

17 February 2023

Review of NSW Competitive Neutrality Policy and Processes
Independent Pricing and Regulatory Tribunal
PO Box K35
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Sydney NSW 1240

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SUBMISSION ON DRAFT REPORT, COMPETITIVE NEUTRALITY IN NSW, DECEMBER 2022

On behalf of over 500 holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates) the Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) welcomes the opportunity to provide feedback on the Independent Pricing and Regulatory Tribunal (IPART's) Draft Report on the review of NSW's competitive neutrality policy.

Thank you to the IPART team for the work undertaken in the review thus far, including the opportunity to participate in the Online Public Hearing on 13 February 2023. The sessions during the Hearing were well managed and informative, providing stakeholders with an open forum to share their views and feedback.

Overall, we welcome the Draft Report and support the 30 draft recommendations proposed by IPART.

Although some issues raised in our 15 August 2022 submission on the Issues Paper were not adopted, the changes IPART proposes for the three tests to determine if competitive neutrality obligations apply, the public interest test, the complaints process and the reporting requirements will go a long way in addressing the shortcomings of the current policies and processes.

The recommendation that the NSW Government systematically considers impacts on competition in advance of deciding to subsidise services in any industry is also a positive step forward.

PUBLIC CAMPING FACILITIES

We reiterate the negative impacts that can result from local councils providing camping sites for RV travellers on council owned or managed land for free or at very low rates that significantly undercut the prices of local private sector caravan parks and camping grounds.

This practice creates unfairness and distortions in the market and makes it very difficult for these private businesses (which are an extremely important part of the NSW visitor economy) to attract business from RV travellers when councils are offering them free or deeply

discounted camping sites and services like dump points, water, etc, in direct competition with them.

Their view is the local baker does not have to compete with local councils giving away free bread to visitors, nor does the greengrocer compete with council giving away free fruit and vegetables. Why then is it appropriate for caravan park operators to compete with their local council giving away free or discounted camping sites, essentially using ratepayer funds to subsidise RV travellers' holidays?

In many regional areas, there are broader implications because the local caravan park is a key business on which other businesses depend. They inject money into their local communities, support other local tourism infrastructure, buy local products, services and produce, employ local people and pay council rates. They can also be a social hub in many towns.

Businesses with such value in their communities should not be adversely affected by the activities of government unfairly competing in the same market. They should be able to look to their local councils for support in the development of sustainable local tourism, rather than having to compete on unfair terms with one of their key regulators. This can have negative flow on effects for a town, as operators that are discouraged from investing further in their businesses can lead to lost opportunities more broadly for a community.

Our Association's position remains that a full range of services and experiences should be available in the caravan and camping industry, so that it can continue to appeal to a broad and growing market. However, private operators of caravan parks and camping grounds should not be adversely impacted by unfair competition from government activities that are heavily subsidised.

Accordingly, we continue to advocate for a NSW equivalent to the Tasmanian *National Competition Policy: Applying Competitive Neutrality Principles to public camping in Tasmania* to address the limitations of the current competitive neutrality policies and processes.

Pending this, IPART's recommendation that the Minister has the power to make a declaration that a particular business activity is significant for the purpose of competitive neutrality policy after receiving a recommendation from IPART is a step in the right direction.

Private operators impacted by collective government business activities should have an avenue of redress, however the efficacy of this power will depend on the details of how IPART may make a recommendation.

The Draft Report only briefly refers to the exercise of this power being 'codified in legislation' or requiring IPART to publish 'binding guidelines.' More information is needed about the process of bringing a matter to the attention of IPART, including information and evidence requirements, as well as details about any thresholds that need to be met or limitations that will apply.

We look forward to further consultation on this recommendation and ask that we be noted as an interested stakeholder.

IMPROVING THE COMPLAINTS HANDLING PROCESS

We strongly support IPART's recommendations to improve the complaints handling process, including:

- a single process and investigative body (IPART),
- complainants able to make complaints directly to IPART without Minister referral,
- not requiring a complainant to first raise the issue with the government business,
- allowing complaints to be made by any affected party, and
- allowing complainants' identities to be kept confidential where this is consistent with procedural fairness and any legal obligations.

We note the issue of complainant anonymity was raised during the Online Public Hearing, with government stakeholders expressing the view this was inappropriate or unworkable.

We reiterate that governments also exercise a regulatory function in some markets (e.g., local councils in the caravan parks and manufactured home estates sector), and operators may have other sensitive reasons for not wanting to raise complaints directly with a government entity. In these instances, complainants should be given the option of raising their complaints directly with IPART in the first instance and anonymously if they wish.

As raised by us during the Online Public Hearing, where anonymity is preferred, there could also be an option for an industry group to raise a complaint on an operator's behalf. For example, section 144 (1) of the *Motor Dealers and Repairers Act 2013* allows a motor industry group to apply to the NSW Small Business Commissioner for assistance in dealing with a dispute about an unfair term of a supply contract or a class of supply contracts or unjust conduct by a manufacturer who is a party to a supply contract or class of supply contracts.

There may be scope for a similar mechanism under the revised competitive neutrality policy.

REPORTING OBLIGATIONS

During the Online Public Hearing government stakeholders also expressed concern over increased reporting obligations regarding competitive neutrality, particularly for local councils.

We reiterate that under existing policy settings in NSW, the information needed for verification that competitive neutrality is being applied is not always easily accessible. Any statements or reporting on competitive neutrality are usually set out within internal government documentation, rather than on dedicated government webpages with open access, and the information provided is minimal. This limits transparency and makes it difficult for private operators to access sufficient information to determine if any concerns they have about competitive neutrality are warranted.

Better reporting and public accountability will help ensure governments remain committed to implementing competitive neutrality and that sufficient information is available to the public so an interested person can satisfy themselves that the relevant government entity has correctly considered competitive neutrality as part of its activities.

We support IPART's recommendation that the revised competitive neutrality policy require government entities to provide the information set out in Box 8.1 of the Draft Report in their annual reports. However, we would also like to see more details around costings as the basis of pricing decisions, including details of subsidies.

In addition, this information should be replicated on the government entity's webpage along with details on the process for a person to make a complaint about competitive neutrality. This would improve information accessibility and help raise public awareness of how and when to pursue a complaint.

IMPLEMENTATION

We agree with IPART's view that the transition costs to government businesses in making the changes required to comply with the revised competitive neutrality policy are outweighed by the benefits to businesses, the economy and the people of NSW. Having ineffective competitive neutrality policies can ultimately lead to higher costs and poorer services, so we welcome the changes proposed in the Draft Report.

It is reasonable that government businesses be given time to adapt to the changes and that this be done after resources have been developed to assist government businesses, particularly local councils, to make the transition at lower cost. However, no timeline for this transition period has been nominated in the Draft Report.

We understand that determination of this timeline is beyond IPART's review and will be subject to further consultation, but our position is once all resources are developed and readily available government businesses should be required to make the transition within 12 months.

As the peak industry body for the NSW caravan and camping industry we are willing to work with IPART and governments to share information about the revised policies with our members and dedicate our resources to assist in any other way we can to make the process of transition quicker and easier.

CONCLUSION

Thank you for considering our feedback on the Draft Report. We look forward to our continued involvement in the consultation process, including participating in any further discussions or forums on the issues we have raised, or any other relevant issues raised by other stakeholders.

Should you wish to meet or discuss the issues raised in our submission please contact Shannon Lakic, Policy, Training and Executive Services Manager, on [REDACTED] or email [REDACTED]

Yours sincerely

[REDACTED]
Lyndel Gray /
Chief Executive Officer