



# **COMPETITIVE NEUTRALITY**

## **POLICY STATEMENT\***

**GOVERNMENT OF  
SOUTH AUSTRALIA**

**July 2002**

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## ABBREVIATIONS

<b>CPA</b>	<i>Competition Principles Agreement, 11 April 1995</i>
<b>COAG</b>	Council of Australian Governments
<b>CSO</b>	Community Service Obligation
<b>GBE Act</b>	<i>Government Business Enterprises (Competition) Act 1996</i>
<b>NCC</b>	National Competition Council
<b>NCP</b>	National Competition Policy
<b>PFE</b>	Public Financial Enterprise
<b>PTE</b>	Public Trading Enterprise
<b>TER</b>	Tax Equivalent Regime
<b>the Commissioner</b>	Competition Commissioner
<b>the Secretariat</b>	Competitive Neutrality Complaints Secretariat
<b>Treasury Guidelines</b>	<i>A Guide to the Implementation of Competitive Neutrality Policy, 2010, Department of Treasury and Finance</i>
<u><a href="http://www.premcab.sa.gov.au">www.premcab.sa.gov.au</a></u> ,	Department of Premier and Cabinet internet site, see under National Competition Policy, Documents
<b>2000 Statement</b>	<i>Competitive Neutrality Policy Statement, Government of South Australia, May 2000</i>

## 1. INTRODUCTION

Competitive neutrality policy is based on the principle that significant government businesses should not enjoy any net competitive advantages over private businesses operating in the same market simply as a result of their public sector ownership.

Competitive neutrality is part of the Competition Principles Agreement (CPA), an economic reform package developed out of the recommendations of the Hilmer report in 1992, and adopted by all States and Territories in 1995 (see [www.ncc.gov.au](http://www.ncc.gov.au) for full text of CPA). Under the CPA, States and Territories agreed to introduce competitive neutrality; reform public sector monopolies to introduce competition into the relevant markets; allow third party access to services provided by means of significant infrastructure facilities; introduce prices oversight to government business enterprises; and review all legislation for restrictions on competition.

As a result of the initiatives in the CPA, significant commercial and corporate reforms have been implemented for many state-owned government businesses over the last seven years. Regulatory functions are being progressively separated from government businesses, and the commercial objectives of the businesses have been clarified. These reforms have been aimed at improving efficiency, effectiveness and service delivery so that government businesses can make the maximum possible contribution to the South Australian community and economy.

The CPA requires competitive neutrality to be implemented by significant government businesses where appropriate and where the benefits to be realised from implementation outweigh the costs. The implementation models may range from corporatisation for larger government business enterprises to full cost attribution for activities undertaken by an agency as part of its broader functions.

Pursuant to its CPA obligations, the State Government published its policy statement on competitive neutrality in June 1996. The policy statement was first revised in May 2000. This Statement replaces the May 2000 Statement and is available electronically from the [www.premcab.sa.gov.au](http://www.premcab.sa.gov.au) (Department of Premier and Cabinet internet site, see under National Competition Policy, Documents).

The Department of Treasury and Finance paper, *A Guide to the Implementation of Competitive Neutrality Policy*, 2010 (Treasury Guidelines), also available at [www.premcab.sa.gov.au](http://www.premcab.sa.gov.au), provides detailed guidance to agencies undertaking competitive neutrality reforms. The Treasury Guidelines specify that competitive neutrality can be achieved through corporatisation, commercialisation or cost reflective pricing. Some government businesses have been corporatised (eg SA Water, TransAdelaide, Forestry SA) and the others have been commercialised (eg West Beach Trust, Police Security Services Branch). For smaller government business activities, a form of full cost attribution called cost reflective pricing has been used (eg Crown Solicitor's Office services to agencies which also have authority to engage private law firms).

In June 1996, the Government identified and gazetted some significant business activities to which the competitive neutrality principles would be applied. These businesses are divided into two categories based on size of revenue and assets. Category 1 businesses have revenue greater than \$2 million or assets greater than \$20 million and Category 2 businesses are all other significant business activities. Appendices A and B show the

current Category 1 and 2 significant government business activities. Government agencies regularly assess their activities to ensure the listing of significant business activities is current. In future, notice of changes to the Category 1 and 2 businesses will not be gazetted, but will be published on [www.premcab.sa.gov.au](http://www.premcab.sa.gov.au).

