Diversion of Resources

In order to provide equity in the food regulatory system the AFGC proposed, and it was accepted, that in cases where food companies contract with ANZFA for the provision of services ANZFA should engage additional resources to meet its obligations. This ensures that the activities identified and prioritised in the work program on the basis of public health and safety are not delayed through ANZFA diverting resources to meet its commercial contractual arrangements. **Thus, when ANZFA imposes fees for services or when companies voluntarily provide fees for services, additional resources must be engaged.**

By providing additional resources delay to previously established priorities is avoided thus maintaining the independence of ANZFA core business activities from financial influence or considerations. This is critical to stakeholders' confidence in the regulatory processes, underpinned by ANZFA's credibility.

Provision was also made for ANZFA to retain costs recovered rather than requiring them to flow through to the government's general revenue, thereby providing an incentive to ANZFA for efficient implementation of cost recovery.

ANZFA's charging systems

Standard fees for applications are, typically, for such things as:

- extending the use of a permitted food additive or processing aid;
- introducing, or varying, a labelling requirement;
- permitting a new ingredient to be added to a standardised food;
- varying, or establishing, a maximum residue limit (MRL) for an agricultural or veterinary chemical;
- allowing food irradiation for a food;
- recognising a new processing technology;
- allowing a novel food;

- approving the use of a statement for a particular food or class of foods which makes claims about the health benefits of that food; or
- approving a food which is, or contains, a food derived using gene technology.

The five levels of fees (under s.15 and s.16 of the *ANZFA Act*) are:

- *Very Simple*: These are for simple procedural matters not requiring public consultation or where a safety assessment is undertaken by another agency — fee = $2,800 + GST;
- *Simple*: These are for Standards variations or updates not requiring risk assessments, or for straightforward procedural matters — fee = $14,000 + GST;
- *Average*: These are for variations or updates to Standards, or procedural matters which are more complex than the 'Simple' assessments — fee = $33,600 + GST;
- *Complex*: These are for applications where there are new risks to be assessed, introducing a new Food Standard or where complex and/or extensive work is required — fee = $56,000 + GST; and
- *Very Complex*: These are for applications where a high degree of scientific analysis and evaluation is required including such things as full toxicology assessments, exposure estimates and protracted negotiation with stakeholders — fee = $84,000 + GST.

ANZFA's Cost Recovery Framework

From this description of the manner in which cost recovery was recently introduced for ANZFA activities it can be seen that a framework of safeguards was constructed which not only provided for the equitable imposition of charges but also protected ANZFA's core public good functions from distortions that may have resulted from the organisation pursuing too vigorously "commercial opportunities". Specifically, that framework comprised:

- restricting the imposition of charges imposing "exclusive, capturable, commercial benefit";
- requiring ANZFA to develop a three year rolling work program based on public health and safety priorities;
- ensuring cost recovery funds additional resources rather than diverting resources from public good activities; and
- allowing costs recovered to be retained by ANZFA rather than flowing through to the government's general revenue.

The role of cost recovery for the activities of ANZFA was born out of serious concerns about the ability of the agency to manage its own resources. These concerns have been addressed through the recent amendments to the ANZFA Act (detailed above) and, at lease for the short to medium term, cost recovery for ANZFA should not become a public policy issue. Notwithstanding that, the AFGC recognises that there is a need for consistency in the application of Government policy across its agencies and departments. The AFGC would expect that changes in the cost recovery arrangements for ANZFA should only be made to achieve that end.

Recommendation

The AFGC recommends that for government agencies regulating industry, cost recovery arrangements provide a framework of safeguards protecting the public good functions by:

- **imposing charges on parties only when an exclusive, capturable, commercial benefit is identified and bestowed;**
- **legislative arrangements require the agency to adequately plan and carry out its public good function;**
- **cost recovery funds provide additional resources rather than diverting resources from public good activities; and**
- **funds generated are retained by the agency, rather than flowing through to government's general revenue, as an incentive to the efficient implementation of cost recovery.**

THE OFFICE OF THE GENE TECHNOLOGY REGULATOR

The AFGC notes that the Productivity Commission is particularly interested in receiving comment on cost recovery proposals for the operation of the Office of the Gene Technology Regulator (OGTR).

