

- Please mute your microphone
- Please turn on your camera (webcam)
- We will start at 10:02am



IPART Independent
Pricing and Regulatory
Tribunal | NSW

Competitive Neutrality Workshop 3

IPART Competitive Neutrality Review



Agenda

- 01 This review and today's aims
- 02 Session 1 – An overview of the NSW competitive neutrality framework
- 03 Session 2 – When should competitive neutrality apply?
- Short break
- 04 Session 3 – Complaints
- 05 Session 4 – Transparency and accountability



Welcome and Acknowledgement of Country

Carmel Donnelly
IPART Chair

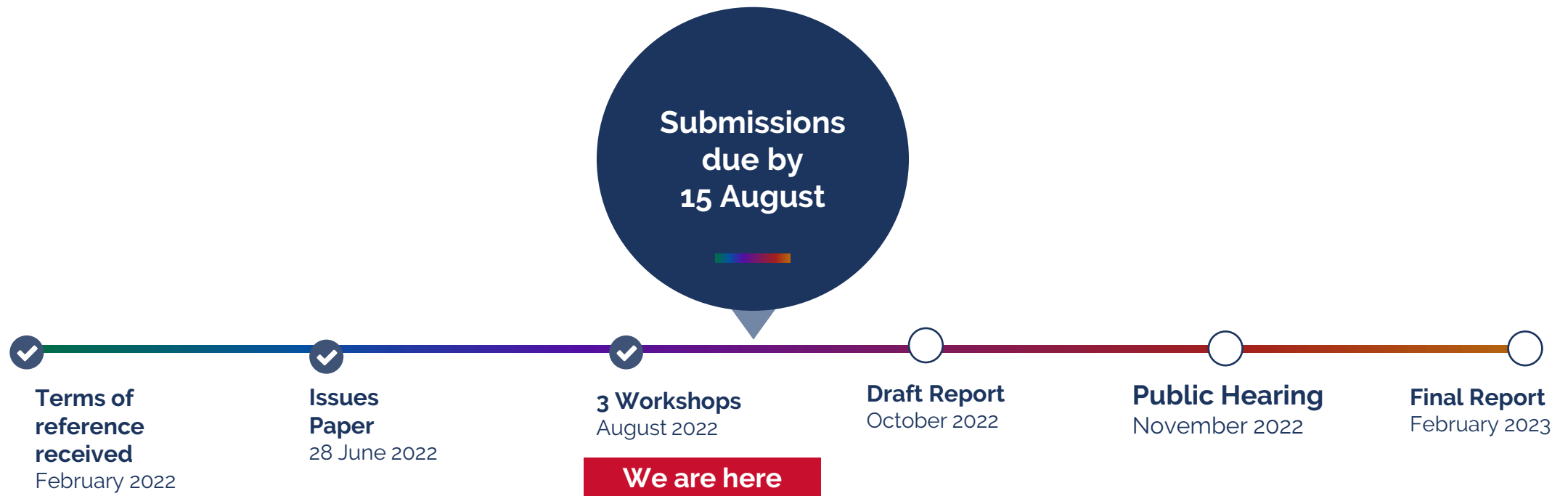
Overview of our review

A broad review scope

Evaluate the scope and effectiveness of policy and guidance documents relating to Competitive Neutrality in NSW

- whether current policies are best practice
- potential improvements
- benefits and costs of expanding the scope of current policies

Timeline and today's workshop



Competitive neutrality

Objective

Competition Principles
Agreement:

“The elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business”

At this workshop, we are particularly interested in:

- Definitions and guidance on:
 - What is a business activity?
 - When is it significant?
 - How to assess benefits and costs?
- How effective is the complaints mechanism?
- What level of transparency is needed?

Our aims today

Your feedback will inform our draft report

We are here to:

- Hear your experience with current policies
- Understand the scope and coverage of current policies
- Identify and explore issues with current policies
- Consider improvements and best practice
- Understand your priorities for change

We will publish a summary report of what is discussed at each workshop on our website.