The application of competitive neutrality to Local Government is set out in the *Revised Clause 7 Statement on the application of competition principles to Local Government under the Competition Principles Agreement*. It can be found on [www.premcab.sa.gov.au](http://www.premcab.sa.gov.au).

## 2. WHAT IS COMPETITIVE NEUTRALITY?

Government business activities may enjoy certain advantages that would not be available if these business activities were conducted by the private sector.

The objective of competitive neutrality is the removal of net competitive advantages for significant government business activities, arising simply from the fact that they are government owned. It questions how significant government business activities are run, and whether they have an advantage from not paying taxes; having cheap government finance; or not being covered by the same regulations as the private sector.

Unfair competitive advantages such as these can lead to resource allocation distortions, resulting in the community's resources not being used in the most efficient way. People will tend to choose the product of the government business activity because it may be artificially cheaper, rather than because it may be inherently better or produced more efficiently. Competitive neutrality policy aims to eliminate the resource allocation distortions arising out of public ownership of entities engaged in significant business activities.

Competition policy does not require that all firms compete on an equal footing: differences in size, assets, skills, experience and culture underpin each firm's unique set of competitive advantages and disadvantages. Differences of this kind are the hallmark of a competitive market economy and not a consequence of public as distinct from private ownership. Competitive neutrality policy and principles are intended only to apply to the business activities of government, not all activities of government. The CPA clearly states that the policy is not intended to apply to non-business, non-profit public sector activities. When the *Competition Policy Reform Bill 1995* and the draft intergovernmental agreements, which make up the national competition policy package, were introduced into the Senate in March 1995, the second reading speech included these comments:

*In sectors such as education, health, welfare, community services and labour market programs where the public sector has, and will continue to have, a dominant role, the relevance of competition policies will be limited to those circumstances where enterprises are engaged in business activity. In most cases where this is an issue at all, this is a small part of their overall role, or ancillary to the provision of core services.*

*For instance, government schools are not normally engaged in business activity. While they may be seen as competing with private schools (for students) this is not competition to earn revenue and profits, and is therefore not a "business" activity to which the competitive neutrality principles apply.*

The CPA is neutral with respect to the nature and form of ownership of business enterprises. It is not intended to promote public or private ownership (CPA clause 1(5)).

Competitive neutrality is obviously important where competition is being introduced into the supply of a good or service which was formerly supplied via a public monopoly. This is because cost advantages enjoyed by the government-owned business, such as immunity from income tax, could enable the government business to win custom by pricing its product below more efficient private sector producers. This would result in a loss to the community as a whole, since resources would not be put to their most efficient use.

Competitive neutrality principles are also relevant when a government agency submits a tender as part of a tendering process in competition with the private sector.

The government will apply the principles of competitive neutrality to significant government business activities wherever it is appropriate to do so, following the cost-benefit assessment described in section 5.4 of this statement. Further guidance on the assessment of costs and benefits is provided in the Treasury Guidelines.

### **Government Community Service Obligations for significant business activities**

Sometimes, to achieve a government policy outcome, the government will require a government business to undertake a non-commercial activity, or community service obligation (CSO). It will pay the business for carrying out the activity. Under CoAG refinements to the CPA made in November 2000, it is necessary to make the CSO arrangements transparent, appropriately costed and directly funded by the Government.

“A CSO is defined to arise when a government specifically requires a government business enterprise to provide a concession, a service or to carry out an activity which the enterprise would not elect to do on a commercial basis, and which the government does not require other businesses in the public or private sectors generally to undertake, or which the government business enterprise would only do commercially at higher prices.... The defining characteristic of a CSO is that it meets a specific public policy objective, benefiting the community rather than fulfilment of the business’s commercial objectives.” (CSO Policy Framework, December 1996, Department of Treasury and Finance).

It is a matter for the government to determine which entity should receive a CSO payment or subsidy. There is no requirement to undertake a competitive process for the delivery of CSOs.

### **Government activities which are not significant business activities**

A government agency or instrumentality may have an aspect of cost recovery in its operations, but this will not necessarily make it a business. As discussed below at 5.1 (b), the activity would also need to be primarily producing goods or services for sale in the market and have a commercial or profit making focus to be considered as a business activity. In addition, competitive neutrality only applies to business activities which are significant in the relevant market.