The AFGC has been a consistent advocate for a comprehensive, scientifically based, strong, independent, transparent, consultative legislative system governing the research into, experimentation with and release into the environment of, genetically modified organisms (GMOs).

Specifically, in relation to food, the AFGC has called for:

- the establishment of a "Gene Technology Authority" (operating as a Statutory Authority and based on the operation of the Genetic Manipulation Advisory Committee) providing the regulatory oversight of the experimentation on, and general release of, genetically modified organisms;
- a case-by-case pre-clearance safety assessment for all gene technology derived foods with transparency and full public consultation as currently provided for in the Food Standards Code by Standard A18 – *Food produced using gene technology*; and
- mandatory labelling of food products where this assists in protecting public health (for example, identification of allergens) and where the food, or ingredient, is no longer "*substantially equivalent*" to its conventionally produced counterpart, also as currently provided by Standard A18 – *Food produced using gene technology*. Notwithstanding this, Standard A18 is about to be amended following the July 2000 decision of the Australia New Zealand Food Standards Council, with proposals to extend labelling but against a practical framework which has been supported by the AFGC.

The AFGC considers that the establishment of the OGTR and the associated legislation is an essential part of such a comprehensive system for regulating GMOs.

The *Gene Technology Bill* 2000 will:

- establish the OGTR and create the position of the Gene Technology Regulator. This is an acceptable alternative to a Statutory Authority, as proposed by the AFGC;
- ensure the independence of the Gene Technology Regulator by providing for his/her appointment by the Governor General, reporting directly to Parliament and freedom from direction "from anyone" in considering licence applications. This is essential, to ensure the apolitical nature of the position and consumer confidence in it;
- make provision for a Ministerial Council to provide overall policy guidance, but not to make decisions in respect to individual licence applications;
- provide for a scientifically based, transparent, consultative system for the approval of licences, varying in complexity in proportion to the potential risk of the GMO "dealing" being licensed. This will ensure an appropriate, economic use of resources and appropriate level of consultation; and
- allow the appointment of inspectors with appropriate powers to monitor and enforce compliance. This is essential to ensure compliance with conditions imposed on licences to protect the health and safety of people and to protect the environment.

It is clear that under the proposed framework the activities of the OGTR are directed primarily at public good functions, providing safeguards rather than a facilitatory framework to the marketing of goods and services. As such, the imposition of cost recovery will be problematic if it is to be equitable, effective and efficient.

The AFGC concerns regarding the imposition of cost recovery are:

- the public good objects of the Bill — that is, protection of health and safety and protection of the environment, are such that the operation of the OGTR should be publicly funded;
- the independence of the OGTR must not only exist, but must be seen to exist, payment of fees by those the OGTR is regulating could be perceived as compromising the integrity of the Office;
- applicants for licences will already be funding the research and development and generation and provision of information to the OGTR;
- the external benefits of the research may not be considered;
- depending on how licence fees are structured, they have the potential to unfairly disadvantage small companies who are less able to afford them, or in effect act as a cross subsidy from the large companies to the small; and
- imposition of licence fees is equivalent to imposing a tax on research and development and could force it "offshore".

The licensing, certification and accreditation provisions provided by the proposed regulatory framework of the Gene Technology Bill 2000 will be seen by consumers as exercising an appropriate degree of regulatory oversight of the research into, experimentation with and release into the environment of, GMOs. While supporting these

controls the AFGC has cautioned against their being too onerous, thereby inhibiting research, development and innovation in this technology.

Of great concern is that applications for licences and certification must be accompanied by the prescribed fee and that an annual charge may be payable in respect of licences. The concern is not so much that a nominal fee may be charged but that this has already been decided on the basis of the current Federal Government fiscal policy that the regulatory scheme shall be 100 per cent cost recovered.

