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Ms Delwyn Rance
Cost Recovery Inquiry
Productivity Commission
Locked Bag 2
Collins St East Post Office
Melbourne, Vic 8003

Dear Ms Rance

Re: Productivity Commission Inquiry into Cost Recovery

PACIA thanks the Commission for the opportunity to provide input into the inquiry into cost recovery arrangements by Commonwealth Government Regulatory, Administrative and Information Agencies.

PACIA represents over 400 members in the chemicals and plastics, which provide many inputs to numerous industries such as food and beverage, agriculture and manufacturing. The issue of full cost recovery by regulatory agencies has been one of particular concern for these industries given the potential impacts of such a policy on business costs and competitiveness.

The attached submission provides further background on the industry and outlines the issues associated with the implementation of full cost recovery by Commonwealth Regulatory Agencies. It also includes several recommendations based upon the industry's experience to aid in the efficient and equitable implementation of partial or full cost recovery by Commonwealth Government agencies.

PACIA looks forward to discussing these issues further with the Commission at its public hearings. Should the Commission wish to speak to PACIA earlier please contact myself or Ashley Van Krieken on the numbers above.

Yours sincerely

Ian Swann
General Manager
PACIA

14 November 2000

Submission to the Productivity Commission

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

Plastics and Chemicals Industries Association

15 November 2000

Overview

PACIA is the peak Australian Plastics and Chemicals Industries Association. The organisation was formed in 1994 following the amalgamation of the Plastics Industry Association, the Australian Chemical Industry Council and the Chemical Importers and Exporters Council of Australia. PACIA currently represents over 400 members – from large multi-national companies to small privately owned family concerns - and accounts for 85% of the industry's annual $30 billion turnover.

The plastics and chemicals industries, as the fourth largest manufacturing sector in Australia, accounts for 10% of the manufacturing sector and employs over 80,000 people. The industry is important in the regional development of Australia, with many of our members operating in areas such as Geelong in Victoria, Kwinana in Western Australia and Gladstone in Queensland. The operations of these companies help support local communities, through substantial investment in plant and infrastructure and provide significant employment opportunities.

Cost recovery and the Plastics and Chemicals Industries

Our industry encounters numerous Government agencies which recover all or part of their costs in line with Government policies. Three of the most important agencies have the role of assessing chemicals and chemical products and establishing certain controls over their use to ensure they meet Australia's high health, safety and environmental standards. These are:

- National Industrial Chemicals Notification and Assessment Scheme (NICNAS)
- National Registration Authority (NRA)
- Therapeutic Goods Administration (TGA)

Each of these agencies operates under full cost recovery through a mix of levies and new chemical or product assessment fees and has moved from partial to full cost recovery over the past five to ten years. Of the three agencies NICNAS has the largest impact upon our members.

While PACIA understands the importance of cost recovery to Government policy, we are concerned that the history of application indicates that good regulation, efficiency and accountability of agencies, has not gone hand in hand with the changes. This has resulted in the imposition of considerable direct and indirect costs upon companies, in particular small and medium companies and has worked to inadvertently discourage innovation and the introduction of new technologies into Australia. In many cases, the loss is not felt in the chemicals sector, but on downstream sectors such as plastics, automobile, construction or packaging who rely on the availability of the new chemicals to produce competitive products and services.

An effective cost recovery system should work to reduce the absolute cost of government operations, reduce duplication and regulatory burden, encourage greater efficiency and accountability of activities and direct a prioritisation of activities against goals and objectives. In addition, the process needs to consider the balance of costs between private and public interest, impact on the user base and global competitiveness of the Australian industry.

The plastics and chemicals industries have identified several concerns surrounding the full cost recovery activities of these agencies which are discussed below.

Predefined Role of Agencies

The legislation that gives effect to the role of the agency often also creates a predetermined level of activity. In the case of the three agencies impacting on the chemicals industry, while market dynamics have changed with faster time to market requirements for goods from increased international competition the original Acts continue to constrain the direction of assessments undertaken. In 1996/97 the NICNAS Act was amended to move the agency to 100% cost recovery along with measures to address these issues and increase efficiency. These changes have not been fully effective with many companies now not able to justify the costs of the introduction of a chemical for the expected returns. The legislation limits the flexibility of the agency to address this and companies are missing opportunities to introduce substances that have a low impact due to the high costs of assessments.

The resultant direct and indirect costs work to limit the chemical and plastics industry's development, particularly in small and medium sized firms who often do not trade large enough quantities to recover the costs. The pace of development of new technology is rapidly increasing and these developments often bring more efficient systems of use, cleaner production and safer products to the marketplace yet barriers from assessment schemes to chemical entry in Australia work to stifle such technological advancement.

