



# Competitive neutrality for local government businesses

6 February 2023

Local government owned businesses have been subject to competitive neutrality policy for over 20 years. In 1997 a set of policy and guidance documents were issued by the NSW Government guiding the application of competitive neutrality policy to local government owned businesses. These documents still apply to local government owned businesses today and are currently being reviewed by IPART as part of a broad review of NSW's competitive neutrality policies and processes.

In our Draft Report we outlined our proposed changes to the policies and are seeking stakeholder views on the proposed changes. In this information paper we consider how the proposed changes are expected to impact local government businesses.<sup>a</sup>

## 1 A well-functioning competitive neutrality policy

Competitive neutrality policies aim to ensure that significant government business activities do not have a competitive advantage over other businesses simply because they are owned by the government. In doing so, these policies promote competition, innovation and efficiency in the marketplace, which encourages cost-reflective prices, better quality goods and services and greater choice for customers (see Figure 1.1).

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<sup>a</sup> Section 6 of this paper provides more information on what competitive neutrality is and why we are reviewing NSW's competitive neutrality policies.

Figure 1.1 Benefits of competitive neutrality





## 2 Key recommended changes and impacts

We received feedback from local government stakeholders that competitive neutrality principles are difficult to apply because the relevant policies are vague or unclear, difficult to read, and hard to find. Some stakeholders called for further guidance and support to understand concepts and tests contained in the NSW competitive neutrality policies. Many of our draft recommendations aim to reduce the ambiguity in the policy to make it easier to apply.

Figure 2.1 summarises the draft recommendations made in our Draft Report. More detail on these draft recommendations can be found in the other information papers and/or the [Draft Report](#).

Figure 2.1 Summary of draft recommendations and impact on local government

 <p>Policy structure</p>	<p><b>Change:</b> A single policy that applies to both state and local government activities, with a clear statement of objective and a simpler, more logical structure.</p> <p><b>Impact:</b> This change will improve consistency between state and local government businesses with otherwise similar characteristics, impacts and size.</p>
 <p>Government ownership test</p>	<p><b>Change:</b> Additional clarification on government ownership, most relevant to businesses with partial government ownership.</p> <p><b>Impact:</b> Clearer definition makes it easier to determine which entities are government owned and controlled.</p>



### Business activity test

**Change:** Introducing a clearer principles-based definition makes it easier to identify the business activities captured

**Impact:** The clarification will reduce uncertainty of current tests and will make it easier to apply.



### Significance test

**Change:** Defining an activity as significant unless its annual turnover is under \$3.7 million (to be indexed);<sup>b</sup> a market review shows it is not significant or the activity is a statutory monopoly (under legislation there is no possibility of competition).

**Impact:** The raising of the threshold from \$2m to \$3.7m (indexed) will reduce the number of business activities captured by the test.



### Pricing/other obligations

**Change:** All 'significant government business activities' are required to estimate a 'competitively neutral' price by establishing their costs and adjusting for advantages/disadvantages of government ownership.

**Impact:** Increases clarity and guidance but may require some changes to current systems and processes.



### Public interest test

**Change:** A proportionate approach to assessing whether charging below the competitively neutral price is in the public interest, which may be qualitative.

**Impact:** The current local government policy does not require a public interest test to subsidise, although we expect local governments already undertake a similar assessment when they decide to subsidise.



### Reporting

**Change:** Clear and consistent obligation to report on competitive neutrality in the annual reports of government entities undertaking business activities.

**Impact:** Aligns competitive neutrality policy with other local government reporting requirements. IPART or NSW Treasury will develop templates for councils to do this.



### Complaints

**Change:** A simpler complaints process that is clear and easy to access, with a single process and complaints body (IPART).

**Impact:** Potential increased likelihood of complaints, but additional obligations around transparency and greater clarity to apply the policy should improve compliance.

<sup>b</sup> The turnover threshold must not be exceeded if the price of the goods or services was set in line with the market price of non-government providers in the same or similar area.



Transition process

**Change:** A transition strategy for the new policy. The transition should only occur when tools and resources have been developed, ideally through a co-design process, to assist government businesses to adapt to the changes.

**Impact:** The provision of tools and guidance, and increased visibility of competitive neutrality should help local government businesses to lower their compliance costs.

### 3 Support for local government

The proposed changes will necessarily impose some additional costs on government businesses as they will need to change their processes and systems in line with the revised policies. They may also require additional training for staff who will need to follow them. We are committed to supporting government entities to adapt to, and comply with, changes to competitive neutrality policy.

Our draft recommendations have been written to be mindful of the transition cost and encourage additional support for government businesses. Examples of this are outlined in Figure 3.1 below:

Figure 3.1 Recommended support for local government to adopt revised policy



Creating additional guidance resources for implementing the policy where needed (e.g. flowcharts, case studies and checklists). (See recommendations 10, 12 and 14)



Minimising burden of requirements as much as possible, for example by allowing a qualitative public interest test. (See recommendation 14)



IPART or Treasury to develop templates for government businesses to use in their application of competitive neutrality principles (e.g. annual reporting, applying the public interest test). (See recommendations 25 and 27)



Encouraging guidance resources to be co-designed with representatives from state and local government businesses to ensure that resources are fit for purpose and compatible with existing procedures. (See recommendation 25)



Consider a government-wide transition strategy that allows government businesses to adapt to the changes over time. (See recommendation 30)

## 4 Further information

See our [review page](#) for further information and resources about competitive neutrality, including:

- terms of reference for the review
- Issues Paper
- Draft Report
- other information papers.

## 5 We want to hear from you

We want to hear about your experiences with the NSW competitive neutrality policies and processes, and your views on our draft recommendations. Hearing the views of a wide group of stakeholders is very important to us.

We have provided a short list of questions for you to respond to below. You can respond to these questions and/or the broader list of questions in the Draft Report, which provides further information on the issues raised here. We are interested in any feedback you can provide. You don't need to answer every question or stick to the questions asked.



Are the recommended changes to the policy clear and will they be manageable to implement?

What types of assistance would be useful to best support implementation of the revised policy?

### Have your say

Your input is critical to our review process.

[Submit feedback »](#)

You can get involved by making a submission, submitting feedback or attending a public hearing.

[Contact the review team »](#)

[Attend the public hearing »](#)

We are accepting written submissions on our Draft Report until 24 February 2023 and are holding a public hearing on 13 February 2023. You can express your interest in attending our public hearing on our website. If you have any questions regarding the review, are interested in meeting with us or would like to speak to the review team, please contact [Ineke Ogilvy](#).

## 6 Background

We are reviewing NSW's competitive neutrality policies and processes. Our review is identifying issues and concerns with current competitive neutrality policies and analysing opportunities to improve them. We have considered how the policies compare to best practice and recommend potential improvements in our Draft Report.

Competitive neutrality policies and processes aim to ensure that government businesses do not have a competitive advantage over other businesses because of their government ownership

Government businesses might compete across a range of industries, including in manufacturing, laundry services, construction (including roads), waste disposal, gyms and fitness, tourism services, printing, childcare and aged care.