



Complaints and transparency

6 February 2023

An accessible complaints process and transparency of business decisions are important features of a good competitive neutrality policy. This helps to ensure that businesses who compete with, or want to compete with, government businesses have the confidence to invest. It also requires government subsidies to business activities to be deliberate and considered, providing value for money for taxpayers.

This paper outlines our draft recommendations concerning the competitive neutrality complaints process and transparency arrangements.^a We have proposed a simpler complaints process with lower barriers to making a complaint, to ensure that anyone can have their say. We have also recommended annual reporting requirements for competitive neutrality to hold government businesses accountable.

1 Complaints

An independent, accessible and simple complaints handling process is an important accountability measure for government policies like competitive neutrality. A well-designed complaints handling process allows third parties to identify instances of ineffectively applied policy and have their concerns considered independently of the government business.

We recommend changes to the complaints handling process so that there is one clear process for complainants to navigate and a single complaints body to investigate complaints.

^a Section 5 of this paper provides more information on what competitive neutrality is and why we are reviewing NSW's competitive neutrality policies.

Our review of the complaints handling process indicates that the current process can be confusing and difficult to access, making it an ineffective way to address concerns about the application of competitive neutrality. For example, there are different pathways for complaints concerning local government businesses, state government businesses and procurement. This complexity is especially difficult for small businesses who may not have the resources to persist with navigating the complaints process. The suggested improvements aim to make the process easier and more accessible.

1.1 A simpler complaints process

Our recommended complaints process is outlined in Figure 1.1. We are proposing the following major changes:

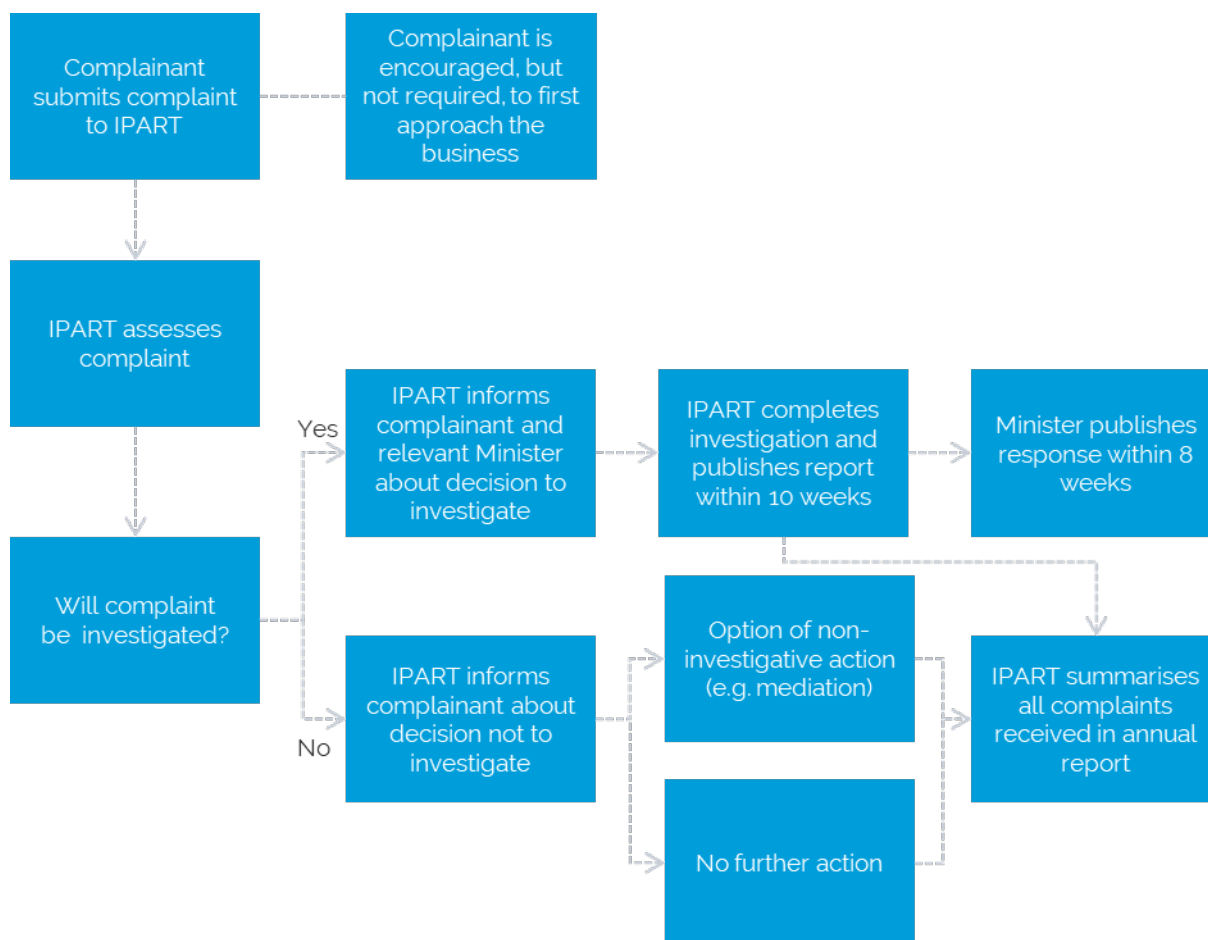
- a single process for all complaints
- reducing the number of complaints handling bodies to one (IPART)
- allowing complaints to be made directly to the complaints handling body, without Ministerial referral
- encouraging, but not requiring, the complainant to first raise the complaint with the government business
- allowing anyone affected by competitive neutrality to lodge a complaint.