When a full cost recovery system is based on costs for service, industry expects the greatest efficiency in the delivery of that service. Agencies should be provided with strong incentives to seek ways of increasing efficiency and thus also improving the cost effectiveness of the process. Where efficiency is not maximised companies suffer through the loss of contracts that could not be filled in time due to delays and the cost of assessment processes.

Industry has identified circumstances where the degree of regulatory burden is not matched to the service being delivered including pricing, lack of prioritisation of activities, impedments to the adoption of new technology and innovation and the role of foreign schemes. Whilst cost recovery ensures a stable funding basis this must go hand in hand with the necessary incentives to improve the priority, value adding and cost effectiveness of agency services. A regular review and benchmarking process would go some way to resolving many of these issues.

Pricing and Prioritisation of Agency Activities

Government should identify ways to reduce both the overheads and direct costs of agencies. One suggestion is to allow the agency or Government to outsource the technical review aspects and undertake a more managerial approach to the assessment process. This would likely lead to competitive costs and reduced overheads which are more justifiable to the applicant. Government would still need to be assured of the quality of the process and retain its role as final arbiter of results to ensure that the level of technical support remains independent and sound.

Industry believes that a majority of resources should be devoted to assessment of new and existing high risk chemicals, with less emphasis on the review of low risk chemicals introduced or already in use domestically. This level of prioritisation must be pursued by the agencies to increase industry satisfaction with the assessment process.

Example: Polymers of Low Concern.
NICNAS has a number of categories of chemicals which seeks to rank chemicals by their risk. The polymers of low concern category has the lowest risk level of all categories yet represents about 30% of NICNAS's workload (excluding temporary permits). This represents less time and ability for NICNAS to assess those high risk chemicals that are in use or industry would like introduced into Australia.

Restraints on Economic, Innovation and Technological Development

Companies introducing new products to the market place have identified circumstances where the fees and charges have reduced innovation and technology uptake within the industry. The majority of Australian companies are geared toward servicing the Australian market place. Australia does not have the volumes of sales that other markets such as Europe and the United States do, however, the range and variety of industrial, agricultural, therapeutic and consumer goods is not significantly reduced. As a result many chemical inputs for Australian production tend to be of low volume and any regulatory costs therefore have a greater impact in determining viability of introduction. Where the product is not introduced due to the incompatibility of assessment cost and final market size, the result is an imported finished product rather than an Australian manufactured product.

The chemical and plastics industry is a very dynamic and innovative industry. With "new chemistry" appearing and higher health and environment requirements by end consumers for products the industry must "innovate to survive". In many cases to develop or take advantage of new technologies, a new chemical not on Australia's register must be used. The company must in these cases then make a choice to either proceed with the development of the product or not to proceed taking into account the issues of cost and timeliness of assessment. In the case of the latter, a product may move offshore resulting in a lost market for Australia. NICNAS has attempted to introduce different categories of chemicals but these are yet to give true benefits to industry. An alternative or complimentary solution would be to allow the limited usage of a new chemical while it is in the assessment process.

Example: Phototronics Industry Inputs
The phototronics industry is involved in the production of computer chips, silicon wafers and solar cells and as such it is a very dynamic industry that requires new chemistry as part of its ongoing development. For Australian firms supplying this industry NICNAS hinders their flexibility to keep up with developments in the chemistry for this technology due to:

- The short shelf life of chemicals as a result of the pace of development in the industry. As advances occur in chemical technology existing chemicals are dropped possibly even before an assessment has been completed.
- The market for photoresist chemicals is small but necessary for larger value added industries. The size makes it even difficult to justify applying for a low volume chemical permit as products may be consumed at 1 litre per month making it not cost effective.
- As a result of the above many of the small market niche products rely on old chemistry leading to internationally uncompetitive products.

Role of Recognition of Foreign Schemes

In the establishment of the legislation surrounding the three agencies many chemical products already in use were "grandfathered" onto the initial inventories of each agency and many activities duplicated with overseas schemes. Chemicals in use in Australia at the time of the introduction of the NICNAS Act were far less than those in use in the US and Europe thus creating a reduced inventory of "grandfathered" chemicals than in other countries. Europe currently has an inventory of 101,000 chemicals, the United

States 75,000 while Australia has approximately 38,500 approved chemicals. On the basis of existing costs and number of approvals by NICNAS per year it can be roughly estimated that it would take 50 assessment years and $US1.5 billion for Australian industry to gain access to 10% of the 62,500 additional chemicals on the European inventory.