### **Government funding to non-government agencies**

For policy reasons, the government may provide funds, subsidies, loans, in-kind support or other assistance to non-government organisations. However, the principles of competitive neutrality do not apply to non-government organisations. Nor does competitive neutrality apply to the provision of such assistance by the Government, because this activity is not a business activity.

### **Joint ventures and like arrangements**

The Government, or a governmental agency, may become involved in arrangements with private businesses, that may be variously described as "joint ventures", "government/private alliances", "public/private partnerships", "equity partnerships",

"alliance contracts", "Indentures", etc. The arrangements on the part of the Government may include grants, loans, guarantees, joint advertising, access to government infrastructure or resources, facilitating private developments, preferential treatment under government contracts, sale of joint venture goods at government outlets, etc.

In assessing whether competitive neutrality principles apply to the particular arrangements the critical issue is not the name of the arrangement, or the structure employed to give effect to it, but the role of the Government. For competitive neutrality to apply, the role of the Government must satisfy the "business activity" criteria described in section 5.1 (in particular, being an activity whose purpose is to generate a commercial return or profit for the Government); and the Government must have control over the activity.

If the Government is contractually bound such that the application of competitive neutrality cannot be achieved without the Government being exposed to a claim for damages, or if the effect of damages would undermine the outcome sought to be achieved by the application of competitive neutrality to those aspects under the control of the Government, it may be inappropriate to apply the principles of competitive neutrality to the arrangements.

In contrast to the case where the Government is involved in joint arrangements with a private party for reasons of business itself, competitive neutrality will not be relevant if the Government is involved in the arrangements (including where the government is involved in the actual business activities) not in order to earn revenue, but in order to achieve outcomes related to public or social policy, or economic or regional development (for example, Adelaide to Darwin Railway Project).



### **3. HOW IS COMPETITIVE NEUTRALITY IMPLEMENTED?**

The principles of competitive neutrality are to be applied to significant government business activities where it is appropriate to do so, and where the benefits to be realised outweigh the costs associated with implementation.

Competitive neutrality can be implemented through corporatisation, commercialisation or cost reflective pricing. The key features of each of these are summarised below.

The appropriate competitive neutrality model to be applied to an agency will depend on a number of factors including the costs and benefits of applying the policy; the organisational context of the activities exposed to competition; the level of resources used in the supply of the good or service; and any special requirements such as increased accountability.

Further details, including the criteria for selecting between the various measures and steps in their implementation, can be found in the Treasury Guidelines.

#### **3.1 Corporatisation**

Under clause 3(4) of the CPA, corporatisation is the preferred path to competitive neutrality for significant government business enterprises. Corporatisation is suitable for a government business which does not include significant non-business activities and which could operate effectively as a separate legal entity on a commercial basis. The process of corporatisation will ensure the entity has:

- clear and non-conflicting objectives;
- managerial responsibility, authority and autonomy;
- effective performance monitoring;
- effective rewards and sanctions related to performance.

The South Australian Government preferred model for corporatisation is set out in the *Public Corporations Act 1993* and guidance on implementation is provided in Chapter 4 of the Treasury Guidelines. The Act provides for a clearly defined set of rules for the conduct, reporting and responsibilities for a corporatised entity owned by the Government.

Implementation involves legislation to enable incorporation of the business and the appointment of a board of directors responsible to the Minister. It entails the introduction of additional “private sector equivalent” measures including the imposition of Commonwealth, State and Local government rates or taxes (or a tax equivalent regime), the payment of debt guarantee fees and compliance with regulations appropriate to the private sector.

Further detail on when corporatisation will be the appropriate measure and the steps in the implementation process is provided in the Treasury Guidelines.

#### **3.2 Commercialisation**

Commercialisation involves structural reform of an entity, but falls short of full corporatisation. The key difference is that the entity conducting the business activity is not

a separate legal entity from its government agency owner and does not have a board of directors. Commercialisation entails the establishment of separate business units, full recovery of all costs, separate financial statements and rate of return requirements. Commercialisation may include many, but not necessarily all, of the following attributes:

- definition of commercial and non-commercial activities (in a business plan);
- clear, commercial performance targets;
- separate definition and funding of non-commercial activities;
- removal of regulatory functions from the entity;
- valuation of assets based on deprival value;
- introduction of commercial gearing;
- payments of tax equivalents to the Treasurer;
- payments of applicable guarantee fees to the Treasurer;
- defined reporting requirements;
- ring-fenced (ie separated) accounts from the host agency (if any);
- a dividend policy based on agreed indicative payout ratio reflecting the cash needs of the owner government and the business.