The imposition of 100% cost recovery for the OGTR operation is clearly aimed at shifting the contingent liability of resourcing the OGTR onto industry for "public good" functions of:

- protecting the health and safety of people; and
- protecting the environment.

These "public good" objectives should be paid for out of the public purse.

The AFGC also considers there are additional, less obvious, but equally valid reasons mitigating the need for 100% cost recovery:

- inhibition of "blue skies" research — the charges would effectively be a tax on research at the very beginning of the innovation chain;
- high costs would disadvantage small companies;
- high fees paid by large companies may be used to subsidise small companies; and
- payment of fees may unduly influence the GTR.

Each of these is a genuine concern and must be considered and has been raised by the AFGC in its submissions to the Government providing its perspectives on the Gene Technology Bill 2000.

The difficulty in imposing cost recovery is that, unlike the operation of ANZFA, it is difficult to conceive of how "exclusive, capturable, commercial benefit" will accrue to parties undertaking the activities which the OGTR will be regulating. The exception may be the final licensing of a GMO for commercial release. This provides strong argument for <u>not</u> seeking 100% cost recovery for the operation of the OGTR.

There are further strong arguments for the OTGR being funded, at least partly, by the public sector rather than seeking 100% cost recovery for its operation, *viz*:

- imposing cost recovery for regulatory licensing or approving of R&D fails to account for the fact that the applicant for a licence will already be funding the gene technology R&D for which a licence application is made. It is well accepted that one of the "spill-over" benefits of any R&D, whether successful or not, is knowledge. This knowledge is retained in the institution that carried out the R&D and can often be used in other research at that institution. This externality factor is another aspect of "public good" that should be funded from the public purse not paid for twice by the applicant, once in direct funding of the R&D and secondly by payment of application fees to the OGTR;

- operation of gene technology research facilities will be subject to the establishment of Institutional Biosafety Committees (IBCs) to oversee the safe and appropriate operation of the facility in accordance with the requirements of the OGTR. Although such operations will be subject to audit by inspectors, it is the IBC that carries the day-to-day responsibility of regulatory oversight and compliance. Thus the IBC is in part underwriting the effective enforcement of the requirements of the GTR and will be subsidising the implementation of effective gene technology regulation;
- other areas of work of the OGTR such as operation of the Community Consultative Group are clear areas of public good and therefore should be publicly funded. Providing the public with information and an opportunity to comment should be a non-exclusive process. Cost recovery may discourage full public participation; and
- a key element of community confidence in the operation of the OGTR is independence from commercial interests. It is not easy to retain this independence, and perhaps more importantly the public perception of independence, while relying for funding on revenue generated from those being regulated.

The current Federal government fiscal policy "that the regulatory scheme shall be 100 per cent cost recovered" is, therefore, totally inappropriate to the operation of the OGTR.

The issue of cost recovery for the OGTR is still to be resolved. The current Inquiry into cost recovery by the Productivity Commission provides a timely opportunity for the Government to delay applying cost recovery provisions to the operation of the OGTR, pending the outcome of the Inquiry.

Recommendation

The AFGC recommends that:

- **finalisation of arrangements for cost recovery for the operation of the Office of the Gene Technology Regulator be deferred until the final report of the Productivity Commission's Inquiry into Cost Recovery to ensure consistency with overall Government policy; and**
- **cost recovery be sought on the basis of being able to identify "exclusive, capturable, commercial benefit" bestowed on a particular party (applicant or licensee).**

THE AUSTRALIAN QUARANTINE AND INSPECTION SERVICE (AQIS)

AQIS provides inspection services for:

- companies wishing to import food products into Australia; and
- companies wishing to export food products from Australia.

There is a general public good associated with these activities in that they protect public health and safety, ensure adequate information is provided for informed choice, and prevent fraud and deception.

Furthermore, in export markets they protect the good reputation of Australian products, contributing to the perception of Australia being a provider of safe, quality food products upon which the whole nation has the potential capitalise.

