

Poppy Advisory and Control Board Funding

Position paper

Version 1.0 – 9 May 2012

Foreword

The Poppy Industry in Tasmania is a shining example of the world class results that can be achieved when government and industry work together to make the most of our unique location and the expertise of our farmers and manufacturers.

The Tasmanian poppy industry is recognised internationally for expert growth and manufacture of products, innovation, effective regulation, and low rates of diversion of raw materials to illegal activity.

In just forty years, the industry has grown to the extent that it now supplies a significant proportion of the world's medicinal opiate market. This has resulted in a multi-million dollar market that benefits not only Tasmanian farmers and manufacturers, but the entire local economy.



Tasmania's reputation as a secure place to grow poppies has a significant influence in international circles and part of the reason for the success of the industry lies in Tasmania's relative isolation. Importantly, the Poppy Advisory and Control Board which oversees all operations and represents Tasmania on the world market, has become recognised as an exemplar of international best practice.

In the 2011-12 Budget, the Tasmanian Government decided that it was appropriate for the now mature poppy industry to fund the activities of the Poppy Advisory and Control Board.

In February 2012 I released a discussion paper seeking feedback on a model designed to implement industry funding in the most efficient, equitable and cost-effective way.

I appreciate the time and effort taken by many interested parties to carefully consider this discussion paper and forward their responses to me. This feedback has helped inform the Government's position.

I now commend to you this position paper which details how the Government proposes to implement an industry-funded model for the Poppy Advisory and Control Board.

A handwritten signature in black ink that reads "Brian Wightman". The signature is written in a cursive, flowing style.

Brian Wightman MP

Attorney-General

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Executive summary

The PACB is an independent statutory board, with a chairperson appointed by the Attorney-General, and other members appointed in accordance with the *Poisons Act 1971*, and has range of functions in relation to oversight of the poppy industry.

In the 2011-12 Budget, the Tasmanian Government decided that it was appropriate for the now mature poppy industry to fund the activities of the Poppy Advisory and Control Board (PACB). The 2011-12 Tasmanian Budget indicated that the level of the industry funding expected over the forward estimates until 2014-15 was \$650,000 per annum.

The aim of the mechanism to fund the PACB was that it should be as equitable as possible considering the nature of poppy growing and processing and the people who perform those functions and that the administrative burden on the industry and the Government should be kept to a minimum.

Given the nature of agricultural enterprises, the model was required to take into account the variability in crop production from year to year as well as the relationship between the growers and the processors.

An industry discussion paper was distributed to stakeholders as part of the consultation process, following initial face-to-face meetings.

The paper proposed a model where the PACB would be funded via a levy on the three licensed manufacturers. The calculation of the levy would be based on the number of hectares harvested by each manufacturer and would be payable at the end of the annual harvesting cycle. It would then be up to the manufacturers to build any additional costs into their cost and pricing structures. Basing the levy on the actual area harvested would take into account seasonal issues, and remove risks associated with imposing the levy in other ways, such as on original areas licenced for growing.

This is a model that meets the criteria of equity, effectiveness and minimal bureaucracy.

Consultation revealed general support for the role of the PACB however concern was expressed about ensuring that the functions performed by the PACB are still as relevant to a mature industry as they were 40 years ago. Further concern was raised about how the cost efficiency of the PACB could be tested and seeking processes or assurances so that the industry would not be subject to unfettered cost increases into the future.

Stakeholders also expressed concern that any increase in costs or regulation could reduce competitiveness and add a further burden during a period of chronic exchange rate pressure, without taking into account the significant economic contribution of the Industry to Tasmania.

Position of Government

- 1 The Government agrees that a review of the PACB functions be undertaken in the 2012-13 financial year.
- 2 The Government will enact legislation to provide that the PACB will be funded via a levy on the three licensed manufacturers based on the areas harvested as proposed in the discussion paper.

Background

The Poppy Advisory and Control Board (PACB) was established in 1972 to fulfil Australia's commitment to the 1961 United Nations Single Convention on Narcotic Drugs. The Convention required then and still requires stringent control and supervision of poppy growing and production.

