

15 August 2022

Competitive Neutrality Review
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
Sydney NSW 1240

Submitted online: https://www.ipart.nsw.gov.au/Home/Reviews/Lodge-a-submission?openforms_id=922debf9-0915-463b-bee1-55ae0c82f644&timeline_id=14518&cta_type=have_your_say

SUBMISSION IN RESPONSE TO THE REVIEW OF NSW COMPETITIVE NEUTRALITY POLICIES AND PROCESSES, ISSUES PAPER, JUNE 2022

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the State's peak industry body representing the interests of over 500 holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates).

We also represent over 200 manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufacturers of relocatable homes and service providers to these businesses.

We welcome the opportunity to provide feedback on the Independent Pricing and Regulatory Tribunal's (IPART) *Competitive Neutrality in NSW Issues Paper, June 2022* (Issues Paper). We believe that competitive neutrality principles should apply to government activities in the caravan and camping industry and trust that the issues raised in this submission will be carefully considered in this review.

THE NSW CARAVAN AND CAMPING INDUSTRY

The caravan and camping industry continues to be one of the fastest growing domestic tourism sectors in Australia, and New South Wales (NSW) is Australia's favourite State for caravanning and camping.

While the COVID-19 pandemic continues to impact the visitor economy, Tourism Research Australia's National Visitor Survey (NVS) data for the year ending December 2021 reveals there were 12.6 million overnight caravan and camping trips taken generating 50.6 million visitor nights nationally. This represents a 19% increase in overnight trips and 23% increase in nights from the previous year.

NSW recorded 3.56 million overnight caravan and camping trips in the State (28% share of national trips), generating 13.1 million visitor nights (almost 26% share). This represents a 4% increase in trips and 1% increase in nights compared to the previous year, reflective of the lockdowns in quarter 3 in NSW and Victoria and the Omicron variant outbreak at the end of

2021. Nevertheless, visitors spent more than \$2 billion in NSW, supporting local economies and job creation in regional communities.

Regional NSW is the main destination for domestic caravan and camping visitors to the State and, as important local tourism infrastructure, caravan parks make a significant contribution to their local communities. A recent BDO study, commissioned by the Caravan Industry Association of Australia, demonstrates that for every \$1 taken by a caravan park, \$1.53 in economic benefit flows on to the local economy.

In offering several accommodation options in pristine locations, from budget powered and unpowered camping sites to luxury cabins and safari tents, caravan parks provide an accommodation service where every type of traveller can be catered for. Visitors can have all the creature comforts they want, or they can get back to basics and experience bush-style camping.

In terms of facilities, most caravan parks provide showers and toilets, laundry facilities, waste disposal as well as camp kitchens and/or barbeques and recreational facilities like swimming pools, games rooms and playgrounds. Resort style parks can also offer facilities like tennis and basketball courts, splash parks, jumping pillows, kids' clubs, onsite cafes and more.

Importantly, the RV manufacturing and retailing sectors support caravanning and camping. While many other areas of manufacturing in Australia are or have receded, the RV industry continues to grow each year.

There are now over 800,000 RVs registered in Australia and manufacturing continues to increase. RV products range from state-of-the-art motorhomes and caravans to budget option tent trailers.

Last year a total of 23,931 units were produced in Australia representing a 42% increase from December 2020 - the largest volume of production recorded since 1979.¹ This is tremendous to see and places RV manufacturing as the largest remaining bastion of automotive manufacturing in Australia.

COMPETITION ISSUES IN THE CARAVAN AND CAMPING INDUSTRY

Councils Providing Free and Low-Cost Camping Sites

There are approximately 50,000 short-term sites and camping sites available across our wide commercial caravan park network in NSW and most offer budget friendly, overnight camping options for RV travellers.

The price of sites can range from \$25 - \$40 per night outside of peak holiday times, which is when retired RV owners tend to travel. And about 73% of our member caravan parks offer facilities to accommodate large RVs.

From January to July 2022, occupancy rates for NSW caravan park accommodation averaged 55% for cabins, 45% for powered sites and only 10% for unpowered sites.² Consequently, there are plenty of camping site options available in caravan parks for RV travellers touring around the State.

¹ *nemAustralasia and Caravan Industry Association of Australia, December 2021 RV Production, February 2022*

² *Caravan Industry Association of Australia, Caravan Park Accommodation Reports, January – July 2022*

There are also other camping options available in areas like national parks, State forests, primitive camping grounds and approved Crown land reserves and showgrounds.