Notwithstanding this, AQIS generally pursues full cost recovery through levying charges for its inspection services which do not recognise, or attempt to account for, the public benefit.

The AQIS system could be considered equitable in that for:

- all importing companies, compliance and inspection is a condition of entry into the domestic market; and
- all exporting companies, compliance and inspection is a condition of entry into export markets.

Notwithstanding this, it could also be argued that importing food products are placed at a competitive disadvantage against similar domestically manufactured food products that may not be subject to inspection and charging. This may be considered inequitable.

Likewise, food companies selling into export markets may be competing against companies which do not manufacture and trade under similar regulatory regimes in their home countries. Again, this may be considered inequitable.

The AFGC considers that the clear public good role of AQIS inspections and the potential for competitive disadvantage being placed on domestic manufacturers should provide the basis for discounting cost recovery applied for AQIS activities.

The current Inquiry into Cost Recovery will provide the basis for the cost recovery policies relating to AQIS activities to be re-examined.

Legislative Basis for Cost Recovery by AQIS

AQIS supports its cost recovery and charging regimes by the following legislation:

- *Quarantine Act (1908)*: This Act covers imports and allows the responsible Minister to make determinations of fees. This Act covers charges for Airports, Seaports, Animal Quarantine, International Mail and post-entry Plant Quarantine charges;
- *Imported Food Control Act (1992)*: Provides for charges to be made for the management and certification of food imports;

- *Export Control Act (1982)*: Provides for charges to be made for the management and certification of exports for such things as Meat, Dairy, Grains, Horticultural organisms, Fish, Processed Food, and Live Animals;
- *Export Inspection (Service Charge) Act (1985)*: This covers charges related to exports of fish and other processed foods; and
- *Export Inspection (Establishment Registration Charges) Act (1985)*: This covers charges related to exports of fish and other processed foods, Horticultural organisms, Grains, Meat and Dairy.

In addition there are two Acts relating to the collection of general (taxation type) charges:

- the *Export Inspection (Charges Collection) Act (1985)*; and
- the *Export Inspection (Quantity Charge) Act (1985)*.

This multiplicity of legislation mirrors the complexity of cost recovery and charging regimes across the AQIS programs.

NATIONAL REGISTRATION AUTHORITY (NRA)

NRA activities provide regulatory approval for the marketing of proprietary products to the agricultural industries. As such they provide *exclusive, capturable, commercial benefit* to the applicant companies.

Under these circumstances full cost recovery is appropriate for the product assessment and approval activities of the NRA.

Legislative Basis for Cost Recovery by the NRA

The *Agricultural and veterinary Chemicals Code Act 1994* (the Agvet Code) and its associated Regulations, together with the various Acts related to levy collection (for example, Acts like the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*) form the basis of the charging regime of the NRA.

The 'Agvet' Code as a Commonwealth law applies only in the ACT. Each of the States and the Northern Territory has enacted complementary legislation that has the effect the Commonwealth registration provisions are applied as a law of each State and the Northern Territory.

COST RECOVERY FOR NON-REGULATORY ACTIVITIES

The AFGC recognises that the major objectives of the current inquiry are to address the rationale for imposing cost recovery for Commonwealth regulatory, administrative and information agencies. Previously in this submission the AFGC has identified those agencies of most direct relevance to the food and grocery industries.

Notwithstanding that, the AFGC places on record its concerns with the broader aspects of cost recovery and user pays principles.

While the AFGC strongly supports the concept of allowing markets, where possible, to operate without Government intervention — this being the most efficient means

of delivering most outcomes — it is not necessarily a corollary that imposing market-like provisions upon Government activities will result in the most efficient and effective delivery of outcomes.

The market failure argument for the intervention of Governments in marketplaces is well established. In the past, areas of strong Government intervention on this basis have been:

- research and development — governments have committed considerable resources to supporting basic research and development and providing incentives to industry-sponsored research and development, recognising the benefit accrues beyond the owner of the new technologies; and
- education and training — the public benefits from having an educated youth and well trained workforce are unequivocal and have resulted historically in Governments around the world supporting these activities.

