



**QUEENSLAND'S
COMPETITIVE
NEUTRALITY
COMPLAINTS
PROCESS**

Queensland's

Competitive

Neutrality

Complaints

Process

March 2001

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Glossary of Abbreviations

CPA	<i>Competition Principles Agreement</i>
CSO	Community Service Obligation
NCP	National Competition Policy
QCA	Queensland Competition Authority
QCA Act	<i>Queensland Competition Authority Act 1997</i>
SBA	Significant Business Activity

1 Introduction

1.1 Purpose of the Guidelines

This statement is provided as an adjunct to the Queensland Government's July 1996 policy statement, *Competitive Neutrality and Queensland Government Business Activities*. This statement reflects the Government's four years of experience in the implementation of the principle of competitive neutrality under the National Competition Policy (NCP). Accordingly, the *Queensland Competition Authority Act 1997* (the QCA Act) was amended in May 2000 to reflect current Government policy in the application of competitive neutrality to the Queensland Government's businesses.

These Guidelines do not apply to Local Government business activities. Competitive neutrality complaints against Local Government businesses should, in the first instance, be referred to the appropriate Local Government Authority.

The Guidelines also do not apply to State Government businesses which have not been gazetted as significant business activities (SBA) under Section 39 of the QCA Act. Competitive neutrality issues involving State Government business activities which have not been declared as SBAs under the provisions of the QCA Act, may be raised in a number of forums: for example, relevant portfolio Ministers, the Ombudsman or the Treasurer, who has primary responsibility for the implementation of NCP in Queensland.

As well as outlining the Queensland Competition Authority's (QCA) competitive neutrality complaints process in relation to SBAs, this statement specifically addresses the treatment, within the Queensland Government's competitive neutrality framework, of issues such as the payment by Government of subsidies and community service obligations (CSO) to its SBAs, tied clients and pricing.

CSOs and subsidies are paid to Government businesses for carrying out non-commercial activities on behalf of Government, and are governed by the Queensland Government's

policy statement, *Community Service Obligations A Policy Framework* – March 1999 (CSO Policy Framework). In this regard, the Government requires CSOs to be dealt with in a transparent and accountable manner.

In terms of the principle of competitive neutrality, CSOs and subsidies are complex and involve a range of social and economic factors. In this context, the decision to pay CSOs and subsidies remains unequivocally a policy decision for Government. Whilst required to be administered in a transparent and accountable manner, the payment of CSOs and subsidies by Government to its SBAs, may lead to the perception that SBAs enjoy competitive advantages solely because of their ownership and control by Government. (There is further information on the treatment of CSOs in Section 2.3. of these Guidelines.)

The Government has decided competitive neutrality issues in relation to the payment of CSOs and subsidies to SBAs will be dealt with by the Treasurer acting in concert with the Premier and the relevant portfolio Minister.

It is also possible that Government SBAs, because of their Government ownership and control, may be perceived to enjoy a competitive advantage through other policies pertaining to pricing matters and tied clients. (These matters are dealt with in further detail in Section 2.4 of these Guidelines.)

In summary, apart from potential competitive neutrality matters such as CSOs, subsidies, pricing policies and tied clients, the QCA will deal directly only with competitive neutrality matters involving SBAs in relation specifically to the absence of debt guarantee fees and tax equivalent regimes, and the presence of regulatory or procedural advantages.

This statement clarifies the Queensland Government's policy intention and process with regard to the implementation of competitive neutrality to Government SBAs.

1.2 National Competition Policy

In April 1995, all Australian Governments became signatories to the *Competition Principles Agreement* (CPA) to implement the NCP. The NCP consists of a number of components, including competitive neutrality, which are aimed at promoting and maintaining competitive forces to increase efficiency and community welfare, and at the same time recognise Australia's integration into the global market place. Clause 3 of the CPA provides guidance as to the national framework for competitive neutrality (Appendix 1).

1.3 What is Competitive Neutrality?

The principle of competitive neutrality requires a government agency carrying on a significant business activity should not enjoy a competitive

advantage over competitors or potential competitors in a particular market solely because of the government ownership or control of the agency.

Competitive neutrality is one of the basic tenets of the NCP. Put simply, competitive neutrality refers to the process of identifying and, where appropriate after application of a Public Benefit Test (PBT) (known also as cost-benefit analysis), removing any advantages or disadvantages which

may accrue to a Government business because it is owned or controlled by Government (Box 1). The application of competitive neutrality reforms to Government businesses may involve introducing full cost pricing, commercialisation or corporatisation. This means Government businesses are required to compete on the same basis as their private sector competitors.