As shown in Figure 1.1, the proposed complaints process starts with the complainant submitting a complaint form to IPART. IPART then assesses the complaint and informs the complainant whether their complaint will be formally investigated.

- **If the complaint will be investigated**, IPART also informs the relevant Minister. The investigation is to be completed and a report published within 10 weeks. The Minister then publishes a response within 8 weeks.
- **If the complaint will not be investigated**, there is an option for IPART to take non-investigative action (such as mediation) or no further action is taken.

We propose that IPART will report on all complaints in our annual report, whether investigated or not. This reporting will provide de-identified information in relation to each complaint received to ensure that there is adequate transparency around the complaints being made and how they are resolved.

Figure 1.1 Summary of recommended complaints process



1.1 IPART as the complaints handling body

Under our recommendations, IPART would assume responsibility for receiving and investigating all competitive neutrality complaints in NSW. This role would be modelled on the Victorian competitive neutrality complaints body, which would mean IPART:

- cannot initiate an investigation without a complaint
- has no enforcement powers
- has discretion over which complaints it investigates
- investigates accepted complaints fairly, independently and rigorously and comes to a finding on the basis of the best available information
- consults with all parties involved before finalising its investigation
- provides finalised investigation reports (excluding any commercial in confidence information) to the parties and publishes them on its website
- cannot recommend compensation or termination of contractual arrangements.

2 Transparency

Without a sufficient level of transparency, it may be difficult for interested stakeholders to determine whether a government business is exempt from competitive neutrality policies or whether it hasn't applied competitive neutrality principles when it should have. This can leave competing businesses or other stakeholders confused about whether they should pursue a complaint and the prospects of its success.

There is no external body that is actively responsible for monitoring compliance with competitive neutrality policy in NSW. Given this, we consider the provision of public information through reporting could improve compliance with the competitive neutrality policies.

An effective reporting framework helps raise awareness of competitive neutrality and gives competing businesses confidence that the government businesses they compete with are playing by the rules



Reporting obligations can support the functioning of competitive neutrality policy by:

- providing competitors and the public confidence that a government business has appropriately applied competitive neutrality principles
- encouraging government entities to regularly check whether their business activities are compliant with competitive neutrality policy
- supporting potential complainants to make an informed complaint
- having up-to-date information available to inform a potential complaints investigation.

2.1 There is scope for greater transparency

Under the current policies:

- NSW state government businesses are not required to report on compliance with the competitive neutrality policies in their annual reports.
- NSW councils are required to report on progress in implementing competitive neutrality in their annual reports and the Office of Local Government is required to report on overall progress in its annual report.






However, our review of existing reporting identified:

- public reporting about competitive neutrality by government businesses is difficult to locate or has been discontinued
- a low level of knowledge of the competitive neutrality policies among both public and private sector businesses
- the current reporting requirements no longer align with requirements for councils' annual reports as set out in other Acts and Guidelines.¹

2.2 Proposed reporting requirements

We propose to recommend requiring government businesses to provide the information set out in Figure 2.1 in their annual reports. This would be subject to any commercial confidentiality restrictions.

Figure 2.1 Information to be published in government businesses' annual reports

| | |
|---|--|
|  | Statements of compliance reporting for all government owned business activities (including those that indicate they do not meet the significance or public interest tests) |
|  | Summary of the costs and benefits of applying competitive neutrality where a public interest test has been applied to exempt a significant government business activity. This would apply to activities which were operating during that year |
|  | Steps taken to comply with competitive neutrality policy (including the last date the application tests were assessed) |
|  | Basis of pricing decisions (fully distributed costs, avoidable costs, market pricing or other) |
|  | Number of complaints received about competitive neutrality, their outcome and any changes made by the business in response |

To reduce the reporting burden of reporting the above information, templates and other materials should be developed that clearly set out the minimum reporting requirements.

3 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.

4 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.



If you are a government business:

- How easy do you believe it will be to comply with the reporting requirements?

If you are a private business:

- Does the proposed complaints process provide an accessible way to raise competitive neutrality concerns?
- Is there any further information you would wish to see in annual reporting from government businesses?

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](#).

5 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.

¹ *Local Government Act 1993*, Integrated Reporting and Reporting Guidelines, and Local Government Code of Accounting Practice and Financial Reporting.