Notwithstanding this, in Australia, particularly in recent years, there have been moves to impose more market oriented frameworks around research and development, and education and training. While the AFGC recognises the benefits that such programs may bring, it is important that such programs are initiated with full regard to both the benefits and the costs to the community of attempting to apportion and recover funds from different sectors of the community for Government support of research and development and public education and training.

Recommendation

The AFGC recommends the Productivity Commission give some consideration to the consequences of "cost recovery" or "user pays" policy principles being applied in wider areas of government activity, including research and development and education and training.

CONCLUSIONS

The AFGC has developed and presents in this Submission a detailed, but not exhaustive, framework for the imposition of cost recovery as relevant to the food and grocery industries.

The AFGC will be seeking further opportunity to provide input into the Inquiry into Cost Recovery and will be seeking an opportunity to participate in the public hearings and making further submissions to the Inquiry when appropriate.

AUSTRALIAN FOOD AND GROCERY COUNCIL

MEMBERSHIP

As At 20/9/00

- Abbott Australasia Pty Ltd
- Ardmona Foods Ltd
- Arnott's Biscuits Ltd
  - The Kettle Chip Company Pty Ltd
- Asia-Pacific Blending Corporation Pty Ltd
- Australia Meat Holdings Pty Ltd
- Australian Food Ingredient Suppliers Pty Ltd
- Beak & Johnston Pty Ltd
- Berri Limited
- BOC Gases Australia Ltd
- Boots Healthcare Australia Pty Ltd
- Bristol-Myers Squibb Australia Pty Ltd
- Bronte Industries Pty Ltd
- Buderim Ginger Ltd
- Bundaberg Sugar Ltd
- Bunge Meat Industries
  - Don Smallgoods Co Pty Ltd
- Campbell Australasia Pty Ltd
- Campbell Brothers Ltd
- Cantarella Bros Pty Ltd
- Carter Holt Harvey Tissue Aust Pty Ltd
- Cascade Beverage Co
- Cerebos (Australia) Ltd
- Chisholm Manufacturing
- Chr Hansen Pty Ltd
- Coca-Cola Amatil Ltd
- Colgate-Palmolive Pty Ltd
- Consolidated Foods Australia Ltd
- Coopers Brewery Ltd
- Cultor Food Science Inc (Cultor/Danisco)
- Cussons Pty Ltd
- Dairy Farmers
- Darling Downs Bacon Co-operative Association Ltd
- Demicombe Pty Ltd
- Derby Industries Pty Ltd
- Devro-Teepak Pty Ltd
- Douwe Egberts
- Dragoco Australia Pty Ltd
- DSM Food Specialties Australia Pty Ltd
- Effem Foods Pty Ltd
  - Mars Confectionery of Australia
  - Master Foods of Australia
  - Uncle Ben's of Australia
- Farm Pride Products
- Faulding Healthcare Pty Ltd
- Fibrisol Services Australia Pty Ltd
- Firmenich Limited
- Fletchers Foods Pty Ltd
- George Weston Foods Ltd
  - Allied Foods Co Ltd
  - Biscuit & Cake Division
  - Tip Top Bakeries
  - Watsons Foods
  - Weston Bioproducts
  - Weston Cereal Industries
- Gillette Australia Pty Ltd
- Golden Circle Ltd
- Goodman Fielder Ltd
  - Germantown International
  - GF Food Services
  - GF Ingredients Group
  - GF International
  - Goodman Fielder Milling & Baking Group
    - Bunge Defiance Pty Ltd
  - Goodman Fielder Mills Ltd
  - Leiner Davis Gelatin (International)
  - Meadow Lea Foods
