

Competitive Neutrality Review  
Independent Pricing and Regulatory Tribunal  
PO BOX K35  
Haymarket Post Shop SYDNEY NSW 1240

Our Ref:  
Date:

22804161  
17 August 2022

To Whom It May Concern

## COMPETITIVE NEUTRALITY IN NSW – ISSUES PAPER

Thank you for providing opportunity to comment on the issues paper currently open for submissions regarding competitive neutrality in NSW.

Wollongong City Council is located within the Illawarra region, an hour south of Sydney. We currently operate three businesses defined as category one commercial businesses, including waste, leisure centres and tourist parks.

Please find below a response to the draft issues paper that directly affect the businesses operated by Council.

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?
  - *What challenges do you face when applying the guideline or estimating cost?*
  - *Why do government businesses require discretion to charge below the competitively neutral price?*
  - *How could the policies and guidance better support more government businesses to price in a competitively neutral way?*

Our local government setting has three 'commercial' businesses and therefore are in the minority of activities that Council provides to the local community. Due to this we apply a simple process of categorising commercial activities as anything over \$2 million. Our ability to apply accurately any other requirements would be very difficult due to staff expertise and availability in the current setting. The ability to define and potentially quarantine commercial operations and to benchmark pricing structures/industry standard promotional pricing best practice could alleviate this issue.

Clearer definitions around what is considered a commercial business, not just based on monetary thresholds and how these can be applied in local government contexts where services are co-located at one facility would be beneficial. Assistance in defining the activities to distinguish fee for service services and commercial activity by activity would be beneficial in a local government context.

Local government policies and processes are also universally applied across the organisation. We are unable to change these processes based on the business utilising them. For example, our procurement requirements are the same for all businesses, we are also required to advertise our fees and charges prior to their approval for public comment and then these cannot be amended without a Council resolution. Some of our policies also sometimes provide significant disadvantage to our commercial businesses compared to our private competitors. For instance, in rating tender applications 5% of the overall assessment is based on strengthening local community, providing an advantage to local suppliers. We also need to consider social procurement policy when selecting suppliers. Our competitors can but do not have to.

Our leisure facilities run at a significant loss, not because they are priced cheaper but due to the community-based programming and associated costs involved in operating in a local government environment. The community as rate payers expect our facilities to be provided at a lower cost as they are run for and paid by the community.

Our commercial businesses are competing within Council against all other services and therefore are sometimes unable to provide a high end 'commercial' service as we may not be allocated funding as there are other needs and priorities within the Council that funding needs to be provided to. Any profits we make are directed back into Council's general funds and used for a variety of purposes, not directly investing back into the businesses where they were raised. This environment is very different to that of the private enterprise where upgrades and funding can be applied quickly and directly towards the business in which they came from.

Our leisure facilities are defined as 'commercial' however over half of their operations are community based. Being able to separate costs such as customer service, cleaning etc would be very difficult in determining full costs of the services provided and price points for all services. These programs are expected by our community and at a cost that is affordable to them. Unlike our commercial competitors we must meet our community's expectations. Our customers dictate our fees and what they will pay as we are a government facility which they are paying for through their rates.

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?
  - *Reflect on the monetary threshold used to determine significance.*
  - *What are the limitations of monetary thresholds?*
  - *Do councils have expertise to correctly apply the tests?*
  - *Should local government have a different application test from state government agencies?*

The report advised that to define a commercial business as a significant business is based on turnover, where the amount (\$2million) has not been adjusted in 20 years. Local Government services by nature pool various activities into one facility which can include both commercial aspects but also have significant community programs and facilities. Combined these facilities go over the \$2 million mark however individually would fall well short. They are however located within one facility therefore treated as one.

Local government provides services directly to the community in which they are in. We are overseen by community representatives (our Council) with all monies generated going back into our community. We provide very diverse and different services to the community however have the same policy and procedures applied across all, irrespective of their commerciality. Being able to change a system for our 3 commercial businesses would be difficult and therefore for this purpose our businesses should be looked at differently and with different rules applied.

Local government provides a lot of services that the rest of the community doesn't, whether these are commercial, or community based. This needs to be considered not just a turnover benchmark. Being able to consider impact to marketplace (whether fulfilling an unmet demand or niche market), turnover, market share, whether organisational KPIs reflect commercial (financial return) or service metrics are all important.

Reassessment of activities that are considered 'commercial' should be benchmarked annually from a pricing perspective. A review should be triggered by significant change to service level, KPIs or strategic/organisational direction which can occur through Council's Strategic Plan based on the communities wishes/needs.

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?
  - *What information should be considered commercial in confidence?*
  - *How could releasing this information put government owned businesses at a commercial disadvantage?*

Local Government requires a significant amount of transparency and as such a lot of information about our business is open and available already for the community to view. All of Council's plans, upgrades, fees etc are on display publicly through our website and every year undergo a public consultation process before going to Council for approval. Most other forms of information are also already accessible through applying to

Council via the Government Information (Public Access) Act 2009. Despite this, local government should be treated no different to their private counterparts with general compliance information available however no commercial in confidence provided that may competitively disadvantage the business.

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?
  - *How do you deal with competitive neutrality complaints?*
  - *Why are separate state and local government complaints bodies necessary?*
  - *Should a complaint handling body be able to self-initiate an investigation?*
  - *What information should be published about competitive neutrality complaints and enquiries?*

Local government has clear guidelines around complaint handling with the community able to make complaints which are addressed by Council officers. If these complaints are not addressed appropriately, they have already have avenues to be able to go to including their local representatives. Our community every year can also question all Council fees and charges, capital, and strategic plans through our annual planning process which are publicly displayed for 28 days prior to approval. This process is very transparent and allows the community to be able to question any concerns within the documents that are then reviewed and reported to Council for consideration. This is a yearly process and is very vigorous.

If you would like any further information, please do not hesitate to contact Jenny Towers, Commercial Business Manager on [REDACTED].

**This letter is authorised by**

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