Despite this availability, for many years local councils around NSW (and the country) have been lobbied by RV traveller groups to provide more 'freedom camping' options in their local government areas (LGAs).

Freedom camping (also referred to as 'free choice camping') essentially involves an RV traveller staying in a free or low-cost camping location, outside of commercial caravan parks and camping grounds.

Freedom camping typically occurs in locations such as beside a river, the ocean or in a bush setting, but it also occurs in roadside rest areas, showgrounds, Crown reserves or other land made available by local Councils (as owner or manager) and private landowners. In many cases, the land is not properly approved for camping and related activities.

RVs with on-board facilities such showers, toilets and waste water holding tanks are contributing to the popularity and practice of freedom camping, and there are countless websites, discussion boards, blogs and books dedicated to it.

Freedom campers argue that their RVs are 'self-contained' and they do not need all the facilities in caravan parks and camping grounds.³ So, councils are being asked to provide free or low-cost camping sites with more basic facilities (e.g., a dump point for grey and black water disposal, potable water, rubbish bins, toilets, picnic facilities, sometimes power) and told they need to provide these to RV travellers to entice them to visit their towns, otherwise they will by-pass their destinations.

The way these camping sites are managed varies across LGAs. Where fees are charged some councils allow volunteer and community groups to manage the sites and collect fees, while others rely on a donation or 'honesty box' system. For sites with very few facilities, overnight stays can be limited to 24 – 72 hours and only for 'self-contained' RVs, though this condition is near impossible to monitor and enforce.⁴

We understand the pressure to respond to such demands, particularly for councils keen to develop local tourism. In some cases, however, councils have chosen to provide free or low-cost camping sites as a response to environmental and safety issues, including the spread of fire, caused by RV travellers who park overnight in inappropriate areas and who sometimes dump their rubbish and sewerage waste. Rather than respond with compliance and enforcement measures (likely due to lack of resourcing), councils seek to discourage these activities by providing designated areas to camp.

In either case, we now have a situation in NSW where many local councils are providing free and low-cost 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.

³ *There is no widely accepted definition of a 'self-contained' RV. Regardless of whether freedom campers want or do not want the use of facilities like pools, laundries, camp kitchens, BBQs, games rooms, playgrounds, etc, which can be found in caravan parks and camping grounds, the reality is that all RV travellers need to regularly dispose of waste, refuel and restock water supplies. The vast majority (90%) of RVs registered in Australia are caravans that are not 'self-contained.'*

⁴ *Without the cooperation of an RV owner to allow access for inspection, it is difficult to verify if an RV is truly 'self-contained' and due to limited resources, such inspections are unlikely to be undertaken by council rangers or other local authorities. Nevertheless, in many regional areas local councils are providing for camping on council land by 'self-contained RVs.'*

This is creating unfairness and distortions in the market. Our members tell us it is extremely difficult for them 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?

One member located in inland NSW reported to us a situation where several camping sites provided by their local council were near full and their caravan park had site vacancies. This is very concerning and demonstrates the detrimental impact this government activity can have on a competing private business.

We reiterate that caravan parks and camping grounds are an extremely important part of the NSW visitor economy. In many regional areas, 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.

Instead of being able to look to their local councils for support in the development of sustainable local tourism, many caravan park operators feel they are 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 is not against competition nor the concept of freedom camping. We believe it is important that a full range of services and experiences 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.

Government-owned Caravan Parks and Camping Grounds

Many local councils also own and operate full scale caravan parks and camping grounds, providing cabin accommodation, powered and unpowered sites for camping and RVs with amenities such as pools, playgrounds and barbeque facilities.

In addition, Reflections Holiday Parks manages 37 holiday parks and 43 community reserves on NSW Crown land and operates as a profit for purpose business.⁵ Also, as part of the Environment and Heritage Group in the Department of Planning and Environment, NSW National Parks and Wildlife Service (NPWS) manages 889 NSW national parks and reserves, many of which provide camping sites and accommodation.⁶

⁵ Reflections Holiday Parks, 'About Us', accessed 8 August 2022 <https://reflectionsholidayparks.com.au/about-us/>.

⁶ NPWS, 'Camping and accommodation', NSW Government, accessed 8 August 2022 <https://www.nationalparks.nsw.gov.au/camping-and-accommodation>.