  - Quality Bakers Australia Ltd
  - Serrol Ingredients
  - Starch Australasia Ltd
  - The Uncle Toby's Co Ltd
- Green's Foods Ltd
- H J Langdon & Co Pty Ltd
- Hans Continental Smallgoods Pty Ltd
- Harvest FreshCuts Pty Ltd
- Heinz Wattie's Australasia
  - Southern Country Foods Pty Ltd
- Henry Jones Foods Pty Ltd
- Herron Pharmaceuticals Pty Ltd
- Hoyt Food Manufacturing Industries Pty Ltd
- International Flavours & Fragrances (Australia) Pty Ltd
- Johnson & Johnson Pacific Pty Ltd
- Kellogg (Australia) Pty Ltd
  - DSM Group
- Kimberly-Clark Australia Pty Ltd
- Kraft Foods Ltd
- La Famiglia Fine Foods Pty Ltd
- Madura Tea Estates
- Mainland Dairies Pty Ltd
- McCormick Foods Australia Pty Ltd
- Mother Earth Fine Foods Pty Ltd
- National Foods Ltd
- NationalPak Pty Ltd
- Nerada Tea Pty Ltd
- Nestlé Australia Ltd
  - Nestlé Beverages Division
  - Nestlé Confectionery Division
  - Nestlé Dairy Products Division
  - Nestlé Foods Division
  - Friskies Pet Care Division
  - Foodservice & Industrial Division
- Novartis Consumer Health Australasia Pty Ltd
- Nutricia Australia Pty Ltd
- Nutrinova (Australasia) Pty Ltd
- Ocean Spray International, Inc
- P B Foods Ltd
- Paper Converting Co Pty Ltd
- Peanut Company of Australia Ltd
- Pfizer Warner Lambert Consumer Group
- Pillsbury Australia Pty Ltd
- Procter & Gamble Australia Pty Ltd
- Quest International Australasia Ltd
- Reckitt Benckiser
- Regal Cream Products Pty Ltd
- Ridley Corporation Ltd
  - Cheetham Salt Limited
- Roche Vitamins Australia Pty Ltd
- S C Johnson & Son Pty Ltd
- Sanitarium Health Food Company
  - Longa Life Vegetarian Products Pty Ltd
- Sara Lee Bakery (Australia) Pty Ltd
- Schwarzkopf and Henkel
- Sharpe Laboratories Pty Ltd
- Simplot Australia Pty Ltd
- SmithKline Beecham International
- Snack Brands Australia
- Specialty Cereals Pty Ltd
- Stafford-Miller Ltd
- Sugar Australia Pty Ltd
- Sunbeam Foods
- Taylor's Foods Pty Ltd
- Tetley Australia Pty Ltd
- The Smith's Snackfood Company Ltd
- Unilever Australia Limited
  - Lever Rexona
  - Unilever Foods
    - Canned Fish & Produce/Unilever Aust Export
    - Culinary Foods
    - Ice Cream
    - Spreads & Bakery
    - Tea
- Universal Foods Corporation (Aust) Pty Ltd
- Wella Australia
- Wyeth Australia Pty Ltd
- Yakult Australia Pty Ltd

Associate Members

- Amcor Fibre Packaging
- AWB Limited
- Chep Australia
- Clayton Utz
- Australian Dairy Corporation
- DiverseyLever Consulting
- Ernst & Young
- Focus Information Logistics Pty Ltd
- Food Liaison Pty Ltd
- Foodsense
- Forstaff Australia Pty Ltd
- Huhtamaki Van Leer (Oceania) Ltd
- IBM Australia Ltd
- Korn Ferry International
- KPMG Chartered Accountants
- Maddock Lonie & Chisholm
- Manassen Foods Australia Pty Ltd
- Meat and Livestock Australia Ltd
- Michels Warren
- Monsanto Australia Ltd
- MPG Logistics Pty Ltd
- Nationwide Food Brokers Pty Ltd
- Novo Nordisk Bioindustrial Pty Ltd
- Peter Arentz & Associates
- PricewaterhouseCoopers
- Protein Technologies International Aust Pty Ltd
- Queensland Sugar
- Ronald L Cossen & Associates Pty Ltd
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- Strategic Horizons Pty Ltd
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