



## IPART Submission

### Feedback

AlburyCity generally agrees with the draft report as prepared by IPART and with the recommendations contained within.

In particular, AlburyCity supports the following recommendations made in the report:

- Bringing the competitive neutrality policies into a single document that covers both local and state government business activities,
- Revision of the 'significance test' to better target activities where competitive neutrality is likely to be cost-effective, including clarifying the circumstances where there is no prospect of competition, and
- Applying different guidance for undertaking the public interest test, between state and local government, where local government can use a qualitative approach in undertaking the public interest test.

### IPART Draft Recommendations

1. ***Bring the competitive neutrality policies into a single document that covers both local and state government business activities.***

Agree in principle with his recommendation

2. ***Apply a consistent set of obligations to all entities regardless of their sector or business structure.***

It is always difficult to have a one size fits all approach and when structures are different then a differing approach may need to be considered.

3. ***Include a clear statement of objective and scope up-front in the policy. We recommend the objective is framed around achieving an efficient allocation of resources through the economy and clearly articulate the benefits of applying the policy. The suggested technical wording is provided in Box 3.1.***

Agree with the draft recommendation in principle, however the definitions associated with "significant Government business activities" and "Public Interest" will be very important to ensure this is applied appropriately.

4. ***Retain the current scope of competitive neutrality policy, which focuses on applying competitive neutrality principles to significant government business activities where it is in the public interest.***

Agree that the definition should not be expanded. It is vital to get the process correct within the current scope. Changes to the scope may be possible in future years after the process is well-defined and understood by participants and stakeholders.

5. ***The 'government ownership test' be revised to improve clarity and make it easier to apply. The proposed test focuses on whether the activity is undertaken by an entity that is government owned or is controlled by government. The proposed government ownership test is set out in Box 4.1.***

Agree in principle, noting that there is no change to our organisation in relation to the "government ownership test".

6. ***The 'business activity test' be revised to improve clarity and make it easier to apply. The proposed test focuses on whether the activity is: undertaken by a public corporation: it involves the supply of goods and/or services with system and regularity and has a commercial character; or is bidding for goods and services. The proposed business activity test is set out in Box 4.2.***

No comment as not applicable to local government.

7. ***The 'significance test' be revised to better target activities where competitive neutrality is likely to be cost-effective. The proposed significance test is set out in Box 4.3. An activity would not pass the significance test where:***
- a. ***the activity has an annual turnover below \$3.7 million (indexed over time)***
  - b. ***the entity undertaking the activity has assessed it as having a low market impact, or***
  - c. ***there is no prospect of competition.***

As the current test is set at \$2m million, we agree with this recommendation, noting parts b and c are subjective but the information contained in Box 4.3 of the draft report and supporting information help to establish a basis for a decision to be made.

8. ***The competitive neutrality policy continues to provide information on how to estimate both avoidable costs and fully distributed costs as valid approaches for estimating a government entity's own cost of business. However, we recommend that the revised policy provide clearer guidance on how to select the most efficient approach. The guidance we are recommending is set out in Figure 5.1.***

Agree in principle with his recommendation

9. ***The approach to adjusting for net cost advantages in the current competitive neutrality policies be retained as it is appropriate. However, we recommend that the revised policy provide clearer guidance to assist government entities to estimate an appropriate rate of return.***

Agree in principle with his recommendation.

- 10. Include guidance in the revised policy on dealing with non-cost advantages and disadvantages. We recommend that the guidance states that where possible, the advantage or disadvantage be removed altogether or converted into an adjustment that can be accounted for in the government entity's costs.**

Agree in principle with his recommendation.

- 11. Non-cost advantages and disadvantages experienced by government business activities that are not experienced by competitors be treated as a competitive neutrality issue, unless the advantage/disadvantage is already addressed through another policy or obligation. Such advantages or disadvantages could arise from government ownership or market power.**

Agree in principle with his recommendation.

- 12. Include a chapter in the revised policy on business structure that sets out high level guidance but does not require a government entity to adopt any particular structure for its business activities. We recommend including the guidance in Box 5.8.**

AlburyCity agrees with the recommendation that does not force a particular structure on a government entity. This would not be considered appropriate or practical.

- 13. The public interest test be undertaken in accordance with the following proposed framework:**
- a. define what is being proposed and how it differs from the competitively neutral action**
  - b. identify the benefits and costs considering the factors set out in Box 6.1**
  - c. assess whether the benefits outweigh the costs**
  - d. consider whether there is a less costly way to achieve the benefits.**

Agree in principle with his recommendation.

