Competitive Neutrality in the ACT

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Content

1. Background to the ACT's competitive neutrality policy 2
2. What is competitive neutrality? 3
3. How to determine whether competitive neutrality should apply to a business activity 4
4. Measures to assist competitive neutrality 8
5. Estimate a competitively neutral price 11
6. Public interest exemption 12
7. Competitive neutrality complaints mechanism 13

Attachment A: Intergovernmental Agreement on National Competition Policy (Schedule 4) 16

Attachment B: Competitive Neutrality Complaints Flowchart 19

ACT Government

1. Background to the ACT's competitive neutrality policy

Purpose

This competitive neutrality policy statement provides guidance to ACT Government agencies, where they conduct business activities, or may consider conducting business activities, that compete with the private sector.

It outlines how recently refreshed competitive neutrality principles are expected to be applied in the ACT (with Cabinet to consider the same later this year). In doing so, it provides guidance on what is competitive neutrality, when competitive neutrality measures should be considered and practical steps that can be taken to bring about a competitively neutral price.

This document fulfils the ACT's commitment under the Intergovernmental Agreement to revitalise National Competition Policy (NCP IGA) to set and maintain its competitive neutrality policy.

The document contains four key parts:

Part 1: setting out what is competitive neutrality, what it seeks to achieve and why

Part 2: setting out how to determine whether competitive neutrality should apply to a business activity

Part 3: advice on what framework measures can be used to ensure the Government business operates on a level playing field with private sector businesses, including whether to corporatise, commercialise, or operate a business activity within a Directorate

Part 4: approaches to setting a competitively neutral price.

National Competition Policy – An overview

The Commonwealth and all State and Territory governments have agreed to a new national competition policy, which supports the maintenance and promotion of consistent and complementary competition policies and laws for a more seamless and competitive Australian economy, to improve living standards and opportunities for Australians.

The NCP IGA was agreed to by the Council on Federal Financial Relations on 29 November 2024. It sets out the refreshed national competition principles, updated institutional arrangements, and the ongoing arrangements for competition law. It updates and builds on the landmark 1995 National Competition Policy agreements, which were later assessed to have lifted Australia's Gross Domestic Product by 2.5 per cent (about $20 billion in 2003-04 dollars).

Updated Competition Principles – Principle 4

The ACT has committed to updating its policies and approaches to competitive neutrality.

This is captured under Principle 4 of the NCP IGA and its supporting action:

> *Principle 4: Government and private businesses should compete on a level playing field.*
>
> *Supporting action: Parties will ensure government business activities that compete (or could compete) with private or other providers apply competitive neutrality measures to remove any net competitive advantages arising from their public sector ownership.*

2. What is competitive neutrality?

Objective of competitive neutrality policy and why it is necessary

The policy intent and ongoing requirements of the NCP IGA with respect to competitive neutrality are set out in full in Schedule 4 of the NCP IGA (Appendix A to this document). In summary:

> *"Competitive neutrality aims to remove any net competitive advantage arising from public sector ownership, levelling the playing field between publicly owned and other businesses, to promote the efficient allocation of resources. This improves the prices, quality and variety of goods and services that consumers are able to access". (NCP IGA Schedule 4)*

This principle is based on an understanding that competition between businesses is central to our economy, and those benefits can be diminished if a business is immune to market forces. Further, given Government collects tax revenue from its constituents to provide "core" Government services (i.e., non-commercial services), it should avoid competing with private enterprises to provide commercial services unless it is addressing a market failure.

Private sector businesses need to be profitable to survive and do not enjoy the competitive advantages of government, such as beneficial tax treatment, lower financing costs and free access to shared business overheads. These advantages, if not addressed, allow business entities of Government to charge lower prices and incur losses that private businesses cannot. This can distort the market, which in extreme cases, can lead to private sector businesses exiting – or not entering the market – and bring about an inefficient allocation of government resources.