Under existing policy settings in NSW, we expect that competitively neutrality principles are being applied to these activities as they would (or should) meet the current 'significant business' and 'public interest' tests. However, the information needed for verification of this is not easily accessible, as any statements or reporting on competitive neutrality are usually set out within internal government documentation, rather than on dedicated government webpages with open access.⁷

In the examples we have seen, councils operating caravan parks and camping grounds as 'significant businesses' generally do address competitive neutrality principles in their annual reports, but the information provided is minimal. This makes it difficult for private operators to access sufficient information to determine if any concerns they have about competitive neutrality are warranted.

These concerns generally arise where council and state government-owned caravan parks and camping grounds are situated in prime locations (e.g., waterfront or camping sites in picturesque national parks) and their accommodation rates are significantly cheaper than those of nearby private sector caravan parks and camping grounds.

Private operators question whether such price discrepancies are an indication that competitive neutrality principles are not being applied or that they are not being applied appropriately or consistently.

In consultations about competition neutrality, members of our Association have made the following comments about the impacts of lower priced services in government-owned caravan parks and camping grounds:

'Pricing offered is well under the true market rate and causes private parks to keep their [sic] low. This in turn causes these parks to remain at a low standard. The government business has little profit motive. They dominate the market due to their locations and size. Council limit price increases to satisfy visitors rather than get a commercial return on the assets. We have to effectively ask our main competitor, for permission to make improvements. We are forced to share information about our future plans and DA's with our main competitor.'

'Campsites are priced lower than surrounding private operators. Firewood and gas are resold and priced at cost plus a minimal amount. These operations do not price based on a commercial return on assets (ROA), or revenue (Gross Margin). The low prices do two things: 1) depress the market so private operators cannot increase prices to obtain a commercial return 2) attract a substantial number of customers attracted to their unfair low prices.'

We acknowledge that a government business can comply with competitive neutrality principles and still price a product or service below that of a private competitor. Competitive neutrality policies are about requiring government businesses to assess their advantages and disadvantages from being government-owned and offset any net competitive advantages.

However, whether governments are undertaking the process and doing it correctly can be difficult to determine when there is limited transparency around a government decision-making.

⁷ We note NPWS state on their website that the principle of competitive neutrality will apply 'to events held in parks so that NPWS events do not enjoy a competitive advantage simply as a result of public-sector ownership' accessed 8 August 2022 <https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/park-policies/events-functions-and-venues>. We were not able to find a similar statement regarding camping.

COMPETITIVE NEUTRALITY OBLIGATIONS

Consultation Questions

- 1. What obligations should competitive neutrality policies place on government business activities?*
- 2. What guidance do government agencies require to support them to correctly apply competitive neutrality principles to their activities?*

While some improvements could be made in relation to transparency, accountability and the complaint handling process (see submissions below), the obligations placed on government business activities under NSW competitive neutrality policies (i.e., commercialisation, adhering to pricing guidelines and being explicit around any subsidies made for policy reasons) are generally appropriate.

We also support the presumption that the benefits of applying competitive neutrality generally outweigh the costs. In our view, such costs are largely administrative and mainly incurred in the initial phase of applying the competitive neutrality principles, whereas the benefits are likely to be ongoing.

Our main concern is that governments are not fully and consistently recognising the role that private caravan parks and camping grounds play in local economic development and the impact their decisions and activities are having on them.

Councils and State government agencies, whether they are operating commercial caravan parks and camping grounds or providing free or low-cost overnight camping sites, should be required to apply principles of competitive neutrality as a means of facilitating competition with private caravan parks and camping grounds on fair terms.

In relation to government (primarily councils) providing free and low-cost camping sites, we understand there needs to be a balance between not putting private caravan parks and camping grounds at a disadvantage and meeting the needs of RV travellers and the local community.

However, while there may be genuine demand for RV camping sites in some areas in NSW in excess of what can be provided by local private businesses, this does not necessarily mean there is a market failure and that demand has to be met by councils stepping in to provide free or low-cost sites.

In addition, the threat of some councils facing negative outcomes if free and low-cost camping sites are not provided (e.g., RV travellers by-passing a town) is also not evidence of a market failure that justifies the council entering the market.

Councils should be required to investigate the range of options available. In the first instance, councils should undertake an audit of what caravan parks, camping grounds, national parks, State forests and other camping areas already exist in their LGAs. Average occupancy rates for those sites should be analysed and what associated services are already being offered to RV travellers.

Where there are gaps, rather than just providing free and low-cost camp sites and competing with private businesses, councils might consider working collaboratively with their local caravan parks and camping grounds, and the wider tourism industry, to encourage more

investment and/or develop partnership programs and promotions that entice budget conscious travellers to their area.