It is essential that Government owned businesses compete with their private sector competitors on the same basis so as to eliminate potential resource allocation distortions. For example, if a government business is not subjected to the requirement to earn a similar rate of return on capital investment, as are its private sector counterparts, then the Government business may be able to underprice its goods and services. This in turn may lead to the Government business attracting custom away from its private sector counterparts, and may lead to overuse of the goods and services. Any community has finite resources, and those resources are optimally allocated when goods and services are consumed in proportion relative to the true cost of their production.

The application of the principle of competitive neutrality to Government owned businesses is essential to minimise resource allocation distortions due to advantages arising from Government ownership.

It is also important that Government SBAs are not restricted from operating commercially because of competitive neutrality. The policy framework for competitive neutrality does not restrict SBAs from using valid private sector practices in relation to pricing matters and tied clients.

“Where a Government business enjoys net competitive advantages, it may be able to price below more efficient or equally efficient rivals. This has the potential to reduce economic efficiency and community welfare by distorting the allocation of resources between advantaged Government firms and other firms. If a less efficient Government business is able to rely on a net competitive advantage to take business from a more efficient firm, society's resources are not being put to their best use. From an equity perspective, the disadvantaged firm may feel justifiable aggrieved in this situation, particularly if its owners consider they are, in effect, subsidising their rival through their tax contributions.”

Box 1

Hilmer Report [1993], p.297.

1.4 *Competitive Neutrality and Queensland Government Business Activities* (July 1996 policy statement)

In July 1996, in accordance with the requirements of the CPA, the Queensland Government issued a policy statement, *Competitive Neutrality and Queensland Government Business Activities*, which detailed its approach to the implementation of competitive neutrality. The 1996 policy statement preceded the competitive neutrality provisions of the QCA Act.

The July 1996 competitive neutrality policy statement outlined the approach to be taken by the Queensland Government in applying the principle of competitive neutrality to its SBAs.

As well as fulfilling Queensland's commitment, in part, under the NCP, the policy statement gave details of the various levels of competitive neutrality reform which could be, or had been, applied to Queensland's SBAs.

The 1996 policy statement listed those "candidate" government business activities which would be subject to a PBT to determine what, if any, competitive neutrality reforms should be applied to their activities. As well as the necessity for Government business activities to meet certain indicative thresholds before reforms are applied, it is also necessary to demonstrate that the benefits of introducing competitive neutrality reforms, taking into account all sectors of the community, outweigh the costs.

2 Implementation of competitive neutrality in Queensland

2.1 *Queensland Competition Authority Act 1997*

The QCA Act was passed by the Queensland Parliament in 1997 consistent with Queensland's commitment to implement the NCP. The Act was amended in May 2000 to *inter alia* provide clarification with regard to Queensland's competitive neutrality framework, as provided for in Part 4 of the QCA Act. Part 4 of the QCA Act sets out the requirements for the handling by the QCA of competitive neutrality complaints against Government SBAs, as gazetted under Section 39 of the QCA Act (Box 2). For an updated list of SBAs see the Queensland Treasury website: www.treasury.qld.gov.au (Appendix 2).

2.2 Declaration as a significant business activity

The indicative principles underlying the declaration of Government business activities as SBAs under Section 39 of the QCA Act were detailed in the July 1996 Queensland Government Policy Statement. Generally speaking, to be declared as a SBA under Section 39 of the QCA Act, a SBA's predominant activity should be to provide commercial goods and/or services either to the public, private firms or other Government agencies.

A SBA is also usually required to meet a substantial part of its operating costs, or earn a substantial part of its operating revenue, from user charges. Another determinant for declaration as a SBA includes the significance of the scale of operation of the business, as determined by annual expenditure, market share and impact generally on the economy, are also determinants for declaration as a SBA.

Queensland Competition Authority Act 1997

39.(1) A "significant business activity" is a business activity carried on by a government agency and declared to be a significant business activity by the Ministers by gazette notice.

Box 2

2.3 Community service obligations and subsidies

As well as commercial activities, some Government SBAs carry out non commercial services on behalf of Government for which the SBAs receive payment or subsidies. These activities are called community service obligations (CSOs) and are dealt with in accordance with the Queensland Government's *CSO Policy Framework*. CSOs are required to be administered with a high degree of transparency and accountability. Whilst essentially non-commercial activities, CSO funded activities carried out by SBAs have, in the past, been subject to the competitive neutrality complaints regime administered by the QCA.