Any time that a company wishes to use a chemical not on the Australian inventory, even if it is on an overseas inventory, it is required to undertake a full assessment. Likewise, NICNAS has assessed many low hazard chemicals even though these may be in use overseas and listed on foreign inventories. Other countries around the world are adopting inventories that reflect use in other countries and Australia will never get to an even par with these countries whilst assessing everything not on the inventory. The regulatory system needs to take account of changes and other systems globally and work towards meeting the goals of sound management within an international context rather than an Island state mentality.

Likewise, the ability for companies producing in overseas countries to transfer production to Australia is constrained by the limited number of approved chemicals and products in Australia. Agencies and the Government by addressing the issue of limited Australian inventories could produce a positive economic benefit by attracting overseas investment into Australia and widening the base of available products in Australia.

Example: Windscreen films for Automotive Industry

In line with a transition to lead free chemicals, overseas companies have begun using safer chemicals for automotive windscreen tints. However, an Australian company is not able to import the chemicals as they are not listed on AICS. While data sets exist to satisfy their current usage in both the European Union and the United States – where they are not of regulatory concern - they do not have the complete dossier for a NICNAS notification.

The cost for the company to perform all the testing required is too high given the size of market for the product. As a result the chemicals are now imported as a finished article on windscreens without the need to notify NICNAS. The Australian company is unable to satisfy customer demands and revenue from sales flows to a foreign based firm.

The failure to recognise foreign assessment schemes and inventories is a primary factor in the size of indirect costs companies face to have chemicals approved in Australia. The cost of preparing the data package necessary - including testing – for assessment of a new chemical under NICNAS for instance can be anywhere up to $250,000. This level of cost prices many companies out of the market who are unable to recover these costs given the size of the Australian market and very often short lifespans of products. Allowing recognition of data assessments prepared for overseas schemes would substantially lower these preparation costs for small, medium and large companies. Costs would also be reduced to industry through acceptance of chemicals approved on overseas schemes to the Australian inventory. Even if this was only for chemicals of low concern, it would allow many companies to overcome the barriers listed above as well as free up agency resources to concentrate on assessments of new chemicals and high risk existing chemicals.

The discrepancy between Australian and foreign schemes often works against the Australian agent for some internationally available technologies. In many cases a chemical has been grandfathered onto a foreign list and there is no drive for the overseas company to assist its Australian agent in undertaking the assessment. A chemical which is grandfathered on an overseas listing has no requirement for a dataset and assessment package to be developed, provided it does not become a high volume or priority risk chemical. For it to be used in Australia however, a full dataset is required at a cost of $200,000 to $300,000, which must be borne solely by the Australian agent. In this respect while recognition of assessments for foreign schemes would partly lower costs it requires recognition of foreign approved chemicals to fully address the ability of foreign schemes to lower cost burdens on Australian companies.

Example: Australian Refinish Industry
Low solvent paints are currently mandated in both the United States and European Union but are not used in Australia due to the large cost barriers imposed by NICNAS.
The Australian refinish industry uses approximately 15 million litres of paint annually, of which more than 50% is low solids acrylic lacquer that has a solvent content of 70 – 80% (based on the old technology). Adoption of these low solvent alternatives available internationally would reduce solvent emissions by approximately 2 million litres per year. It would also lead to world class finishes improving the competitiveness of final finished products.

Agency Determination of Costs and 'Public Benefit'

Industry also has a concern with what costs the legislation allows agencies to cover under full cost recovery arrangements. Costs recovered from industry need to be directly relevant to the activity being undertaken. Industry believes that it is not appropriate for companies to pay for those aspects of agency's operation that can be considered public goods or give a public benefit. Such activities as compliance monitoring, policy advice and agency overheads (accommodation costs, legal and accounting fees) should not be included in the costs covered by cost recovery arrangements.

Whilst industry benefits from improved consumer confidence in its products, the assessment of chemicals and chemical products provides a public benefit, through assuring the community that their health and safety and the environment is protected. The activities of compliance monitoring and assessment of existing chemicals provide no or little benefit to industry but add to the assurances given to the wider community and as such should not be paid for by industry.

A similar argument can be presented for the policy development role the three agencies undertake. Policy development and setting is clearly a government role and should not be industry funded. PACIA encourages the Commission to recommend the Commonwealth consider partial cost recovery where there exists clear evidence of a public good / benefit being provided by an agency.