In most LGAs there is a wide range of services already available to RV travellers at various price points. Improving visitor numbers is a matter of better communicating those services, which can be done via VICs, websites, brochures and other marketing and communication channels.

Such activities would alleviate the need for councils to maintain their own facilities and efforts could be redirected towards projects to help drive visitors into local tourism infrastructure. Councils should be transparent in their decision making, informed by thorough research and genuine consultation with their communities, including local businesses, to find the best solution.

Where free or low-cost camping sites are provided by councils, competitive neutrality obligations should apply to these activities. Unfortunately, these activities are not currently captured by the 'significant business' test and councils are not treating them as a 'business activity' because they are free or do not generate a sustainable income.

We note the *NSW Government Policy Statement on the Application of National Competition Policy to Local Government, June 1996* (NSW Policy Statement), and the NSW Department of Local Government's *Pricing & Costing for Council Businesses - A Guide to Competitive Neutrality July 1997* (Local Government Guide) are the relevant policy documents for information on the application of competitive neutrality principles to the business activities of local councils.

The Local Government Guide provides that councils should regard 'water supply,' 'sewerage services,' 'abattoirs' and 'gas production and reticulation activities' as businesses.⁸ In relation to other activities, councils determine whether an activity will be treated as a business, however they 'must be able to justify any decision if requested by the community (or if a complaint is made in relation to unfair competition).'⁹

The Local Government Guide sets out the following, non-exhaustive considerations:

- *'Is the activity intended to make a profit? An activity which is intended by council to make a profit clearly has a strong business element to it.'*
- *Does council bid for external contracts? Any activity in which council bids for external contracts should be regarded as a business activity. For example, council's staff may tender for external contracts as well as providing internal services. Despite the in-house element of the activity, the decision to tender externally means that the council should regard the whole of the activity as a business, unless the internal unit and external bidders are completely separate. Similarly, if a council unit intends to or has participated in a competitive tendering process called by council, the activity of the unit should be regarded as a business activity.*
- *Is the activity provided on a fee for service basis? A wide range of activities could be included in this. Once again, council will need to balance this element with others in any decision.*

⁸ NSW Department of Local Government, 'Pricing & Costing for Council Businesses - A Guide to Competitive Neutrality,' NSW Government, July 1997, p. 6.

⁹ *Ibid.*

- *What economic impact does the activity have? For example, a small scale activity, possibly included within a larger function, may not have a significant effect on the local or regional economy. It may also be inefficient to separate it from the larger function.*
- *What is the nature of the activity and how important is it to customers? A particular type of activity may be difficult to treat as a business, for example some community service functions. The reverse may also be true in relation to some activities.*¹⁰

Activities that are determined to be businesses then need to be categorised for the purposes of competitive neutrality.

For Category 1 businesses (annual sales turnover \$2M per annum and above) the principles of competitive neutrality are required to be applied and in the case of these types of business activities the benefits of applying competitive neutrality are expected to outweigh the costs. For Category 1 businesses councils must:

- *adopt a corporatisation model*
- *apply full cost attribution including:*
 - *tax equivalent regime payments*
 - *debt guarantee fees, where the business benefits from council's borrowing position by comparison with commercial rates*
 - *return on capital invested*
- *make explicit any subsidies paid to the business, and*
- *operate within the same regulatory framework as private businesses.*¹¹

In relation to Category 2 businesses (annual sales turnover less than \$2M per annum) councils have more flexibility in their treatment and determination of the level of competitive neutrality to be applied. For Category 2 businesses councils:

- *must make any subsidy to the business explicit as part of the calculation of costs*
- *should apply full cost attribution where practicable*
- *are free to determine the extent to which the business will be separated from other associated mainstream activities*
- *must operate within the same regulatory framework as private businesses.*¹²

Importantly, the Local Government Guide states on page 8 *'although council has some discretion in the treatment of Category 2 businesses, it must still abide by the board principle and intent of competitive neutrality. Council should be sensitive to the impact that the business could have on the local and/or regional business community. The principle of competitive neutrality is still as applicable in these businesses as in larger ones.'*

Despite this, the level of discretion provided to local councils for Category 2 businesses is resulting in councils not identifying the provision of free and low-cost camping sites as 'business activities' or 'significant business' activities, even though camping sites can be provided with a dump point (i.e., 'sewerage services') and they can have a direct, adverse impact upon local private sector caravan parks and camping grounds.