Further detail on when commercialisation will be the appropriate measure and the steps in the implementation process is provided in the Treasury Guidelines.

### **3.3 Cost reflective pricing**

Where corporatisation or commercialisation of a government business are not appropriate, the government will consider an alternative approach to ensure that the prices charged for goods and services will take into account, where appropriate, taxes and tax equivalents, debt guarantee fees and private sector regulation equivalence, and reflect full cost attribution for the provision of the goods and services.

Application of cost reflective pricing principles involves a two stage process:

- firstly, the calculation of the competitively neutral cost, accounting for various cost advantages and disadvantages arising from government ownership, to determine the net competitive advantage,
- secondly, from that cost basis, determine an appropriate market price, which must be equal to or above the competitively neutral cost.

Cost reflective pricing will be reflective of costs to a large extent, over the long term, but will also take into account elements such as: what the market will bear; the level of competition; the degree of technology advantages available to service providers; and market pricing strategies.

Cost reflective pricing may be introduced by ring-fencing the business from other activities of the government agency, or within the agency's structure.

Further detail on cost reflective pricing as the appropriate measure and the accompanying implementation process is provided in the Treasury Guidelines.

#### **4. WHAT ARE THE ADVANTAGES OF GOVERNMENT CONTROL?**

The CPA requires significant government business enterprises classified as “Public Trading Enterprises” or “Public Financial Enterprises” to adopt:

- (i) full Commonwealth, State and Territory taxes or tax equivalent systems;
- (ii) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees;
- (iii) those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors

where appropriate and to the extent that the benefits to be realised from implementation outweigh the costs.

Other significant government business activities, undertaken by agencies as part of a broader range of functions are required to:

- adopt the three factors listed above; or
- ensure that the prices charged for goods and services take account of the above factors and reflect full cost attribution for those activities

where appropriate, and to the extent that the benefits to be realised from implementation outweigh the costs.

An explanation of tax equivalence, debt guarantee and regulation equivalence follows.

##### **4.1 Tax equivalent regime**

Comparability in the tax treatment of government businesses and private business operations is a key element of competitive neutrality policy. Any competitive advantage that a government business obtains through being exempt from Commonwealth, State and Local Government rates and taxes by virtue of its government ownership can be neutralised through imposts that are equivalent to rates and taxes.

The guiding principle is that any entity that falls within the coverage of the tax equivalent regime (TER) will be liable for the full range of rates and taxes or their equivalents for which they would otherwise be liable if they were not State owned entities. Both Commonwealth and State laws allow for certain exemptions from tax liability and government business activities will enjoy these legal exemptions where their private sector competitors also enjoy them.

A TER does not involve any transfer of funds across jurisdictional boundaries. All tax equivalent liabilities are payable to the owner government. The TER has not been designed as a revenue-raising mechanism, since payment of tax equivalents will generally reduce the dividend-paying capacity of these entities by a similar amount. Rather, the TER is primarily a tool for removing competitive advantages arising from the exempt status of government-owned business operations.

The Government has been liable for GST since its introduction on 1 July 2000 (when wholesale sales tax was abolished).

#### **4.2 Debt guarantee fees**

A government guarantee is an undertaking by the government to cover the liability of an entity in the event that it is unable to service its debts. Private companies do not have this security and when they borrow money they are assessed by financial institutions according to their level of risk, with interest rates or other factors adjusted accordingly. However, government business activities are explicitly or implicitly guaranteed against bankruptcy. As a result, a government business activity may receive cheaper finance, giving it a competitive advantage over private sector competitors.

A debt guarantee fee is intended to eliminate the advantage which comes from the government bearing the risk, and to provide better incentives for managing risk. The fee applies to the face value of debt outstanding, but may vary according to the level of debt and an assessment of the risk.

#### **4.3 Regulation equivalence**

The CPA states that regulation applicable to all significant government business activities should be equivalent to that applying to competing private sector businesses, unless there are countervailing community benefits that require otherwise.