Government business activities can also experience competitive disadvantages compared to activities run by private businesses due to factors such as public sector employment requirements, greater accountability obligations, and expectations to provide services that benefit the community at a loss.

Competitive neutrality policy accounts for these differences to prevent government businesses from using any resulting net competitive advantages to out-compete other businesses, unless it is in the community's best interest that competitive neutrality measures should not be applied.

Benefits of competitive neutrality

Competitive neutrality supports competition in the market and in doing so, benefits the community by ensuring:

- optimal conditions to incentivise innovation by both private and public businesses.
- opportunities for private businesses to grow and access new markets; and
- the same competitive pressures apply to government business activities to ensure government resources are used efficiently.

However, competitive neutrality does not:

- guarantee private businesses remain profitable;
- prevent or limit government undertaking business activities;
- restrict government subsidising government business activities where such support is intentional, appropriately considered and in the public interest.

3. How to determine whether competitive neutrality should apply to a business activity

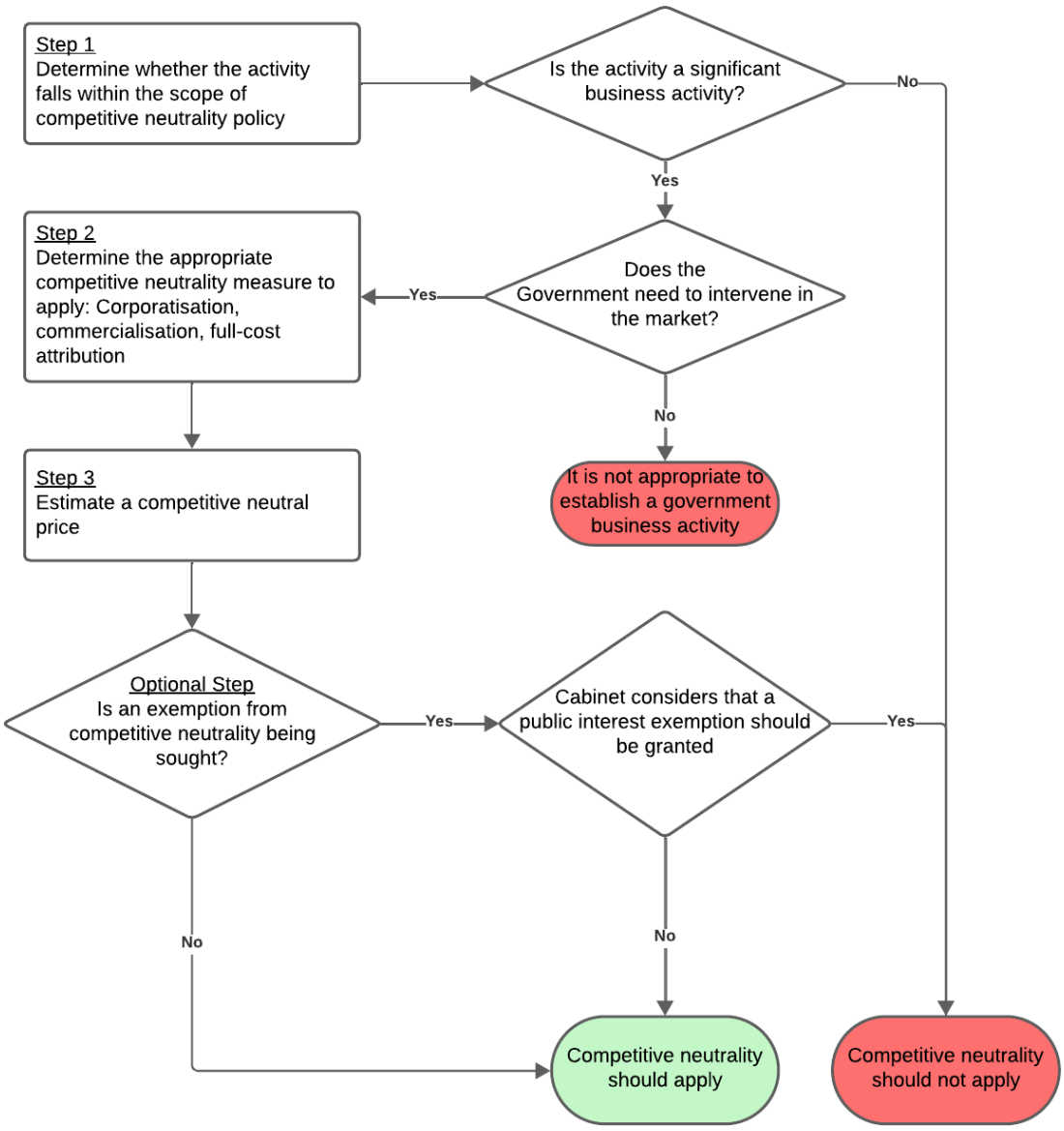
The NCP IGA requires that competitive neutrality policy apply to significant government business activities that compete (or could compete) with private sector entities. This includes instances where there are no existing competitors, but the activity is contestable.