As a result, NSW competitive neutrality policies are not being applied in a market segment where they are necessary. If the purpose of competitive neutrality is to enable fair competition

¹⁰ *Ibid.*, p. 7.

¹¹ *Ibid.*, p. 8.

¹² *Ibid.*

between government and private sector businesses, the system is not working effectively at the local level in the caravan and camping industry.

Privately operated caravan parks and camping grounds are currently being disadvantaged by the actions of their local councils supplying free and low-cost camping sites for RV travellers with advantages arising from their public ownership. These practices are working against the creation of a sustainable domestic tourism sector.

Councils should be required to:

- Assess and determine, through meaningful community consultation, whether providing overnight camping sites is the best solution.
- Identify the provision of overnight camping sites as a business activity and apply competitive neutrality.
- Account for the costs of providing these sites when setting prices and be consistent with the approach followed by private operators.
- Be clear and transparent about the contribution of any ratepayer funds (subsidies) to these sites.
- Be more transparent about their decisions and activities, including publishing information that is easily accessible and provides sufficient detail for a member of the public to determine whether competitive neutrality principles have been applied by a council to a particular business activity and how.

In relation to cost approaches, there is no such thing as a free campsite. When a government entity decides to offer overnight camping sites and services to RV travellers there are several costs involved.

These can include the costs of providing water, power, dump points and other waste facilities. There are site management costs such as staff wages, repairs and maintenance. Effective compliance and enforcement to ensure RV travellers are doing the right thing is also a big cost that is often under-resourced across councils. There are also risks and public liability issues, so sites should be appropriately insured.

Providing such sites and services to RV travellers for free, or at rates in the vicinity of \$10 per night or less, is unlikely to reflect the true business costs associated with these activities. As such, most free and low-cost camping sites provided by councils are being subsidised by ratepayers and councils are competing unfairly without applying full cost attribution to these operations.

In our view, where councils operate overnight camping sites, they should be required to appropriately apply the competitive neutrality principles and implement the full cost attribution model, including taking account of costs that a private business would incur in the provision of the same service e.g., insurance, rates and taxes. They should also be required to conduct regular reviews to ensure that competing services continue to reflect full cost attribution.

Insurance is an important costs consideration, particularly at this time. In providing free or low-cost camping sites, we are concerned that councils are giving no or limited consideration to public liability issues – something which private sector operators must consider.

In 2010 and 2011, the Office of the Tasmanian Economic Regulator (OTTER) received four complaints from private caravan park owners about councils providing free or low-priced overnight camping services. The complaints were that the pricing (or lack of pricing) of these council-provided services did not reflect the costs of providing these services and the

councils were in breach of competitive neutrality principles under National Competition Policy.

The OTTER investigated and agreed with the caravan park owners. It found the councils had acted unfairly against the operators by providing free unpowered caravan and camping sites. In each case, it found that the services provided by the council constituted a significant business activity because it was competing in a market with private caravan park owners and determined that the competitive neutrality principles of full cost attribution should be applied.

The Economic Regulator also found that no public liability insurance was allocated to the relevant camping sites and, as such, did not appropriately reflect the level of risk associated with camping activities. The Economic Regulator went on further to note that *'insurance should take into account the nature of the activities on the sites and the risk of claims in relation to those activities, i.e. be calculated on the same basis as private caravan sites' public liability insurance is levied.*

At the moment we are in a very hard insurance cycle where private caravan parks are facing challenges in securing adequate and affordable public liability and property insurance coverage. Insurance markets and risk appetites have been shifting dramatically and for those caravan parks who are managing to secure insurance for their activities, they are seeing significant premium increases on renewal (some as high as 300%).

These issues have been raised on behalf of the industry in consultations with the Australian Small Business and Family Enterprise Ombudsman, the Insurance Council of Australia and the NSW Small Business Commissioner. Insurance for private caravan parks and camping grounds is a significant cost that should not be ignored by governments competing in this space.

In relation to loss leader activities, we see no compelling policy reasons to allow government businesses to enjoy net competitive advantages in the caravan and camping sector due to government ownership, even on a temporary basis. All businesses should earn a commercial rate of return and start-up businesses (whether government owned or not) may be higher risk, but they are no exception.

In the caravan and camping industry, private-sector caravan parks and camping grounds are often adversely impacted by 'freedom camping trials.' These are effectively start-up operations, conducted by local councils, to trial (and often extend) the provision of free and low-cost camping for RV travellers at pilot sites in council reserves and other areas and during peak holiday seasons.