- 14. Establish different guidance for undertaking the public interest between state and local government:**
- a. For local government business activities, a qualitative assessment for the public interest test is acceptable, although the financial cost of the subsidy must be quantified at minimum.**
  - b. For state government, the public interest assessment must be quantitative where possible and reasonable (i.e. effort and cost involved in quantification of costs and benefits is proportionate to the size of the business activity).**

Agree in principle with his recommendation.

- 15. Government business activities re-apply the public interest test when there are major changes in the market and at minimum, once every 5 years.**

Agree in principle with his recommendation.

16. ***The revised competitive neutrality policy outline circumstances where government businesses may decide that applying competitive neutrality would not be in the public interest. This includes:***
- a. ***CSOs that meet the criteria and principles set out in the CSO Guidelines***
  - b. ***below cost pricing where the government business activity has significant up-front costs, the market is growing, and costs are to be recovered within a reasonable period (1-2 years)***
  - c. ***not setting prices to cover dividends, taxes or other costs avoided by not-for-profits or charities (as relevant) where most competitors are not-for-profits or charities, and there is a role for government in the market.***

Agree in principle with his recommendation.

17. ***Public interest assessments be published, subject to the removal of any commercial-in-confidence material. As part of this, a template identifying information for inclusion and information that might be considered commercial in confidence would be developed by IPART.***

Agree in principle with his recommendation.

18. ***The revised competitive neutrality policies encourage but not mandate consultation on the public interest test.***

Agree in principle with his recommendation.

19. ***The complaints process be made more open and accessible with a single process and a single investigative body (IPART). Complainants would be able to make complaints directly to the investigative body removing the need for Ministerial referral. Restrictions on who can make a complaint and requirements to contact the government business first would be relaxed.***

Agree in principle with his recommendation.

20. ***IPART have a similar complaint handling process to that in Victoria's competitive neutrality regime, to be implemented through amendments to Part 4C of the IPART Act. Under this process IPART would not be able to initiate an investigation and would not have enforcement powers. IPART would have discretion as to whether it will investigate a complaint.***

Agree in principle with his recommendation.

21. ***The IPART Act be updated to reflect a broader range of options for outcomes from a complaint, including no investigative action or non-investigative action, similar to the outcomes available in Victoria.***

Agree in principle with his recommendation.

22. ***IPART's role in assessing complaints about the public interest test be confined to assessing whether framework requirements have been applied and a reasonable conclusion reached.***

Agree in principle with his recommendation.

- 23. Treasury or the NSW Productivity Commission review the competitive neutrality policy every 5 years, consistent with other Treasury review processes.**

Agree in principle with his recommendation.

- 24. Treasury continue to provide advice to support state government entities to understand and apply competitive neutrality policies and principles. This advice would also be extended to local government entities, if the local and state government policies are combined (Draft Recommendation 1).**

Agree in principle with his recommendation.

- 25. A suite of resources and tools, such as templates and checklists, be developed by the complaints handling body through a co-design process to support stakeholders to understand and apply competitive neutrality policies and principles.**

Agree in principle with his recommendation.

- 26. Further evidence is required before investing in higher cost resources for stakeholder education, such as workshops, online modules and in-person training**

Agree in principle with his recommendation.

- 27. Government agencies undertaking business activities be required to report basic information about competitive neutrality in their annual reports, subject to any commercial confidentiality restrictions (see Box 8.1). Templates should be developed that clearly set out the minimum reporting requirements for agencies.**

Agree in principle with his recommendation.

- 28. The revised competitive neutrality policy not extend to council as a purchaser of services. We recommend that the Office of Local Government considers whether the current regulations and guidance regarding procurement for local councils needs to be revised to include content that is currently sitting within the competitive neutrality policy but that would be removed under our recommended approach.**

Agree in principle with his recommendation.

- 29. The NSW Government review its processes to ensure that it systematically considers impacts on competition when making policy decisions that are likely to impact competition and which may not be picked up by regulatory impact assessments. This includes:**
- subsidising services in a market**
  - acquiring minority government ownership of a business when competitive neutrality policy does not apply because the government does not control the business**

- ***providing grants to businesses***
- ***providing or removing access to data.***

Agree in principle with his recommendation.

***30. Consider providing a transition period to assist government businesses time to adjust to the changes. We recommend that the transition period provide an appropriate timeframe for government businesses to review their business activities against the revised tests and to update their internal policies and processes to reflect the requirements of the new policy. We recommend that this transition period commence once Treasury and IPART have provided the advice, resources and training necessary to support and guide government businesses to implement the proposed changes.***

Agree in principle with his recommendation.

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