A visual step through follows of how competitive neutrality can be approached, with information on how to approach each step in practice.

Agencies seeking assistance on how to approach competitive neutrality should consult the Economic and Regulatory Policy Unit within Treasury via email at EconomicandRegulatoryPolicy@act.gov.au.

Agencies are encouraged to engage early and on an ongoing basis with the Economic and Regulatory Policy Unit when considering activities that may trigger competitive neutrality requirements, to ensure advice can be provided during the proposal development stage.

Figure 1: Decision-making tree for applying competitive neutrality in the ACT



Key steps and questions to answer in the application of competitive neutrality

There are two key threshold issues to consider in determining whether competitive neutrality should be applied to a particular activity.

Threshold 1 – Is the activity a significant business activity?

The NCP IGA leaves it to participating jurisdictions to define what constitutes significant government business activities within their respective competitive neutrality policies.

The 2010 *Competitive Neutrality in the ACT* policy contained a simple baseline, requiring '***all government business activities*** … to fully attribute costs on the same basis as private firms', rather than only applying competitive neutrality to significant business activities. It did so to encourage improved efficiency and allocation of resources on a broader scale.

While some jurisdictions have chosen to apply competitive neutrality to when its business entity has significant expenditure, or share of the market, we propose the ACT's 2026 guidance continue to ensure Canberrans gain the greatest benefit, by competition principles applying to Government business activities through a lower range threshold test.

- In the ACT, significant government business activities include government-owned or controlled activities that regularly supplies goods or services in competition with the private sector that can impact on the competitive process of the market.

Where there are existing private businesses who provide the same or similar good or service in the market, impacts to competition can occur through the government owned business taking or retaining customers who would otherwise be supplied by existing businesses, or impacting the product offerings or price of those in the market.

Likewise, in a contestable market with no existing competitors, the presence of a government owned business may reduce the likelihood of new entrants.

Some examples of significant business activities currently being undertaken include managing large scale commercial infrastructure such as:

- Capital Linen Service, which provides commercial laundry services to public health facilities and some private clients
- The Suburban Land Agency (SLA) develops and sells land or property for residential, commercial, or industrial use, where the agency participates in the property market alongside private developers.

An activity need not be considered significant where:

- it is deemed a non-business and non-profit activity to benefit the community (i.e. it is not in competition with the private sector who supply the same or similar goods for profit). These activities should be classified as community service obligations (CSOs), which are discussed later in the document.

Where Government encourages, but does not mandate, procurement from government businesses to advance policy objectives such as employment standards, environmental outcomes, and supply certainty, it may be perceived as influencing market behaviour. In these circumstances, Government should focus on refining procurement approaches to test alignment with policy objectives and enable private sector participation, thereby promoting effective competition and avoiding unintended net disadvantages for government entities.

Threshold 2 – Does the Government need to intervene in the market?