One example is the Great Lakes Council Camping Trial at Tuncurry Rockpool over the 2015 Christmas period. In this case, feedback from members of our Association was that the trial was commissioned and implemented by senior council management without any prior consultation with the community, local businesses or concurrence from the Mayor and Councillors.

This trial placed the Great Lakes Council in direct competition with its local private-sector caravan parks and undermined the local government planning regulations that the local council was responsible for administering. It was only after community outrage that the trial was terminated in mid-January 2016, but not without negative impacts on private sector caravan parks that could have been addressed through the application of competitive neutrality.

We acknowledge that expanding the scope of competitive neutrality to apply to free and low-cost camping sites will require time and resourcing for governments to review and implement policy changes.

Additional support will need to be provided to ensure councils are not overburdened and able to correctly apply competitive neutrality principles to their activities. This should include:

- Updated guidelines and clearer policy statements about the application of competitive neutrality.
- Additional resources such as decision trees, checklists, and reporting templates to simplify processes as much as possible.
- Initial and ongoing training.
- Access to the assistance and feedback of a third party such as Treasury or IPART.

Our focus in this section has been on councils. However, we wish to make clear that state government agencies providing free or low-cost camping sites should also be subject to competitive neutrality obligations and provided with additional support.

RECOMMENDED IMPROVEMENTS

Consultation Questions

3. How should governments identify the activities that need to apply competitive neutrality principles?

4. How often should government businesses re-assess their activities for competitive neutrality? What circumstances could trigger a re-assessment?

9. Where are the regulatory and policy gaps or overlaps with respect to the scope of competitive neutrality in NSW?

Scope of Competitive Neutrality in NSW

As advocated above, competitive neutrality in NSW should be expanded to apply to government owned camping sites that are provided for free or at low cost, as well as commercially operated government-owned caravan parks and camping grounds.

Due to the current application tests and guidelines in NSW, competitive neutrality principles are not being applied to the provision of free and low-cost camping sites. They are falling outside current policy parameters regarding ‘business activities’ and ‘significant business,’ despite the fact these activities can have a real and serious impact on private sector caravan parks and camping grounds.

In relation to council owned sites, the \$2 million threshold for Category 1 businesses is an arbitrary and outdated measure and the discretion given to councils regarding Category 2 businesses is allowing councils to bypass applying competitive neutrality principles in a sector where they are needed.

Amendments could be made to the application tests, but we suspect several other stakeholders will advocate for the threshold to be increased rather than decreased. A simpler approach for our sector could be to clearly define the application of competitive neutrality principles to government owned camping sites and issue a new policy statement and guideline, similar to the approach taken in Tasmania.

Tasmanian Model

Following the Tasmanian cases outlined above, in May 2012 the Tasmanian Government released the *Statewide Directions Paper – Review of Council Recreational Vehicle Overnight Camping Services* (Statewide Directions Paper), which made the following acknowledgement:

‘The provision of free or low-cost camping services by a council may be a useful short-term solution to some of the amenity issues facing councils, for instance to prevent RVs parking and camping on the side of the road and to attract visitors to the area. However, these measures may discourage private caravan parks from investing and operating in the area and reduce the benefits from a competitive market. These benefits include efficient market prices (reflecting the costs to provide and operate such services), customer choice through a wide range of services and the development of services that customers want, leading to economic development. Setting prices to recover costs will, in the long term, enable councils to contribute to a more sustainable overnight camping industry.’

The Statewide Directions Paper also acknowledged that *‘each council-owned service in Tasmania is likely to be competing with a privately-owned caravan park, either within its own municipality or in surrounding municipalities and needs to price its services to reflect costs.’*

In 2017 there was a review of the application of competitive neutrality principles on public-owned camping sites in Tasmania to provide further clarification. Stakeholders, including councils, industry and state government agencies, were consulted and the outcome of the review was a new policy statement issued by the Department of Treasury and Finance in January 2019, the *National Competition Policy: Applying Competitive Neutrality Principles to public camping in Tasmania*.

Intended to provide clarity and certainty for stakeholders, the policy statement:

- defines public camping,
- clarifies relevant businesses activities,
- provides a clear threshold for identifying significant business activities,
- clarifies that full cost attribution for public camping facilities should only be applied where appropriate, and
- provides a new process for the Treasurer to issue a Ministerial Statement regarding a specific camping site, which has the effect of exempting the site from full cost attribution principles where a public benefit assessment has demonstrated it is appropriate.¹³

As a result, Tasmanian councils now have formal guidelines to assist them in understanding how (not if) to apply competitive neutrality principles under the National Competition Policy when providing overnight camping sites. There is also a Full Cost Attribution Checklist (Appendix A to the policy statement) and a Public Benefit Assessment Guide (Appendix B).