9 AUGUST 2022

IPART Competitive Neutrality Review

Workshop



Workshop Agenda

Session 1 - Overview of the NSW competitive neutrality framework	Deloitte	10:15am
Session 2 – When do competitive neutrality principles apply?	Deloitte	10:35am
Break		10:55am
Session 3 – Competitive neutrality complaints	Deloitte	11:05am
Session 4 – Promoting transparency and accountability	Deloitte	11:25am
Next steps	IPART	11:45am
Feedback	Deloitte	11:50am
Close	Deloitte	12:00pm



Scope of this workshop

The workshop will only cover topics and issues surrounding competitive neutrality. Decisions have already been made about what stakeholders can and cannot influence as part of this review,

What stakeholders can influence	Decisions that have already been made
<ul style="list-style-type: none">• What government activities are captured by the competitive neutrality policies and processes• Design and application of the significance test• Application of the public interest test• What obligations apply to activities that are covered• What the complaints and investigation process should look like• How and when we consult (over and above what is required by the terms of reference)	<ul style="list-style-type: none">• At least 1 public hearing and an 'issues paper' and 'draft report' made public• Outcomes must be consistent with national competition policy agreements (including that there will continue to be a competitive neutrality policy in NSW)• Review must cover all the items listed in the terms of reference• The review is not an investigation of compliance with competitive neutrality policies and will not investigate individual complaints• Review timeframe – we are required to report in February 2023

The workshop **will not** cover broader topics and issues such as privatisation and the merits of competitive neutrality.

The rules of the road throughout our session

If you are comfortable, please add your organisation to your name.



Be Present

Unplug, Turn off, Tune in – limit distractions by saving emails and phone calls for designated breaks



Be Engaged

Actively participate in the discussion and ensure your opinion is stated and heard



Be Candid and Transparent

Speak open and honestly – raise instances of misalignment where they exist



Be Decisive

Focus conversation on addressing what needs to change



Session 1

An overview of the NSW competitive neutrality framework

What is competitive neutrality?

Competitive neutrality requires government businesses to assess their advantages and disadvantages from being government owned and offset any net competitive advantages. It aims to create a level playing field between government businesses and the private sector. Competitive neutrality policies impose 3 main sets of obligations on government businesses depending on their characteristics/circumstances. It is important to note that not all obligations apply to every business.

Obligations include:

1

Corporatisation and commercialisation of significant government businesses.

2

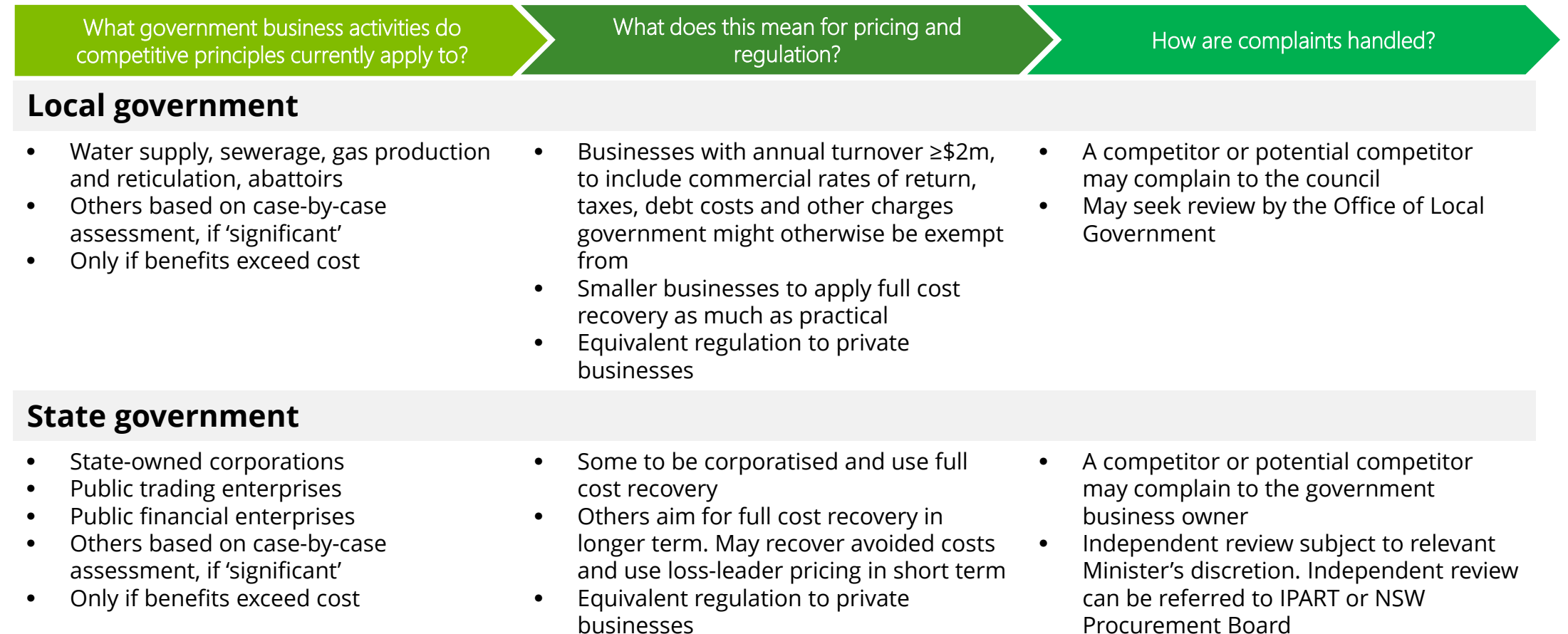
Adhering to pricing guidelines that apply to government businesses that operate in competition with private businesses.