Strict adherence to the Convention is essential in order that Tasmanian poppies can be cultivated, processed and the extracted opiates sold in the global pharmaceutical market.

The operations of the Board have been funded by the Government since its inception and the current cost is approximately \$690,000 per year.

The Government has decided that funding of this industry specific Board should be by contributions from the industry itself.

The Government has agreed to continue the current arrangement for the 2011/12 financial year as a transitional period.

Industry consultation

On 14 September 2011 Robert Williams (Deputy Secretary of the Department of Justice) and Mr Terry Stuart, (Manager, PACB), held consultations in the North and North West of Tasmania. They visited the business sites of each of the manufacturers, and in Launceston met with representatives of Poppy Growers Tasmania Inc.

On 8 November 2011, Robert Williams met with a representative of Tasmanian Farmers and Growers Association (TFGA) in Hobart.

Details of the meetings are as follows:

Company	Representatives	Location
TPI Enterprises	Jarrold Ritchie Lucy Waddell	Mt Joy Road, Cressy
GlaxoSmithKline Australia Pty Ltd	Mike Doyle	Henry St, Latrobe
Tasmanian Alkaloids Pty Ltd	Rick Rockliffe Doug Blackaby	Biralee Road, Westbury
Poppy Growers Tasmania Inc	Keith Rice Glyn Williams	Garfield St, West Launceston
Tasmanian Farmers and Growers Association	Jan Davis	Department of Justice, Trafalgar Building, Hobart

Summary of feedback

There was a general consensus that the Board adds value to the industry, though some suggested that the industry has matured to the level where it may be able to undertake some of the functions currently carried out by the Board. It was suggested that it was possible that some of the functions of the Board were being duplicated by manufacturers and growers.

It was suggested that a general review of the Board should be conducted to ensure that its functions are being carried out in the most cost-effective way and are still meeting the needs of the industry 40 years on. For example, the changing crop composition from morphine to thebaine should be taken into account when reviewing security requirements.

There was some concern expressed that the introduction of an industry-funded model might lead the way for costs of the PACB to be increased beyond CPI in the future, or to be extended to cover Tasmania Police costs. Reassurances were sought that this was not the “thin end of the wedge”.

Stakeholders also requested that there be a level of transparency about the operation of the PACB; they want to be able to see how any levy or licence increase is used to benefit the industry. They sought a mechanism by which stakeholders could engage with the Board to raise concerns and receive information about its operations and expenditures.

Contributors suggested that the funding model should take into account the relative size and production levels of growers and manufacturers and relate directly to the costs of oversight, without introducing unnecessary red tape.

In summary, stakeholders wanted a funding model which would provide the most effective, most equitable and least bureaucratic method of covering the costs of the PACB.

Discussion paper and stakeholder consultation

Following the initial industry consultation, a discussion paper containing the above proposed model and recommendation for a review of the Poppy Advisory and Control Board was distributed for comment to the following stakeholders:

Company	Representative	Address
TPI Enterprises	Mr Jarrod Ritchie Chief Executive Officer	TPI Enterprises Ltd PO Box 7580 Launceston TAS 7250
GlaxoSmithKline Australia Pty Ltd	Dr Mike Doyle Research and Field Business Manager	GlaxoSmithKline Australia Ltd PO Box 189 Latrobe TAS 7307
Tasmanian Alkaloids Pty Ltd	Mr Rick Rockliffe Field Operations Manager	Tasmanian Alkaloids Pty Ltd PO Box 130 Westbury TAS 7303
Poppy Growers Tasmania Inc	Mr Keith Rice Chief Executive Officer	Poppy Growers Tasmania Incorporated 28 Garfield Street Launceston TAS 7250
Tasmanian Farmers and Growers Association	Jan Davis Chief Executive Officer	The Tasmanian Farmers and Graziers Association PO Box 193 Launceston TAS 7250
Department of Treasury and Finance	Mr Martin Wallace Secretary	
Department of Health and Human Services	Mr Matthew Daly Secretary	
Department of Primary Industry, Parks, Water and Environment	Mr Kim Evans Secretary	
Poppy Advisory and Control Board	Dr Peter Patmore Chair	Poppy Advisory and Control Board PO Box 380 Ulverstone TAS 7315

Summary of issues raised

The Government is most appreciative of the time and effort taken by stakeholders to respond to the Department.