CSOs, subsidies and pricing issues for government business activities are complex matters. CSOs and subsidies provided by Government to SBAs are required to comply with the Government's *CSO Policy Framework*. As long as CSOs and subsidies comply with the Government's *CSO Policy Framework*, they are deemed to also be compliant with the principle of competitive neutrality.

As confirmed by the Council of Australian Governments in November 2000, CSOs and subsidies are matters for Government to determine within its overall policy framework, taking into account social and economic factors.

The Government considers potential competitive neutrality issues pertaining to CSOs and subsidies are best dealt with in the first instance within Government.

2.4 Pricing and other issues

SBAs acting in a commercial manner are no different in many ways to their private sector counterparts. Government businesses can be expected to use a variety of mechanisms, including pricing strategies, to maintain their competitive edge.

Such commercial practices are not confined to Government businesses. A diverse range of commercial practices also apply within the

private sector, and within private sector company groupings. It is common practice within the private sector to achieve overall commercial targets through practices such as "loss leaders", marginal cost pricing and "group buying power". It could be expected Government businesses behaving in a commercial manner will use similar practices, and these practices may not be due solely to their Government ownership and control.

In order to ensure these are valid commercial practices equivalent to private sector behaviour, it is necessary to consider the financial performance of Government businesses over time, including the rate of return on targets and other related policy issues. Accordingly, the Government considers matters such as pricing policies are best dealt with by Government through Queensland Treasury.

Additionally, some SBAs may have tied clients which can also give rise to the perception that Government businesses enjoy a competitive advantage solely because of their Government ownership and control.

Government businesses may be required to have tied clients for other reasons which are in line with broader Government policy objectives, such as achieving efficiencies and value for money through economies of scale. Tied clients may also be used to give effect to other government policy priorities such as maintaining a ready employment pool in a particular area, or for general employment reasons.

The Government considers competitive neutrality matters pertaining to pricing and tied clients are best dealt with in the first instance within Government.

2.5 Referral to the QCA by the Premier and Treasurer

The QCA may investigate a competitive neutrality complaint against a Government SBA declared under Section 39 of the QCA Act only to the extent that the Government SBA does not comply with Section 38 of the QCA Act (Box 3).

Details of the independent QCA process for dealing with competitive neutrality complaints are provided in section 3 below.

As well as competitive neutrality matters handled by the QCA direct, there is provision under Section 10(e) of the QCA Act for the Premier and Treasurer to refer competition matters (such as those detailed in 2.3 and 2.4 above) to the QCA for investigation and advice. Such matters could include investigation of complaints relating to CSOs, subsidies, pricing and tied clients.

In the case of such referrals, the Premier and Treasurer, under Section 12 of the QCA Act, have the capacity to determine the extent of the QCA's investigative powers under Part 6 of the Act which are to be applied to the investigation (Box 4).

Queensland Competition Authority Act 1997

Principle of competitive neutrality

Box 3

38. *The principle of competitive neutrality is that a government agency carrying on a significant business activity should not enjoy a competitive advantage over competitors or potential competitors in a particular market solely because the agency's activities are not subject to one or more of the following-*
- (a) *full Commonwealth or State taxes or tax equivalent systems;*
 - (b) *debt guarantee fees directed towards offsetting the competitive advantages of government guarantees; or*
 - (c) *procedural or regulatory requirements of the Commonwealth, the State or a local government on conditions equivalent to the conditions to which a competitor or potential competitor may be subject, including, for example, requirements about the protection of the environment and about planning and approval processes.*