A threshold of 10% of the market within a 60-kilometre drive applies for determining significant business activity. If a council is providing free or below cost public camping above the 10% market share threshold, the council can either choose to apply full cost attribution pricing principles or conduct a public benefit assessment. If they do the latter, the onus is on

¹³ Department of Premier and Cabinet, ‘Camping sites and competitive neutrality’, Tasmanian Government, accessed 10 August 2022 https://www.dpac.tas.gov.au/divisions/local_government/legislation/past_reviews_and_inquiries/camping_sites_and_competitive_neutrality.

the council *‘to conduct an objective public benefit assessment to substantiate that the public benefit will not be served by applying competitive neutrality principles.’*¹⁴

Importantly, the policy statement provides that councils *‘must first consult with their communities, including private camping providers’* when undertaking a public benefit assessment. It also states, *‘while a public benefit assessment may only be formally required where the provision of public camping exceeds 10 per cent of the geographic market, public entities are encouraged to undertake a public benefit assessment when evaluating whether to allocate public resources towards the establishment and maintenance of any public camping services or facilities.’*¹⁵

If a public benefit assessment concludes that there is a net public benefit from providing public camping in a certain location without applying full cost attribution principles, then a council can get a Ministerial Statement from the Treasurer confirming the public benefit to not apply full cost attribution. The council would then be certain it can provide free or low-cost camping in that location in compliance with the terms of the Ministerial Statement.

We advocate for a NSW equivalent to the Tasmanian Policy Statement for our sector to address the limitations of the current competitive neutrality policies. Giving NSW councils such a high level of discretion in determining to which government business activities competitive neutrality should apply is not working well for the caravan and camping industry.

We support the development of clearer definitions, criteria and factors for consideration in applying competitive neutrality to camping sites provided by all levels of government. Governments should also be required to re-assess their activities for competitive neutrality at regular intervals or when triggered (e.g., expansion or contraction).

Whether the same or a similar approach to the Tasmanian model is adopted in NSW will need to be the subject of further consultation with local councils, state government agencies, caravan park owners, RV user groups and other industry stakeholders. We are very keen to be involved in that process and to assist in any way we can.

Increasing Transparency and Accountability

Consultation Questions

- 5. How often should the competitive neutrality framework in NSW be reviewed?*
- 6. What types of information should government businesses publish to demonstrate compliance with competitive neutrality policies and when? What types of information should not be published?*

We agree that competitive neutrality policies in NSW should also be subject to regular review. Markets are dynamic and subject to ongoing change and government activities that are not initially considered to be significant can increase in market share.

As set out in the Issues Paper, the NSW Government last reviewed competitive neutrality policies around 20 years ago and the economy has changed significantly since then. The caravan and camping industry is one sector where government activities have increased.

¹⁴ Department of Treasury and Finance, *‘National Competition Policy: Applying Competitive Neutrality Principles to public camping in Tasmania,’ Tasmanian Government, January 2019, p 12.*

¹⁵ *Ibid.*

Critical to ensuring competitive neutrality policies and processes remain fit for purpose, front of mind and clearly understood, is regular reviews. We believe this should happen at least every 10 years.

Regular reviews can also help ensure governments remain committed to implementing competitive neutrality, although in our view the primary driver for this would be better reporting and public accountability. The process of a government entity applying competitive neutrality principles to its activities should be as transparent as possible and a critical part of transparency is information disclosure.

We are concerned, however, that current administration and oversight arrangements for competitive neutrality are lacking at the state and local government level. Public disclosure of governments' compliance with competitive neutrality is very limited. It is often exceedingly difficult for private operators to obtain access to information that is sufficient in detail to allow them to assess whether their concerns are valid or to bring a complaint.

As identified in the Issues Paper we agree that *'publishing information about its decisions provide stronger incentive for government organisations to comply'* (page 50) and such information can help competitors who suspect a breach of competitive neutrality understand those decisions and raise a complaint if they think competitive neutrality policy has not been appropriately applied.

To increase government transparency and accountability in NSW, reporting processes need to be improved. This would ensure information is available to the public that is easily accessible and contains sufficient detail for a person to satisfy themselves as to what the relevant government entity is doing and that it has correctly applied competitive neutrality to its activities.