Any regulation which exempts a government business activity from a particular requirement imposed on private sector competitors is a restriction on competition. The CPA requires that legislation which restricts competition must be reviewed and, unless there are countervailing community benefits that require otherwise, reformed by 30 June 2002.

The Treasury Guidelines require that, where appropriate, regulation applicable to all significant government business activities will be equivalent to that applying to competing private sector businesses.

## 5. WHAT IS A SIGNIFICANT GOVERNMENT BUSINESS ACTIVITY?

The principles of competitive neutrality are to be applied to significant government business activities where it is appropriate to do so, and where the benefits to be realised outweigh the costs associated with implementation.

“Business activity”, “significant”, market and cost-benefit assessment are discussed below.

### 5.1 Business activities

A business activity includes any activity undertaken by a government agency:

- (a) where the activity falls within the Australian Bureau of Statistics classification of “Public Trading Enterprise” and “Public Financial Enterprise”; *or*
- (b) where:
  - (i) the activity is primarily involved in producing goods and services for sale in the market; *and*
  - (ii) the activity has a commercial or profit making focus; *and*
  - (iii) there is user charging for goods and/or services; *or*
- (c) where a government agency submits a tender as part of a tendering process in competition with the private sector.

However, an activity will not be a business activity if:

- (d) it provides goods or services to government, and, for reasons of policy or law, there is no competition with alternative suppliers; *or*
- (e) it is clear that the intention of government is that the activity’s predominant role is regulatory or policy-making, or where the achievement of public policy outcomes is the main priority of the activity.

Typically, an activity has a commercial focus if it operates primarily in a manner which seeks to maximise its revenue. A critical indicator of whether an activity is a business activity is the intention of the owner of the business. Where that intention is not otherwise manifest, the conduct of the entity in the relevant market is to be taken into account.

Simply because there is a market for goods or services provided by the government entity, or the provision of goods or services is contestable, does not mean that the activity is a business. The Government may have decided to provide a particular good or service at below cost for policy reasons (eg vacation Learn to Swim classes, access to National Parks for camping or other activities, public immunisation programs).

Further, the use of language, management tools or mechanisms of business may also be simply good public sector management and not an indication that the activity is a business.

An example for each of the sub-clauses above is provided:

5.1(a) Adelaide Convention Centre, Adelaide Entertainment Centre.

5.1(b) SAPOL Security Services Division, for building security.

5.1(c) TransAdelaide, tendering for metropolitan bus services.

5.1(d) Crown Solicitor's Office, legal services to agencies which are not permitted to engage the services of private law firms.

5.1(e) Flinders Medical Centre Car Park, which was built for the public policy reason of servicing the public hospital by providing adequate legal parking places for hospital staff and visitors, rather than to make a profit as a car park.

## **5.2 Significant**

Whether a business is significant depends upon its size and influence in the relevant market. In the past, for the purpose of determining priorities for the implementation of competitive neutrality policy to business activities, significant government business activities were identified and divided into two categories:

- Category 1: Business activities with an annual revenue in excess of \$2 million, or employing assets with a value in excess of \$20 million;
- Category 2: All other significant business activities.

In general, a Category 2 business activity will be significant when:

- (a) it possesses market power to create a competitive impact in the market that is more than nominal or trivial; and
- (b) its size relative to the size of the market as a whole is more than nominal or trivial.

A business activity will not necessarily be significant simply because a competitor alleges that it is adversely affected by government activity.

The criteria above do not represent hard and fast rules about what is "significant". They need to be considered in making a judgement about whether or not the business activity, on balance is or is not significant. Such an assessment will require the identification, and analysis, of the relevant market.

The businesses in each category, at the time of adoption of this policy, are listed in Appendix A and Appendix B. While changes to the category lists have previously been notified in the Government Gazette, in the future they will be published on [www.premcab.sa.gov.au](http://www.premcab.sa.gov.au). Readers should refer to that site for the latest list.

Identifying and listing specific businesses is not intended to exclude other business activities being identified as significant and added to the list as required. This may occur as a result of a complaint, or self-identification by the government agency following a change in operations or commencing a new activity.