Queensland Competition Authority Act 1997

10. The authority's functions are

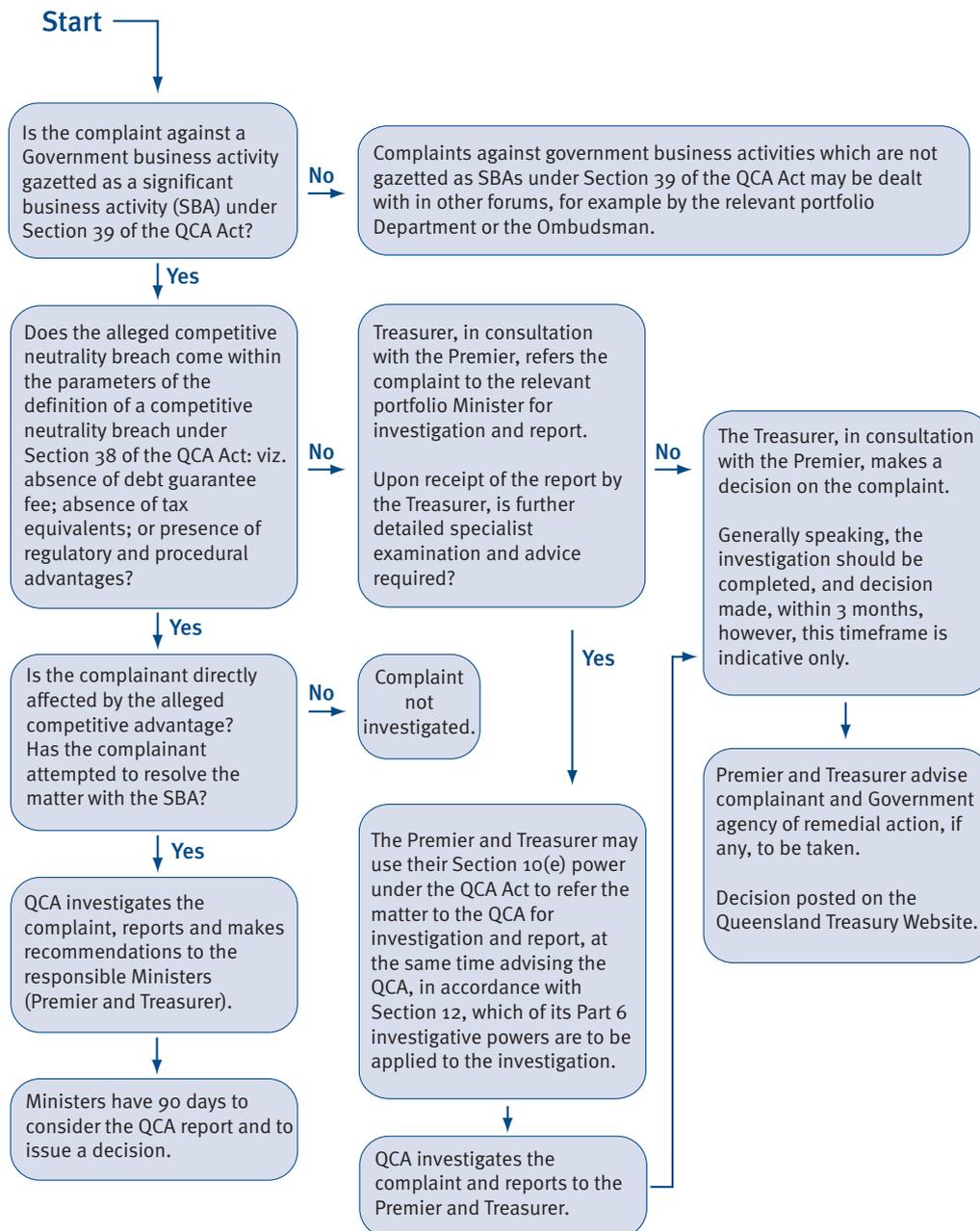
- (e) *if directed by the Ministers – under the direction, to investigate and report to the Ministers on, any matter relevant to the implementation of competition policy; and*
- 12(1) *The authority is subject to the written directions of the Ministers in performing its functions.*
- 12(5) *Despite subsection (2), if a direction is a direction by the Ministers under section 10(e), the direction must state how the investigation is to be conducted and, for that purpose, may apply all or stated provisions of part 6 to the investigation.*
- 12(6) *To the extent the direction applies all or stated provisions of part 6, the part or stated provisions apply to the investigation.*

Box 4

3 Process for competitive neutrality complaints relating to tax equivalents, debt guarantee fees, and procedural and regulatory matters

Part 4 of the QCA Act sets out the requirements for investigation of competitive neutrality complaints by the QCA (Diagram 1).

Diagram 1: Competitive neutrality complaints process



3.1 Grounds for complaint

The QCA may investigate a complaint against a Government owned SBA where it is alleged that the SBA has breached the principle of competitive neutrality through the absence of tax equivalents; the absence of debt guarantee fees; or the presence of regulatory and procedural advantages.