3

Being explicit about any subsidies made for policy reasons.


NSW competitive neutrality framework at a glance


Competitive neutrality policies apply to both state and local government.




Why is competitive neutrality important?

Competitive neutrality is essential for supporting competition, innovation, quality and efficiency.

 **Promotes competition**
Competitive neutrality policies are important because they create opportunities for better quality and greater choice for customers, by supporting competition, innovation, quality and efficiency.

 **Promotes innovation**
Competitive neutrality aims to ensure that less innovative government businesses do not dominate other firms, and that private sector businesses who are innovative and efficient can more easily enter the market.

 **Enables efficient resource allocation**
Competitive neutrality aims to ensure prices reflect the true value of products, such that resources like labour, capital, and raw materials are efficiently allocated. If costs were not fully accounted for, resources would be allocated inefficiently, and less production of society's wants and needs would occur.

Competitive neutrality policies support the market

○ **Competitive neutrality aims to reduce the potential for advantages for government businesses**

Government business can impact the private sector through undercutting and providing cheaper business offerings. This is because government businesses often have cost and non-cost advantages through not having the same impetus to earn profit, not having to pay certain taxes and being exempt from some regulatory constraints, unlike a private business.

○ **Without competitive neutrality policies, private businesses would be negatively affected**

If government businesses did not account for these cost and non-cost advantages, then they would be able to unequally or unfairly undercut private businesses, which could potentially lead to the failure of some private businesses.



CASE STUDY

ANSTO and PETNET

ISSUE

The Commonwealth Government's Australian Nuclear Science and Technology Organisation (ANSTO) wholly owned PETNET Australia Pty Ltd, which manufactured a type of nuclear imaging medicines in a market where other manufacturers exist. A competitor alleged PETNET's pricing did not cover costs and thus it was not generating commercially acceptable profits, allowing PETNET to obtain a competitive tender with NSW hospitals.

IMPACT

PETNET's return on assets needed to exceed the long-term government bond rate, and include a margin for risk. ANSTO claimed PETNET's long term rate of return was between 18-25%, however a competitor alleged PETNET could not achieve a positive longer-term return without gaining a monopoly in NSW. An investigation by the Productivity Commission found that PETNET was likely unable to achieve a commercial return on equity as it could only make a return of around 5.3% over 10 years. This meant PETNET was in an "ex ante" breach of competitive neutrality obligations.

Discussion





Session 2

**When should competitive
neutrality principles apply?**

When do competitive neutrality principles apply?

Competitive neutrality principles apply to **significant government** (both state and local) **businesses** where there is a **public interest** to apply the principles. The following three tests determine whether competitive neutrality is applicable to government businesses:



Though the overarching test is the same, there is some distinction in its application between state and local government business activities.