Similarly, the nature of a listed government business may change such that it is no longer a significant business activity, in which case it will be removed from the list. The government agency concerned would initiate this action through the Department of

Treasury and Finance. Regular assessments are carried out by agencies. Removal of the business from the list would not prevent a complaint being made against the business.

Appendix C is a checklist designed to assist agencies in determining whether or not an activity carried out by a government agency is a 'significant business activity'.

The Government's Annual Report to the NCC contains a summary of activity in implementing competitive neutrality for the calendar year (see [www.premcab.sa.gov.au](http://www.premcab.sa.gov.au), "Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA").

### **5.3 Market**

A market is the area of close competition between firms, or the field of rivalry between them. (If there is no competition there is a monopolistic market.) A market has four dimensions often described as product (eg goods, services), functional (eg retail, wholesale), geographic (eg local, state, national), and temporal (eg intermittent or continuous in time).

Within the bounds of a market there is substitution between one product and another and between one source of supply and another in response to changing prices. A market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive.<sup>1</sup> Whether such substitution is feasible or likely, depends ultimately on consumers' attitudes, technology, distance, cost and price incentives.

### **5.4 Cost-benefit assessment**

The government will apply the competitive neutrality principles to significant government business activities where appropriate, and where the benefits to be realised from implementation outweigh the costs.

The possible benefits to be considered include:

- increased market contestability which enables competition in the markets traditionally dominated by public sector businesses. This in turn produces incentives for lowering costs and achieving greater choice for consumers;
- improved assessment of the performance of government businesses in comparison with competitors. This increases the incentives for the business to operate efficiently, encouraging better use of the community's scarce resources;
- owner governments can better clarify non-commercial objectives and thereby determine whether the business is effectively meeting these objectives.

The possible costs to be balanced against these benefits include those of:

- legislative and regulatory amendment;
- management and culture changes;
- obtaining information and undertaking analysis to assess appropriate levels for tax equivalents, debt guarantee fees or pricing principles;

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<sup>1</sup> See: Trade Practices Tribunal, *Re QCMA and Defiance Holdings (1976) ATPR 40-012*

- administration of tax equivalent and debt guarantee frameworks;
- compliance and the monitoring of compliance.

Clause 1(3) of the CPA explicitly recognises that cost-benefit assessments should not be narrowly based, but should also take into account factors such as:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations (CSOs);
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses;
- the efficient allocation of resources.

CoAG agreed in November 2000 that when examining the above matters, consideration should be given to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including the expected costs in adjusting to change.



## 6. COMPETITIVE NEUTRALITY COMPLAINTS MECHANISM

The *Government Business Enterprises (Competition) Act 1996* (the GBE Act) provides for a competitive neutrality complaints mechanism. An independent Competition Commissioner (the Commissioner) can be assigned to investigate complaints of infringement of competitive neutrality principles. A Competitive Neutrality Complaints Secretariat (the Secretariat) has been established and is located in the Department of the Premier and Cabinet. It receives complaints about the application of competitive neutrality policy to significant state or local government business activities.

The GBE Act enables complaints to be made by a person who competes or seeks to compete with a government activity in a particular market. Complaints must be made in writing and must contain full details of the alleged infringement. A complaint may be made against a significant government business activity, even though it has not been identified as a Category 1 or 2 business by the government.

The Secretariat will refer the complaint to the State or local government agency for initial investigation, report and possible resolution. If the complaint cannot be satisfactorily resolved between the government agency and the complainant consideration will be given to assigning the complaint to the Commissioner.

On assignment of a complaint the Commissioner will conduct an investigation and report on whether the complaint has been substantiated and the reasons for the decision. If the principles have been infringed, the Commissioner may recommend the implementation of policies and practices to avoid further infringement. No monetary compensation is possible through the complaints process.

A summary of the decision will be prepared and be publicly available on [www.premcab.sa.gov.au](http://www.premcab.sa.gov.au). The summary will not contain confidential information. Complaints will be assessed by the Commissioner, using the competitive neutrality policy in place at the time the investigation is assigned.

Where a complaint against a significant government business activity has previously been investigated by the Commissioner and the agency was found to be fully complying with the appropriate principles of competitive neutrality in respect of the business activity, further complaints will not be referred unless:

- (a) the nature of the significant government business activity has changed; *or*
- (b) the competitive neutrality principles being applied have changed.