A complaint may be made to the QCA only by a person who has the potential to be adversely affected by the alleged competitive advantage of the Government owned SBA and who competes, or wishes to compete, in the same market as the SBA. In the first instance, a complainant is required to attempt to resolve the matter of the complaint with the relevant Government SBA.

Complaints to the QCA must be in writing and contain details of the alleged breach of competitive neutrality, as well as details of the attempt to resolve the complaint with the Government SBA.

3.2 Queensland Competition Authority complaints process

The QCA is required to investigate a complaint unless it considers that the complainant has not complied with Section 46 (1) of the QCA Act: for example, the complainant has not made a genuine attempt to resolve the competitive neutrality issue with the SBA, or the complainant is not considered to be in the same market as the SBA.

The QCA has considerable power in carrying out an investigation and may require the production of information and material by any party or parties. Following its investigation of the complaint, the QCA reports to the Premier and Treasurer on whether it considers the complaint to be substantiated. If so, the QCA makes recommendations to the Premier and Treasurer as to how it considers the SBA could overcome its failure to comply with the principle of competitive neutrality.

After the Premier and Treasurer receive the report, the QCA is required to make the report publicly available for inspection at its offices during office hours.

3.3 Ministers' decision on the Queensland Competition Authority's report

When the Premier and Treasurer receive the QCA's report, they consult with the relevant portfolio Minister to obtain advice on the QCA's report.

Within 90 days of receiving the QCA report, the Premier and Treasurer either accept or reject the QCA's findings as to the breach of competitive neutrality, and the QCA's recommendation as to how the SBA could comply with the principle of competitive neutrality. The QCA is advised accordingly and provides the Ministers' decision to both the complainant and the SBA.

4. Process for other competitive neutrality complaints

As detailed above, the Premier and Treasurer, in conjunction with the relevant portfolio Minister, will deal with competitive neutrality complaints and issues which do not come within the QCA competitive neutrality framework under the QCA Act.

4.1 Grounds for complaint

Section 38 of the QCA Act provides the grounds for complaints concerning perceived breaches of the principle of competitive neutrality by Government SBAs declared under Section 39 of the QCA Act. These complaints are dealt with by the QCA as outlined in Sections 2 and 3 of these Guidelines.

There are other potential competitive neutrality complaints against SBAs which are not covered by Section 38 of the QCA Act. These potential complaints could relate, for example, to pricing issues, tied clients, subsidies and CSOs.

A person or business lodging a complaint with the Treasurer against a SBA must demonstrate they compete, or seek to compete, in the same market with the Government SBA.

4.2 Complaints process

A complaint may be lodged with the Treasurer on the basis that a Government SBA enjoys a competitive advantage which does not fall within Section 38 of the QCA Act. Upon lodging a complaint, the complainant is required to provide details of attempts to resolve the issue being complained about with the relevant Government SBA.

Complaints lodged with the Treasurer must be in writing with a copy provided to the Premier. The Treasurer, acting in consultation with the Premier and the relevant portfolio Minister, will endeavour to resolve the complaint as expeditiously as possible after consultation with relevant stakeholders. As a guide, it is anticipated most complaints could be resolved within 90 days of their receipt, depending on the extent of the investigation required. (This is an indicative timeframe only.)

Key stakeholders will be consulted where necessary in the investigation process and commercial confidentiality will be maintained in the course of all investigations. Upon the Government agency's advice on the matter, the Premier and Treasurer will assess the report. The Ministers' decision in the matter will be made available on the Queensland Treasury website: www.treasury.qld.gov.au.

4.3 Complaints referred to the Queensland Competition Authority under Section 10(e) of the Queensland Competition Authority Act 1997

The Premier and Treasurer, as responsible Ministers under the QCA Act, have the capacity to refer competitive neutrality matters to the QCA for further investigation under Section 10(e) of the QCA Act where they consider this to be appropriate.

The responsible Ministers may give the QCA a direction as to the extent of the QCA's investigatory powers under Part 6 of the QCA Act to be applied to the investigation.

The QCA, after investigating the matter, reports to the Premier and Treasurer, who make a joint decision on the QCA's report.

The Premier and Treasurer will advise the complainant, the Government SBA against which the complaint was lodged, the relevant portfolio Minister, and the QCA of the Ministers' decision in the matter and what, if any, remedial action is to be taken. The Ministers' decision is also to be made available on the Queensland Treasury website.