The following issues were raised by stakeholders in response to the discussion paper:

- 1 PACB should be an independent body at arm's length from industry and growers but able to give advice to Ministers. The Regulator may not be independent and impartial if not funded by government.
- 2 A review of roles and functions of PACB should be conducted prior to the introduction of a cost recovery model.
- 3 Funding of PACB under levy must be clearly shown to be for functions of PACB, not in relation to the issuing of growers licences, under Part 5 of the *Poisons Act* or issuing of manufacturers licences under Part 16 of the *Poisons Act*.
- 4 The discussion paper does not sufficiently acknowledge the contribution of the industry to the Tasmanian economy, and to Government revenue through taxes and charges which exceeds the cost of funding the PACB.
- 5 Concerns poppy levy may be disproportionate given inconsistent returns.
- 6 Levy should be against processors but without reference to hectares to include import of poppy material.
- 7 Concerns about impact of increased taxation and increased regulation on competitiveness of industry, particularly in times of high exchange rate.
- 8 A restructured PACB should include an industry representative.
- 9 Despite opposition to the introduction of a levy as a model for funding the operations of the PACB, only Poppy Growers Tasmania Inc rejected the proposed model, arguing it should not be based on farm area.
- 10 Tasmanian Farmers and Graziers Association (TGFA) raised concerns that a Regulatory Impact Statement (RIS) had not been prepared as required by the *Subordinate Legislation Act 1992*.
- 11 TGFA also argued that since Article 23 of the United Nations Single Convention on Narcotic Drugs required that a government agency carry out the regulation and licensing functions, there was an expectation that the agency be government-funded.

Response to issues

The following comments are in response to the similarly numbered issues listed in the previous section:

- 1 The independence of the Board would not change under the proposed funding model. It is a key part of ensuring national and international regulatory requirements.
- 2 The Government is fully supportive of a review of the PACB being undertaken. The funding arrangements are scheduled to be implemented for the 2012/13

financial year and growing season, and it is intended that the review will take place in the first year of operation under the new arrangements.

- 3 The proposed model recommends the levy be applied to the manufacturers rather than growers and be calculated on hectares harvested rather than yield, thus directly linking the levy to the more directly to the cost of oversight rather than the yield to farmers or the producers.
- 4 The significant economic contribution of the Poppy Industry to the State is acknowledged. Currently, whilst the industry is a very successful and profitable one, it makes only a nominal contribution to the costs of the regulatory structure required to permit it to operate. All costs of licensing and monitoring are borne by the Government - the Department of Justice (monitoring/oversight), the Department of Health and Human Services (issue of licences) and the Department of Police and Emergency Management (surveillance and security during riskier times of year).

The current cost of running the board is about \$691,000 per annum however the Budget Forecast provided that \$650,000 would be raised by way of the industry levy, with the balance to be provided from the Consolidated Fund on an ongoing basis into the current forward estimates period.

- 5 Levying the processors was judged to be the simplest process of recouping costs. The processors contract for the hectares to be grown and then arrange for the harvesting and removal of the poppy crop so they have the necessary details for a levy based on harvested hectares. It would be administratively much cheaper to manage than to impose the levy on growers only or both the growers and the processors.

It also has the advantage that the processors can pass the costs either back to the growers or to their purchasers in the pricing structures they use to either pay their growers or to sell their products. They have the capacity to absorb costs and/or pass the costs in either direction.

Given the nature of agricultural enterprises the proposed model takes into account the variability in crop production from year to year, as well as the relationship between the growers and the processors.

Basing the levy on the actual area harvested takes into account seasonal issues and the variable values of the crop (certain types/products attract differing payments to the growers) and removes risks associated with imposing the levy in other ways, such as on original areas licensed for growing which might subsequently fail. The oversight role of the Board is more closely aligned to the areas that are being used to grow and harvest the poppies than to the financial values to the growers or manufacturers.

