



# Summary of competitive neutrality review so far

6 February 2023

We are reviewing NSW's competitive neutrality policies and processes. Our review identifies issues and concerns with current competitive neutrality policies and analysing opportunities to make improvements. We have also considered how the policies compare to best practice. Our Draft Report proposes a number of potential improvements, which we are seeking feedback on before finalising our recommendations to the Government in May 2023.

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.

This short information paper is written to explain and help you provide feedback on the competitive neutrality policies and processes in NSW and our proposed recommendations. It outlines what competitive neutrality is, gives a summary of current NSW competitive neutrality policies and explains why we are reviewing them. It also provides further information on how you can get involved and provide your feedback. It can be read alone or with the material listed at the end of this paper.

## 1 What is competitive neutrality?

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).

Figure 1.1 Benefits from competitive neutrality



**Scope and obligations:** Competitive neutrality policies require significant government businesses to assess their advantages and disadvantages from being government-owned and offset any net competitive advantage. One way that government businesses are currently required to do this is by pricing their goods and services to reflect all costs that an equivalent private business would have to pay in the same market.

For instance, when the Forestry Corporation of NSW sells timber in competition with private businesses, it must make tax payments, pay dividends, and cover its full costs of production and capital, just like private rivals.

Some advantages of government ownership that a government business may benefit from are:

- 01 Not having to pay the same types of taxes as other businesses

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- 02 Not needing to earn a profit

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- 03 Being able to access cheaper finance or infrastructure than other businesses

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- 04 Exemptions from certain regulations.

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**Public interest test:** Competitive neutrality does not prevent significant government businesses from providing subsidised services where it is in the public interest to do so (known as the 'public interest test'), but it does require the subsidy to be considered and deliberate.

**Complaints:** In NSW there are different competitive neutrality policies for local and state government business activities. If a competitor considers that the policies have not been appropriately applied, they may make a complaint. The complaint process currently differs depending on whether the complaint relates to a state or local government business and whether the complaint relates to a government business bidding in a procurement process.

**Reporting:** There is very little public reporting on government businesses' compliance with competitive neutrality under the current policies. A national report covering large state government businesses has ceased to be published in recent years.

## 1.1 Why are we reviewing NSW's competitive neutrality policies?

While Australia's competitive neutrality policies are well regarded worldwide,<sup>1</sup> NSW's current policies have not been reviewed in over 2 decades and NSW's economy has changed significantly since they were put in place. For instance:

- many large government businesses have been sold or corporatised, subjecting them to the same set of costs and taxes as private businesses
- local governments have outsourced or divested a range of business activities
- many services provided by Commonwealth, state and local governments have been expanded to allow the private and not-for-profit sectors to operate alongside government providers.

Given these significant changes, this review is an important step in ensuring NSW competitive neutrality policies remain fit-for-purpose.

The NSW Government has asked us to conduct this review. This delivers on its commitment to revise the NSW competitive neutrality framework in response to the recommendations of a review of Australia's competition policy completed in 2015.<sup>2</sup>

## 2 The review so far

### 2.1 What we've heard

Our review has identified two main issues with the current competitive neutrality policies and processes. The first relates to issues that potential complainants face in understanding how the policy has been applied or making complaints.

There have historically been very few competitive neutrality complaints in NSW. However, through our consultation process, we have heard from businesses, both large and small, who suspect that the government businesses they compete with are not following the rules. They pointed out the difficulties they face in making a complaint and the lack of transparency around whether and how a government business has considered competitive neutrality.


The second issue relates to the policies themselves. We have heard from government businesses about the difficulties they have in identifying which activities they need to apply competitive neutrality to, and what they are required to do. Some government businesses are also concerned that competitive neutrality may require them to act in a way that is not in the public interest.

## 2.2 Draft recommendations

The Draft Report sets out the findings of our review so far and our assessment of the current policies and processes. It puts forward a range of draft recommendations to assist the NSW Government to develop a revised competitive neutrality policy that works better for both government businesses and their non-government competitors. The draft recommendations seek to address the two main issues identified during consultation with these groups. They are designed to help deliver and maintain a best practice approach.

Figure 2.1 sets out the key changes proposed and the reasons for the changes. 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

	<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>Policy structure</p>	<p><b>Why:</b> Bringing the policies into a single document with a more logical structure would improve accessibility and consistency.</p>
	<p><b>Change:</b> Clearer definition to determine which entities are captured, particularly for businesses with partial government ownership.</p>
<p>Government ownership test</p>	<p><b>Why:</b> Additional clarification on what constitutes government ownership makes the test easier to apply.</p>
	<p><b>Change:</b> Clearer definition to determine which activities are captured.</p>
<p>Business activity test</p>	<p><b>Why:</b> The current tests for business activity are not clear, the clarification reduces uncertainty and makes the test easier to apply.</p>
	<p><b>Change:</b> An activity is significant unless its annual turnover is under \$3.7 million (to be indexed)<sup>a</sup>, a market review shows it is not significant or there is no potential for competition.<sup>b</sup></p>
<p>Significance test</p>	<p><b>Why:</b> The current monetary threshold for local government is outdated. The current process for determining significance by reviewing the market is uncertain. The changes will unify local and state government tests.</p>

<sup>a</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.

<sup>b</sup> There is no potential for competition where legislation prohibits the provision of the service by other providers.



#### Pricing/other obligations

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

**Why:** Clarifies what obligations the policy imposes, including on state-owned corporations and not-for-profit business activities.



#### Public interest test

**Change:** A proportionate approach to assessing whether charging below the competitively neutral price or retaining a non-cost advantage is in the public interest.

**Why:** A detailed, quantitative public interest assessment may not always be appropriate or within the capability of smaller government businesses.



#### Reporting

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

**Why:** Effective governance and transparency arrangements are important for ensuring that the competitive neutrality policy is followed as intended.



#### Complaints

**Change:** A simpler complaints process that is clear and easy to access, removing the requirement for the Minister to refer the complaint for investigation, and with a single complaints body.

**Why:** An independent and accessible complaints handling process is an important accountability measure for government policies.



#### 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.

**Why:** A transition process will allow government businesses to adapt to the changes over time rather than all at once.

## 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.

### 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](#).

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<sup>1</sup> See e.g., Antonio Capobianco and Hans Christiansen, OECD Corporate Governance Working Papers No. 1, Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options, 2011, p 16; Matthew Rennie and Fiona Lindsay, OECD Corporate Governance Working Papers No. 4, Competitive Neutrality and State-Owned Enterprises in Australia: Review of Practices and their Relevance for Other Countries, 2011, p 3.

<sup>2</sup> Harper, I, McCluskey, S and O'Bryan, M, Competition Policy Review Final Report, March 2015.