5 Useful contacts

NCP Directorate
Queensland Treasury
GPO Box 611
BRISBANE QLD 4001

Tel: (07) 3225 8717
www.treasury.qld.gov.au

Queensland Competition Authority
GPO Box 2267
BRISBANE QLD 4001

Tel: (07) 3222 0555
www.qca.org.au

For Queensland local government business matters:

Department of Local Government and Planning
PO Box 31
BRISBANE ALBERT STREET QLD 4002

Tel: 3235 8649
www.dcilgp.qld.gov.au

For *Trade Practices Act 1977* matters:

Australian Competition and Consumer Commission
PO Box 10048
Adelaide Street Post Office,
BRISBANE QLD 4000

Tel: (07) 3835 4666
www.accc.gov.au

Appendix 1

Clause 3 of the Competition Principles Agreement

- 3.(1) The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not the non-business, non-profit activities of these entities.
- (2) Each Party is free to determine its own agenda for the implementation of competitive neutrality principles.
- (3) A Party may seek assistance with the implementation of competitive neutrality principles.
- (4) Subject to subclause (6), for significant Government business enterprises which are classified as “Public Trading Enterprises” and “Public Financial Enterprises” under the Government Financial Statistics Classification:
- (a) the Parties will, where appropriate, adopt a corporatisation model for these Government business enterprises (noting that a possible approach to corporatisation is the model developed by the inter-governmental committee responsible for GTE National Performance Monitoring); and
- (b) the Parties will impose on the Government business enterprise:
- (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; and
- (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.
- (5) Subject to subclause (6), where an agency (other than an agency covered by subclause (4)) undertakes significant business activities as part of a broader range of function, the Parties will, in respect of the business activities:
- (a) where appropriate, implement the principles outlined in subclause (4); or
- (b) ensure that the prices charges for goods and services will take account, where appropriate, of the items listed in paragraph 4(b), and reflect full cost attribution for these activities.
- (6) Subclauses (4) and (5) only require the Parties to implement the principles specified in those subclauses to the extent that the benefits to be realised from implementation outweigh the costs.
- (7) Subparagraph (4)(b)(iii) shall not be interpreted to require the removal of regulation which applies to a Government business enterprise or agency (but which does not apply to the private sector) where the Party responsible for the regulation considers the regulation to be appropriate.
- (8) Each Party will publish a policy statement on competitive neutrality by June 1996. The policy statement will include an implementation timetable and a complaints mechanism.

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| <p>(9) Where a State or Territory becomes a Party at a date later than December 1995, that Party will publish its policy statement within six months of becoming a Party.</p> | <p>(10) Each party will publish an annual report on the implementation of the principles set out in subclauses (1), (4) and (5), including allegations of non-compliance.</p> |
|---|---|

Council of Australian Governments' changes to competitive neutrality arrangements – November 2000.

Competitive neutrality – assessment

The assessment of a party's compliance with the competitive neutrality requirements under clause 3 of the *Competition Principles Agreement* (CPA) should have regard to:

- | | |
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| <ul style="list-style-type: none"> • the adoption of a 'best endeavours' approach to assessment, in those circumstances where a government business is not subject to the executive control of a party. This would require parties, at a minimum, to provide a transparent statement of competitive neutrality obligations to the entity in question; • the term 'full cost attribution' accommodating a range of costing methodologies, including fully distributed cost, marginal cost, avoidable cost etc., as appropriate in each particular case; | <ul style="list-style-type: none"> • there being no requirement for parties to undertake a competitive process for the delivery of Community Service Obligations (CSO); and • parties being free to determine who should receive a CSO payment or subsidy, which should be transparent, appropriately costed and directly funded by government. This position refers directly to the implementation of competitive neutrality requirements under the CPA, and is not intended to impact on consideration of CSO matters arising in the context of related reform agreements. |
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Appendix 2

Declared significant business activities under Section 39 of the Queensland Competition Authority Act 1997