The funding model is as equitable as possible considering the nature of poppy growing and processing and the proposed collection method would ensure that compliance costs and administrative costs are kept to a minimum.

- 6 At this time no one is licensed to grow poppies in any other State or Territory, nor has there been approval given for importing raw material from overseas so the question of oversight by the Board of imported raw materials is not a factor.

- 7 This model does not represent increased regulation and is a cost-recovery model, not increased taxation. The levy will be directly linked to the cost of services provided in order for the industry to exist and the proposed review will closely examine the current work and costs as well as what form of oversight is needed in future.
- 8 It is essential for the PACB to remain independent and impartial. If an industry representative were to be included in the membership of the PACB there may well be seen to be a conflict of interest. However the proposed review of the PACB will explore mechanisms by which the PACB can engage with the industry, to ensure that the views of the industry are taken into account.
- 9 The majority of stakeholders believe the proposed model to be the most equitable one.
- 10 Although the Poisons Act (in which the Poppy Board legislation is to be found) is not subordinate legislation and an RIS was not therefore required under the *Subordinate Legislation Act*, it was considered that the discussion paper did contain most of the information one would expect to find in an RIS.
- 11 The argument for Government funding of industry regulation is not well founded. Most bodies which issue licences are funded either wholly or in part by the people they are regulating. A regulatory body established by and answerable to Government does not have to be funded by government.

Position of Government

The Government proposes that the PACB be funded via a levy on the three licensed manufacturers based on the areas harvested as proposed in the discussion paper and set out as the Proposed Model below.

The Government supports the request that a review of the PACB functions be undertaken and details of the review are set out below.

Proposed model

What the model looks like

It is proposed that the cost of overseeing the industry be raised by imposing an industry levy on the three licensed manufacturers.

The levy would be calculated according to the number of hectares harvested by each manufacturer as a proportion of the total number of hectares harvested by the industry and would be payable at the end of the growing season after harvesting has been completed.

It would then be up to the manufacturers to decide whether or how they might factor the levy into their cost and price structures. It will be up to the manufacturers to decide whether to pass costs on to the farmers whom they have contracted to grow poppies or to pass costs on to the purchasers of their products or to absorb all or part of the costs.

This model appears to best meet the criteria of equity, effectiveness and minimal bureaucracy.

It is also proposed that a review of the PACB be undertaken to ensure the relevance and efficiency of the PACB functions. Until that is complete, the figure nominated in the 2011-12 Tasmanian Budget for industry funding ie \$650,000 over the forward estimates, which is slightly less than the amount previously funded from consolidated revenue will be used as the basis for the model.

How the levy could be calculated

The levy will be based on each individual company's proportion of the number of hectares harvested by the industry as a whole.

So the levy can be expressed as:

$$\text{Levy} = \text{Costs of PACB} \times \frac{\text{Manufacturer's hectares harvested}}{\text{Total hectares harvested}}$$

So for example, with a forward estimate of \$650,000 for the operating costs of the PACB, an estimate of 34,000 hectares in total, and an individual company with contracts amounting to 10,000 hectares, the levy would be:

$$650,000 \times \frac{10,000}{34,000} = \$191,100$$

A Review of PACB role, functions and efficiency and ongoing industry consultation

As an independent board, the PACB is at arm's length from both the industry and the Government, and is unfettered in its decision making powers within the functions defined in the *Poisons Act 1971*. The ongoing independence of the Board is a key part of ensuring national and international regulatory requirements.

One concern raised by the industry was the ability of the industry to have input into the future role and activities of the Board.

To address this it is proposed that one of the terms of reference for the Review of the PACB will be to look at what might be the most effective consultative process for the PACB to hear the views of industry stakeholders on an ongoing basis.

For example, the Board might hold a meeting every 6-12 months where stakeholders can review financial and operational aspects of the Board's operations and discuss any issues that have arisen.

The Review will include an examination of the current functions, their relevance and the efficiency with which they are performed.

The review will take place in the 2012-13 financial year, and will be undertaken by a person independent of the Department of Justice and the industry, with skill in administration.