The Department of the Premier and Cabinet will include in its annual reports information on complaints received by the Secretariat and the outcome of any investigations into the complaints.

Complaints should be addressed to:

The Competitive Neutrality Complaints Secretariat  
Cabinet Office, Department of Premier and Cabinet  
Level 14, State Administration Centre  
200 Victoria Square  
ADELAIDE SA 5000

## **7. APPENDIX A - CATEGORY 1 SIGNIFICANT GOVERNMENT BUSINESS ACTIVITIES**

- Adelaide Convention Centre\*
- Adelaide Entertainment Centre\*
- Adelaide Festival Centre Trust\*
  - Bass ticketing service
  - Set building workshops
  - Theatre hire services
- Attorney General's Department
  - Contestable legal services
- Forestry SA
- Department for Administrative and Information Services
  - Supply SA (distribution services)
- Department of Employment, Further Education, Science and Small Business
  - Fee for service activities not required by government in vocational education and training.
- Adelaide Cemeteries Authority\*
- Lotteries Commission of South Australia\*
  - Conduct of lotteries
- The Public Trustee\*
  - Personal trusteeship services
- SA Water Corporation\*
- Department of Human Services
  - Medvet Science Pty Ltd
  - IMVS Research and Diagnostic Pathology Services
  - Homestart Finance
- South Australian Police Department
  - Security Services Division
- TransAdelaide\*
- West Beach Trust\*

\* falls within the ABS' classification of PTE or PFE .

## **8. APPENDIX B - CATEGORY 2 OTHER SIGNIFICANT GOVERNMENT BUSINESS ACTIVITIES**

- Department of the Premier and Cabinet
  - Artlab
- Department of Justice
  - Interpreting and Translating Services
- Department of Industry and Trade
  - SA Centre for Innovation, Business and Manufacturing
  - Manufacturing Engineering Projects Group
- Department of Human Services
  - Modbury Hospital rental accommodation
  - RAH rental accommodation
  - North-Western Adelaide Health Service
    - equipment hire (outside customers)
  - Flinders Medical Centre
    - Rental of flats
  - Southpath SA pathology services
- Department for Environment and Heritage
  - Cleland Wildlife Park
- Department of Primary Industries and Resources
  - Seed certification and testing
  - Rural Solutions
- Department for Water, Land, and Biodiversity Conservation
  - State Flora
- Department of Education and Children's Services
  - DECS Publishing
  - Distribution Centre Services
  - International Program
    - Student recruitment
    - International business

## **9. APPENDIX C - SIGNIFICANT GOVERNMENT BUSINESS ACTIVITY CHECKLIST**

*Suggested checklist for use in determining whether or not an activity carried out by a government agency is a 'significant business activity'.*

### **What is the activity ?**

Describe the nature of the activity ('what does it do?').

Describe the agency's product(s) or service(s).

### **Who owns the activity ?**

The activity must satisfy the definition in the GBE Act of being carried out by a "government agency".

Is it carried out by:

- a Minister; or
- a Department or administrative unit of the Public Service; or
- any other agency or instrumentality of the Crown that is subject to control or direction by a Minister?

Is it a statutory corporation (that includes a subsidiary of the Minister under *Public Corporations Act* regulations)? If so:

- is it subject to control or direction by the Minister?

Is it established under *The Corporations Law*? If so:

- what % shareholding does the Government / the Minister / another Instrumentality of the Crown, own; and,
- can the Government / the Minister / or other Instrumentality of the Crown control the appointment or dismissal of a simple majority of the Directors / Board Members?

Is it an Incorporated Association, established under the *Associations Incorporation Act*? If so, does its Constitution or Rules allow the Government / the Minister / or another Instrumentality of the Crown:

- to control the appointment or dismissal of a simple majority of the Committee / Board Members; or
- to give directions to the Committee / Board Members, or to exercise control over the body?

### **Is the activity a "business" for CN purposes?**

Are product(s) or service(s) sold to consumers for valuable consideration, or is the agency engaged in a community service activity (even if there is some cost recovery)?

What is the predominate purpose for undertaking the activity? - see definition 5.1(b), (d) & (e) - eg. is the purpose 'commercial' or revenue orientated, or is it the achievement of governmental policy outcomes, or is the purpose of the activity regulatory or policy-oriented?