Significant business activity	Relevant Government	Agency Date of declaration
All the business activities of Queensland Generation Corporation	Queensland Generation Corporation	1 July 1997 Ceased to be a SBA 2 April 1999
All the business activities of AUSTA Energy Corporation	AUSTA Energy Corporation	1 July 1997
All the business activities of Stanwell Corporation	Stanwell Corporation	1 July 1997
All the business activities of Tarong Energy Corporation	Tarong Energy Corporation	1 July 1997
All the business activities of CS Energy	CS Energy Corporation	1 July 1997
All the business activities of Queensland Transitional Power Trading Corporation	Queensland Transmission and Supply Company	1 July 1997
All the business activities of Capricornia Electricity Corporation	Capricornia Electricity Corporation	1 July 1997 Ceased to be a SBA 29 June 1999
All the business activities of Far North Queensland Electricity Corporation	Far North Queensland Electricity Corporation	1 July 1997 Ceased to be a SBA 29 June 1999
All the business activities of Mackay Electricity Corporation	Mackay Electricity Corporation	1 July 1997 Ceased to be a SBA 29 June 1999
All the business activities of Queensland Electricity Transmission Corporation	Queensland Electricity Transmission Corporation	1 July 1997
All the business activities of the South West Queensland Electricity Corporation	South West Queensland Electricity Corporation	1 July 1997 Ceased to be a SBA 29 June 1999
All the business activities of South East Queensland Electricity Corporation	South East Queensland Electricity Corporation	1 July 1997
All the business activities of Wide Bay-Burnett Electricity Corporation	Wide Bay-Burnett Electricity Corporation	1 July 1997 Ceased to be a SBA 29 June 1999

Significant business activity	Relevant Government	Agency Date of declaration
All the business activities of Southern Electricity Retail Corporation	Southern Electricity Retail Corporation	1 July 1997
All the business activities of Northern Electricity Retail Corporation	Northern Electricity Retail Corporation	1 July 1997 Ceased to be a SBA 3 April 1998
All the business activities of Central Electricity Retail Corporation	Central Electricity Retail Corporation	1 July 1997
All the business activities of DPI Forestry	Department of Primary Industries	1 July 1997
All the business activities of Gladstone Area Water Board	Gladstone Area Water Board	1 October 2000
All the business activities of Mt Isa Water Board	Mt Isa Water Board	1 October 2000
All the business activities of SunWater	SunWater	1 October 2000
All the business activities of CITEC	Department of Public Works and Housing	1 July 1997
All the business activities of GOPRINT	Department of Public Works and Housing	1 July 1997
All the business activities of Queensland Property Management	Department of Public Works and Housing	1 July 1997
All the business activities of Project Services	Department of Public Work and Housing	1 July 1997
All the business activities of Sales and Distribution	Department of Public Works and Housing	1 July 1997
All the business activities of Cairns Port Authority	Cairns Port Authority	1 July 1997
All the business activities of Gladstone Port Authority	Gladstone Port Authority	1 July 1997
All the business activities of Mackay Port Authority	Mackay Port Authority	1 July 1997

Significant business activity	Relevant Government	Agency Date of declaration
All the business activities of Port of Brisbane Corporation	Port of Brisbane Corporation	1 July 1997
All the business activities of Ports Corporation of Queensland	Ports Corporation of Queensland	1 July 1997
All the business activities of Rockhampton Port Authority	Rockhampton Port Authority	1 July 1997
All the business activities of Townsville Port Authority	Townsville Port Authority	1 July 1997
All the business activities of Queensland Rail	Queensland Rail	1 July 1997
All the business activities of Road Transport Construction Service	Department of Main Roads	1 July 1997
All the business activities of Plant Hire Service	Department of Main Roads	1 July 1997
All the business activities of Queensland Investment Corporation	Queensland Investment Corporation	1 July 1997
All the business activities of North Queensland Electricity Corporation Limited	North Queensland Electricity Corporation	19 September 1997 Ceased to be a SBA 29 June 1999
All the business activities of the Bundaberg Port Authority	Bundaberg Port Authority	19 September 1997
All the business activities of Golden Casket Lottery Corporation Limited	Golden Casket Lottery Corporation Limited	19 September 1997
All the business activities of Ergon Energy Corporation Limited	Ergon Energy Corporation Limited	30 June 1999

Appendix 3

Indicative thresholds for declaration as a significant business activity July 1996 Queensland Government Policy Statement

Competitive Neutrality and Queensland Government Business Activities

Principles underlying the identification of significant business activities (SBAs)

Three principles have been applied in identifying those Government business activities to be subjected to competitive neutrality reform.

The principles will also act as a guide to considering, over time, other activities to which competitive neutrality reforms should apply.