**Discussion about where
there are issues and where
improvements can be made**



5 minute break



Grab some water, coffee or tea and a snack



Close your eyes, take a deep breath and hold it for 10 seconds, then exhale slowly – repeat this 3 times



Stretch or use the bathroom



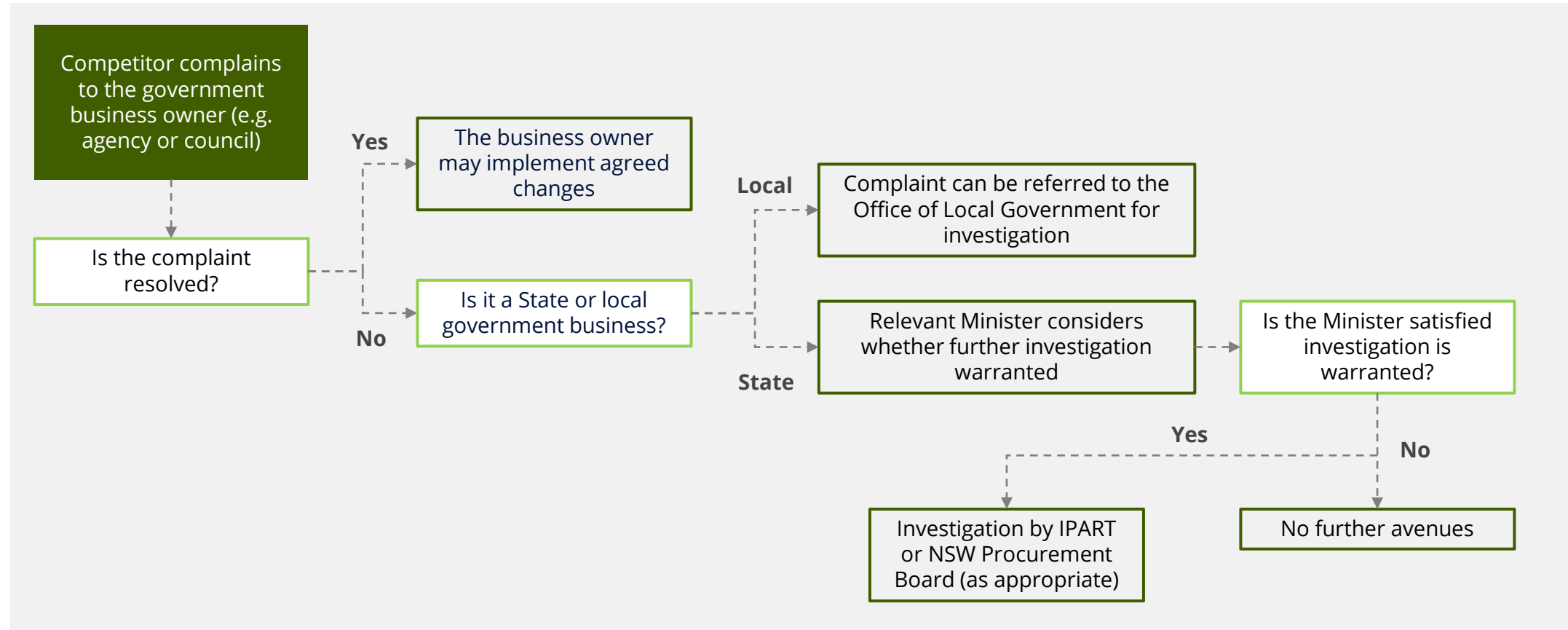
Open a window to get more light or air. Name 3 things you can see outside.



Session 3
Complaints

Overview of the complaints process

Below is a diagram depicting how affected parties may raise concerns about competitive neutrality compliance in NSW



Discussion





Session 4
Promoting
transparency and
accountability

Promoting transparency and accountability

How do you know that government businesses are correctly applying competitive neutrality principles?

○ Reporting improves transparency through ensuring private businesses are aware of the pricing considerations that government businesses adopt

It helps the private sector understand the decisions of government businesses and provides information for private sector competitors who might believe that competitive neutrality principles are being breached.