Effectiveness and Efficiency

The role of an agency plays a large part in determining the total cost faced by companies as it impacts upon its level of effectiveness and efficiency. The three agencies were developed to ensure that chemicals and chemical products entering or being produced in Australia meet our high health, safety and environmental standards. Whilst the agencies have been effective in ensuring these standards are maintained holistically, there is evidence that some types of products are discriminated against as well as inherent inefficiencies in the application of full assessments for many products. NICNAS has shown the lead by adopting a number of different categories but these have yet to show significant relief for users of the system. In many circumstances the agency has claimed that the Act does not allow them to undertake a lower level of assessment when it is clear that a full assessment is unwarranted. Emphasis should be on a risk orientated approach which would increase efficiency and effectiveness.

Globally there is a greater demand for assessment than there are resources to conduct the activity. Industry anxiety is highest when it is clear that the system which is largely funded by industry, does not provide any prioritisation of costs or rigour. For instance, when assessing the polymer in a paint, the detail of the assessment does not focus on low impact of the polymer. The assessment focuses on the exposure effects of the solvents with no regard to the low hazard presented by the polymer which is the subject of the notification assessment process.   Such assessments draw agency resources away from higher priority chemicals.

PACIA suggests that the creation of clear incentives for agencies will produce greater efficiencies over time in the agencies operations. Such things as measurable reduction targets for fees for services and auditable productivity targets would ensure agencies improve efficiencies over time and improve industry confidence in the assessment system.

Transparency and Accountability

Transparency and accountability are crucial to the operation of any organisation, private or public in the current commercial environment. Mechanisms need to be implemented which clearly indicate the allocation of funds, the interrelationship with other departments or service agencies and establish performance criteria for agency activities. Where it is evident that activities are not being directed toward highest priorities then a means by which the direction can be influenced also needs to be in place.

Industry if required to fund a scheme to 100% should have a strong ability to influence the allocation and priority of the activities. This may be through a Board or stakeholder group that has responsibility to advise on the ongoing process. Regular review should also be implemented along with the creation of benchmarks and key performance indicators to allow both agency and stakeholder monitoring of the agencies performance over time. Where problems are identified processes and relationships must exist between the agency and stakeholders to ensure changes can be made smoothly and efficiently, in contrast to the current state of affairs for most agencies.

Example: Pool chlorine and the NRA
The NRA implemented fees for the ongoing sale of pool chlorine to assist in its monitoring role. While several hundred thousand dollars were collected in revenue, the level of activity in the NRA on pool chlorine was negligible. Clearly the funds were gathered and used as a cross subsidisation of other work for the agency. In this case an inefficient cost recovery scheme was unable to match the fund raising mechanism to the appropriate usage of the collected funds.

Recommendations for Cost Recovery Design and Implementation

In light of the comments raised above, PACIA believes that an effective cost recovery system should work to reduce the absolute cost of government operations, reduce duplication and regulatory burden, encourage greater efficiency and accountability of activities and direct a prioritisation of activities against goals and objectives. In addition the process needs to balance the costs between private and public interest, impact on the user base and global competitiveness of the Australian industry.

PACIA acknowledges and supports the assessment of chemicals in their raw or processed form as it ensures that the community's health and the environment are protected. However, from this activity flows a large degree of public benefit – safer paints, medicines and fertilisers which are essential for the health of Australians and to our export markets. Full cost recovery as it has been implemented by NICNAS, NRA and TGA should seek to better reflect the public benefit of chemical assessment and regulation and increase the incentives to ensure regulations and their administration is efficient.

We offer the following points:

- Legislation must be well structured to ensure flexibility with changing markets.
  - This is best achieved through comprehensive stakeholder consultation early in the design process.
- Cost recovery must be transparent and target those areas where it is clearly a service provided by Government to achieve an outcome
  - Assessment must be made of the public versus private benefit of the legislation
- Mechanisms need to be put in place for review, prioritisation, audit trails, allocation of funds and provide processes for change
- Drivers for efficiency and accountability must be developed and implemented
  - Regular progress reports, performance indicators and comparisons with other similar structures to ensure currency and best practice
  - Phased reduction targets for fees should be introduced and clearly identified
- In its design, issues of duplication with either domestic or international schemes must be minimised
- Outsourcing of services where it can improve the efficiency and cost effectiveness without limiting the Governments charter for the activity
- Where measures that can alleviate some of the current burden have been identified, Government needs to pursue these on a whole of Government approach that gives effect to them in the short or interim term whilst more fundamental changes can be established.
- In its implementation, cost recovery by Government agencies must be associated with enforceable, auditable productivity targets for each agency and meet measurable fee reduction targets over the course of its operations.