Principle 1 Must be a “business activity”

Government business activities are taken to include any activity undertaken by Government departments (including business units within department and trust funds), statutory authorities (not subject to private sector taxation and regulatory regimes), Government owned corporations, and other statutory bodies which:

1. fall within the Australian Bureau of Statistics’ classification of a Public Financial Enterprise (PFE) or Public Trading Enterprise (PTE); and/or
2. (a) trade goods and/or services as their predominant activity; and
(b) meet a substantial part of their operating costs or earn a substantial part of their operating revenue from user charges; and
(c) are expected to have a predominantly commercial or profit-making focus.

Such activities may provide commercial goods and/or services either to the public, private firms or other Government agencies.

While the application of competitive neutrality is clearly pertinent when Government businesses are competing with other (Government or private) firms, allocative efficiency requires the application of competitive neutrality reforms also to monopoly or near-monopoly Government businesses.

“Business activities” do not include activities which:

- provide goods and/or services only to their own department and are not engaging in competition with any other provider outside the department;
- do not have the necessary commercial or profit-making focus. While many Government activities may meet 2(a) and (b), there may be no expectation that an activity should operate on a commercial basis and yield a commercial rate of return. Merely because an activity earns, or is required to earn, a substantial part of its operating costs or revenue from user charges does not necessarily mean it is a business activity. For example, user charging (including partial and full cost recovery) is a tool for ensuring the prudent, judicious and efficient use of Government resources; ie. as a demand management tool. User charging and full cost recovery may be practised for a number of reasons other than a desire to commercially exploit a particular activity;
- have a predominantly regulatory or policy-making role; or
- have, as their prime function, responsibility for providing a community service obligation or social policy function.

Generally speaking, the predominant role of the following activities is to meet a community service obligation or some other social, environmental or cultural policy objective:

- general public and community health services;
- general delivery of primary, secondary, and post-secondary education services, except for fully commercial activities of TAFE and universities;
- public and community childcare;

- police and emergency services;
- sustainable management of natural resources;
- environmental protection and national parks;
- art organisations;
- libraries;
- museums;
- cultural services;
- correctional services;
- public housing;
- legal aid; and
- publicly funded research and research organisations where there is a public interest foundation for the research.

It is emphasised, however, that the listing of these activities does not preclude consideration of alternative means for attaining the Government's social objectives. These alternatives could include the entry of alternative suppliers, possibly in competition with a Government provider.

Where competition is introduced to the delivery of the services listed above, consideration will be given to the appropriateness of introducing competitive neutrality reforms where one of the providers is a Government provider.

In addition, there will be instances where an activity whose predominant function is to deliver social policy may, in delivering that service, be undertaking ancillary or support activities which are in competition with the private sector. Where these operations are easily separable and are of a significant scale (see Principle 2 below), they may be considered as significant business activities.

Principle 2 Must be of a significant scale of operation

The Competition Principles Agreement requires that competitive neutrality reform applies only to significant business activities of Government.

There is no single criterion for determining the significance of a government business activity. A range of factors will be taken into account in determining "significance" including the:

- scale of operation as indicated by annual expenditure;

The scale of operation is important in terms of both the measure of resources used and the type of activities which could, realistically, support the various reform options.

The benefits from competitive reform will emanate from the elimination of resource allocation distortions arising from Government ownership. However, implementation of competitive neutrality will incur costs. These costs will include the cost of corporate governance, legislative amendments, the time and resources involved in implementation of the reform and ongoing administrative requirements (see Principle 3). As a guide, the implementation costs of corporatisation are such that this type of reform will generally be appropriate only for those Government business activities which have an annual current expenditure in the vicinity of \$15 million or more.

Similarly, it is estimated that the implementation costs of commercialisation or adoption of full cost pricing principles are such that, as a guide, these reforms would generally be feasible for business activities which have an annual current expenditure in the vicinity of \$10 million or more.

It should be emphasised, however, that these expenditure thresholds are a guide only and activities which do not meet these “thresholds” are not precluded from consideration for competitive neutrality reform.

- market share; and
- the impact on the Queensland economy of poor performance by the business activity.

Principle 3 **The benefits of introducing competitive neutrality, taking into account all sectors of the community, must outweigh the costs**

The Competition Principles Agreement provides for competitive neutrality reform to be implemented only where the benefits expected from reform exceed the costs.

Clause 1(3) of the agreement provides for the following matters, where relevant, to be taken into account in undertaking a benefit/cost assessment:

- Government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- 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; and
- the efficient allocation of resources.

A more specific indication of some of the benefits and costs with regard to competitive neutrality reform is outlined in section 4.2 of the July 1996 policy statement *Competitive Neutrality and Queensland Government Business Activities*.