○ Competitive neutrality policies currently only apply in some situations

Currently, NSW competitive neutrality policies impose reporting requirements on State Owned Corporations and other government businesses, but such reporting principles generally only apply to business activities that apply competitive neutrality principles to their activities. If a public interest test is undertaken, this should be a public and transparent assessment.

State government

State owned corporations and public financial corporations in NSW are subject to a range of requirements that ensure their competitive neutrality obligations are met, including those set out below.



1. Clear performance targets for boards and management

These are used to assess performance and agreed between the government business and the NSW Government through either a Statement of Corporate Intent or a Statement of Financial Performance. These focus on capital structures, shareholder value added (which indicates whether a business is generating or eroding value) and dividends.



4. Payment of debt guarantee fees

This makes up the difference between the interest paid by government businesses and what they would have paid based on their stand-alone credit rating. Government businesses with government guaranteed borrowings are required to pay a credit-rating-based fee to the NSW Government.



2. A financial performance monitoring regime

This process is designed to enhance accountability and set performance expectations. Government businesses report to NSW Treasury on their business plans, operating budgets, cash flow statements, income and expenditure statements, balance sheets and management accounting data. They also report risk, on an exception basis.



5. Regulations that mirror those applying to private businesses

Many government businesses gain exemptions from certain NSW legislation and regulations as a result of their status as an entity of the Crown or statutory authority. NSW has introduced a range of legislation that has the effect of removing or reducing these differences.



3. Payments of taxes and tax equivalents

All commercial government businesses are required to make direct payments of Commonwealth and NSW State taxes or tax equivalents. Government businesses are subject to an income tax equivalent regime administered by the Australian Taxation Office. All government businesses pay the GST in the same manner as private enterprises



6. Explicitly funded Social Programs

The Government may wish to use businesses to achieve certain social justice objectives. The Social Program Policy ensures transparent payments from the consolidated fund to NSW Government businesses to achieve certain social justice objectives and ensures social programs can be delivered without putting the commerciality of the businesses at risk.

Local government reporting

Reporting guidelines no longer align with requirements for councils' annual reports as currently set out in the Local Government Act, Integrated Reporting and Reporting Guidelines and Local Government Code of Accounting Practice and Financial Reporting. The local government pricing guidelines state that councils are required to include in their annual reports:



A list of all business activities



A statement of expenses incurred, revenue raised, assets acquired and assets held for significant businesses



At statement that each of the pricing requirements (tax equivalent regime payments, rates of return and debt guarantee fees) have or have not been applied to each business



Comparison of actual performance during the year with the projected performance of category 1 businesses, including an explanation of any difference

Their annual reports are also required to include a summary of complaints received regarding competitive neutrality and the results of those complaints. The reporting requirements were phased in with full reporting required from 1998-1999.

Local governments do issue schedules of rates, fees and charges as part of their operating plans required under the Local Government Act. While this is not a component of the competitive neutrality framework, these schedules may explain the pricing policy taken to determine the fees and charges applied to the council's services.

Other reporting

IPART, Office of the Local Government and the NSW Procurement Board are required to provide statistical information on complaints and non-compliance in their annual reports.

○ **NSW is required to report annually on implementation of competitive neutrality principles under the Competition Principles Agreement and Competition and Infrastructure Regulation Agreement (2006).**

Starting in 2008 and continuing until the 2017-18 reporting year, the Heads of Treasuries Competitive Neutrality Matrix report documented compliance with the competitive neutrality principles and was published online annually.

○ **As acknowledged in the 2017-18 report, the report restricts its assessment to government business enterprises only and does not provide assessments for other agencies that are also engaged in significant business activities.**

The reporting is at a very aggregated level for each business enterprise, and does not provide detailed information about individual products, services or business decisions. It does not include any reporting on local government owned business activities.

Discussion



Workshop 3



Closing remarks

Review of NSW Competitive Neutrality policies and processes

Next steps

- This is our final workshop at this stage
- We will publish a brief report with workshop findings (unidentified)
- Submissions to Issues Paper due 15 August
- Draft Report October 2022

Contact us

Staff are available to meet for further discussion

Contact: Ineke Ogilvy

Ineke_Ogilvy@ipart.nsw.gov.au

Ph: 02 9290 8473

Visit our website

<https://www.ipart.nsw.gov.au>