At a minimum, governments should be required to include information on competitive neutrality compliance in their annual reports and on their websites, including:

- A list of all business activities.
- Business activities to which competitive neutrality has been determined to not apply – this should include the reasons why, including any cost-benefit analysis showing no net public benefit from competitive neutrality.
- Business activities to which competitive neutrality does apply and the steps taken to comply with competitive neutrality policies. This should include details of full cost attribution reflected in pricing or the public policy reasons for not applying full cost attribution.
- Details of subsidies to all business activities.
- The process for a person to make a complaint about competitive neutrality.

We note much of this information is already required to be prepared by governments and the change will be transforming it into publishable material. To minimise as much as possible the administrative burden of this process and any additional reporting, guidance should be produced setting out minimum information requirements and templates to assist agency reporting.

Improving the Complaints Handling Process

Consultation Questions

- 7. How can the processes for lodging or investigating complaints be improved?*
- 8. What are the benefits and disadvantages of retaining a separate process for complaints about local government businesses?*

There are several issues in the current complaint handling process for competitive neutrality complaints that need to be addressed.

Firstly, there is a lack of community awareness about competitive neutrality and how, and to whom, to make a complaint. This is one of the reasons why complaint numbers in NSW are so low. One member of our Association was confused by the complaints process for a state government business and, after spending 1½ years on the matter, gave up pursuing their complaint.

One of their reasons was the first step of the two-stage complaint handling process for competitive neutrality complaints. Requiring a private operator to lodge a complaint in the first instance with the relevant State government business or local council that is the subject of the complaint can be problematic for various reasons.

For example, councils operating caravan parks and camping grounds and/or providing free or low-cost camping sites in competition with private operators also exercise regulatory and planning approval functions under the *Local Government Act 1993* and the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*. Understandably, many private operators find it difficult to be subject to the regulatory authority of an entity that is effectively a major competitor, and many are reluctant to make a complaint due to fear of reprisal.

This fear stems from caravan parks needing council consent for redevelopments and the fact that they are not allowed to carry on business without an approval to operate. This is currently an ongoing requirement and we have seen councils use this planning requirement as a means of rectifying alleged non-compliances, notwithstanding existing uses and exemptions.

For better complaints handling, an independent body such as IPART should be tasked with investigating and ruling on competitive neutrality complaints not addressed by government, including local councils. There also need to be mechanisms to enforce a ruling on a complaint and incentives for ongoing compliance.

In relation to complaints about breaches by local councils, the NSW Office of Local Government (OLG) is not perceived as truly independent and, as noted on page 57 of the Issues Paper, where the OLG does investigate a complaint, it is unclear whether a council is required to respond to a finding that it has not followed competitive neutrality.

It is interesting to note that a search for 'competitive neutrality' on the OLG website produces the message '*Sorry, no results.*' On the 'Contact Us' page, there is a section on 'Complaints about Council' but no specific mention of the process for raising competitive neutrality complaints. The focus is on the conduct of Councillors or council staff.¹⁶

¹⁶ NSW Office of Local Government, 'Contact Us,' NSW Government, accessed 11 August 2022, <https://www.olg.nsw.gov.au/about-us/contact-us/>.

If private operators are expected to dedicate precious time and resources pursuing a complaint, they should be able to access clear information and processes and have confidence there will be an outcome in the complaints handling process.

Considering governments also exercise a regulatory function in some markets, and operators may have other sensitive reasons for not wanting to raise complaints directly with a government entity, complainants should also be given the option of raising their complaints directly with the independent complaints body in the first instance and anonymously if they wish. It then follows that the independent body should be able to self-initiate an investigation, rather than wait for a referral from a Minister.

Where anonymity is preferred, there could also be an option for an industry group to raise a complaint on an operator's behalf. As an example, in NSW section 144 (1) of the *Motor Dealers and Repairers Act 2013* allows a motor industry group¹⁷ to apply to the 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.

As to reporting on complaint outcomes and ensuring ongoing compliance, governments should be required to respond publicly to the findings of complaint investigations, including adopting or not adopting any recommendations for remedial action and reporting back to complainant (if known) or the industry group.

An independent body charged with investigating complaints should be able to publish findings on its website too and conduct follow-up reviews with the relevant government agency. It could also be useful to publish case studies of complying government businesses that are setting good examples of competitive neutrality in various industries.

CONCLUSION

Thank you for considering our feedback. As the peak industry body representing holiday parks and residential land lease communities, CCIA NSW is an important stakeholder in relation to the application of competitive neutrality policy in NSW.

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

¹⁷ Our Association is a motor industry group.