Describe the pricing policies for the product(s) or service(s) the agency sells:

- What is the basis for establishing the prices that the agency charges? *Eg:* is it a notional 'market' price; the recovery of some or all operational costs; supply at concessional prices for all or certain customer categories; full competitive neutrality cost recovery (including owner's dividend, plant depreciation, and other cost items included in the DTF Guide to Implementing CN Policy, 2010): avoided cost basis or pricing based on marginal cost, etc.

Did agency submit a competitive tender as part of a tendering process that included the private sector - definition 5.1(c)?

Does the agency sell product(s) or service(s) to another Governmental agency that is required by law and/or policy (including a Cabinet Decision, Treasurer's Instructions, State Supply Board directions, Minister's or Chief Executive's direction, etc) to purchase only from the agency?

### **Is the business "significant" ?**

Whether a business is significant depends on its size and influence in the relevant market. This means the government business should have the size, or market power, or resources at its disposal (including the Government's 'deep pockets'), that would give it the capacity to adversely affect competition in a way that is not merely trivial or minor.

Formal definition:

A "market" is the arena of commercial rivalry between buyers and sellers of goods or services that is defined by the close substitution possibilities on both the demand and the supply side. Markets are described by reference to the elements of product, geographic area, and functional level.

Relevant market:

For each category of product(s) or service(s) that the agency sells what is the 'product market' & the 'geographic market'?

- Which alternative supplier(s) does the agency consider to be its rivals, and customers/consumers consider to be alternatives to the agency?
- Are there alternative products or services that consumers consider reasonable substitutes for the agency's product or services?
- What is the geographic area from which its present customers are drawn?
- What is the largest geographic area from which it could reasonably hope to attract customers?

If the agency raised its prices to a level that drew significant consumer complaint:

- What alternative product(s) or service(s) would its present customers closely consider?
- What are the names of the suppliers of those alternative product(s) or service(s)?
- How far (alternative locations) would its present customers go to purchase substitute product(s) or service(s)?
- Would it be commercially or practically viable for:
  - a new entrant to produce products or services that the business's customers would regard as viable alternatives to the business's products or services? or,
  - an existing supplier or producer of other products to shift (some of) its supply or production into products or services that its customers would regard as viable alternatives to the business's?

At what "Functional level(s)" does the business operate ?

- Does the agency sell to the public generally (at retail), or does it only supply distributors or wholesalers?

Significance in the relevant market(s):

- What is the size of the market? - by reference to approximate number of suppliers, or to volume, or value, of product(s) or service(s) sold.
  - Approximately how many other sellers are there in the relevant market(s)?
  - Broadly describe the size or market share of other sellers in the relevant market(s).
  - What is the agency's approximate percentage share of the relevant market(s)?
  - Is there 'tough' competition in the relevant market(s) ? that is:
    - Is the agency a price maker, or a price taker, in the relevant market(s)?
    - Are profit margins tight?
    - Is it usual for there to be discounts or other 'deals' done on either price or 'extras'?
    - Can the agency set its prices or service levels independently of the conduct of its competitors or its customers?
- Do customers have significant countervailing power, that is:

- Do customers usually bargain, or
  - Go elsewhere if dissatisfied on price or service?
- The agency may be 'significant' in a large market even if it has only a small to average market share.
    - What is the amount of annual revenue received from all customers to whom it is a contestable supplier (that is, the customer could go elsewhere if it wished)?

### **Implementation**

If the agency is found to be a significant government business activity, competitive neutrality principles should be applied where appropriate to the extent that the benefits to be realised from implementation outweigh the costs. The implementation process is described in the DTF "Guide to the Implementation of CN Policy".

One aspect of market analysis may assist in determining whether or not it is 'appropriate', from the perspective of competitive neutrality, to implement the principles. If the product(s) or service(s) are a "natural monopoly", there is little anticompetitive cost in not implementing the principles.

- Are there any aspects of the product(s) or service(s) provided by the agency that should be regarded as a "natural monopoly"? This would be satisfied if any reasonable commercial analysis would conclude that only one supplier, the incumbent, could operate in a commercially viable way. Eg: for most major utility infrastructure (eg pipes and wires in suburban streets), it would be not be commercially viable for a new entrant to challenge an incumbent's existing infrastructure service.

