

Draft Terms of Reference for a Review of NSW Competitive Neutrality Policies and Processes by IPART

I, Victor Dominello, Minister for Customer Service, pursuant to Section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992*, request that the Independent Pricing and Regulatory Tribunal (IPART) conduct an investigation in accordance with these 'terms of reference'.

BACKGROUND

The central tenet of competitive neutrality is that a government business, or agency, that competes with the private sector should not have a competitive advantage (or disadvantage) over other businesses solely due to its government ownership.

Commonwealth, state and territory governments committed to implement competitive neutrality policies in the 1995 *Competition Principles Agreement*, which was enhanced through the 2006 *Competition Infrastructure Reform Agreement* and affirmed in the 2016 *Intergovernmental Agreement on Competition and Productivity- Enhancing Reforms*.

Competitive neutrality policies aim to promote efficient competition between public and private businesses.

The 2015 Competition Policy Review led by Professor Ian Harper recommended that all Australian governments should review their competitive neutrality policies and increase the transparency and effectiveness of their competitive neutrality complaint processes.

PURPOSE OF THE REVIEW

The purpose of this Review is to evaluate the scope and effectiveness of the current NSW Competitive Neutrality Policies and Processes (the Policies and Processes) in ensuring a level playing field between government business activities (including the activities of state-owned corporations) and their non-government competitors.

SCOPE OF THE REVIEW

IPART will consider and report on whether the operation and scope of the current Policies and Processes remains appropriate to best fulfil the Government's competition policy objectives.

The Policies and Processes include:

1. TPP 02-1 – Policy Statement on Competitive Neutrality
2. TPP 01-2 – Guidelines for pricing of user charges
3. Part 4C of the IPART Act (NSW) (1992)
4. Section 173 of the Public Works and Procurement Act (NSW) (1912) and Part 3 of the Public Works and Procurement Regulation 2019
5. Pricing and Costing for Council Businesses – a Guide to Competitive Neutrality, July 1997

6. NSW Government Policy Statement on the Application of National Competition Policy to Local Government, June 1996.
7. Department of Local Government - Guidelines on the Management of Competitive Neutrality Complaints, c. 1997.

This will include reporting on:

1. Whether the operation of the current NSW Competitive Neutrality Policies and Processes is best practice, including assessing:
 - a. The level and relevance of the threshold for a 'significant' business activity;
 - b. The application of the public interest test;
 - c. Mechanisms for the assessment and investigation of competitive neutrality complaints, including how the state and local governments respond to adverse findings;
 - d. Existing guidance on the NSW Competitive Neutrality Policies and Processes that is provided for the use of non-government entities, local councils and government agencies (including participants in public tenders);
 - e. Current oversight and administration arrangements;
 - f. Accountability and transparency mechanisms around the operation of the Policies and Processes; and
 - g. How disadvantages of government ownership are considered.
2. Potential improvements to the NSW Competitive Neutrality Policies and Processes and their delivery, including in relation to government procurement, where government takes a minority stake in a business and during the start-up stages of government businesses.
3. The benefits and costs of expanding the scope of the NSW Competitive Neutrality Policies and Processes to a broader range of government activities where government service providers operate in the same market as private and not-for-profit service providers (for instance, human services).

STAKEHOLDER CONSULTATION

IPART should consult the public, local government and state government agencies as part of this review, including inviting submissions from stakeholders on an Issues Paper and a Draft Report.

PROCEDURE

IPART should publicly release a Draft Report for comment. A Final Report should be provided to the Treasurer and the Minister for Customer Service within 12 months of receiving the final Terms of Reference. The Treasurer will decide on the timing of release of the Final Report.

GOVERNANCE

IPART should provide progress briefings to NSW Treasury at regular intervals.

A handwritten signature in blue ink, appearing to read 'Victor Michael Dominello', with a stylized, cursive script.

The Hon. Victor Michael Dominello, MP

Date: 10/11/21