If the business activity is assessed to be a **significant** government business activity, agencies should consider whether there is need for the Government to intervene in the market. This is particularly important where the creation of a government business would compete for customers who are supplied by existing private sector businesses.

As a general principle, the government should avoid competing with private enterprises unless it is addressing a market failure. An example of this would be to provide a service where there is not enough effective competition in the market, such as where there is a limited pool of private buyers or sellers. In such circumstances, the introduction of a government business would serve to improve service delivery to the public, support long-term market resilience, service continuity, local capability and contestability over time.

You should approach this by seeking to understand the competitive dynamics of the market when assessing whether it is the community's interest for the Government to provide goods or services traditionally delivered by the private sector. Key factors to consider in this assessment include:

- **Scope for competition:** What goods and/or services would the government business activity deliver in competition with the private sector? What other alternatives could consumers turn towards if prices for these goods and/or services were to rise? Is significant unmet demand that is not being met in the absence of government intervention? Are there legislative or policy constraints that can be addressed to encourage greater supply and competition?
    - As an example, the ACT Government championed greater competition in on-demand transport by lifting monopoly restrictions on taxis, becoming one of the first jurisdictions in the world to allow ridesharing platforms.
- **Relative scale**: What is the volume of sales or number of customers that would be served by the business activity relative to its competitors? Would the government business entity have sufficient scale in the production of a good or service to provide a competitive offering?

In all cases it is important to demonstrate why intervention by the Government is in the public interest.

Applying competitive neutrality to government start-ups

For the purposes of the ACT's competitive neutrality policy, a start-up refers to a newly established business or business activity. This section is also relevant to innovation pilots, early-stage initiatives, and activities operating in emerging markets.

Before establishing a government start-up, agencies should undertake the steps outlined in the previous section to determine whether the activity falls within the scope of competitive neutrality. Where the activity is within scope, agencies are expected to follow the processes set out in this document to ensure compliance with competitive neutrality requirements.

In addition, recognising that businesses in their early stages may differ significantly from their matured state, due to start-ups potentially having a smaller market share than established private-sector incumbents, or may be operating in an emerging market with limited competition. Accordingly, competitive neutrality arrangements for government start-ups should therefore be reviewed periodically as the market and the business mature.

Agencies planning to establish a start-up are encouraged to engage early with the Economic and Regulatory Policy Unit within Treasury.

Processes for when multiple jurisdictions are involved

In instances where multiple jurisdictions jointly own a government business, agreement between jurisdictions should be sought up-front as to which jurisdiction's competitive neutrality policy will apply, with this formalised in governance arrangements of the business.

Where practicable to do so, the process outlined below should be followed:

- By default, the competitive neutrality policy of the jurisdiction owning the largest share in the business should apply. This recognises that the jurisdiction with the largest share has the greatest level of control over the business and by extension the greatest responsibility for any competition impacts arising from the activity.
- If jurisdictions have an equal share in the business, the competitive neutrality policy of the jurisdiction where the greatest amount of the business activity is expected to occur will

apply. This is on the basis that any competition impact of the activity is likely greatest in the jurisdiction where the most business activity occurs.

There is scope to depart from the approach outlined above where practical circumstances warrant it, subject to agreement from all jurisdictions involved. If shares of the business were to change over time, the default position would be for existing arrangements to apply until a new agreement is formalised.

In the event of a complaint that competitive neutrality measures have not been applied, the recipient jurisdiction will refer the complainant to the jurisdiction whose policy applies. The complaints mechanism in the ACT is outlined below in section 6.

4. Measures to assist competitive neutrality

Having determined that the ACT's competitive neutrality policy will apply, for reason that there is a significant government business activity and that there is a need for government intervention in a market, the next step to apply appropriate measures to ensure the Government's business and private businesses can compete on a level playing field.

Competitive neutrality can be achieved through various framework measures, including corporatisation and commercialisation. Commercialisation of the activity will be sufficient in most circumstances, bringing a commercial focus to the supply of goods or services, with corporatisation available to support rare circumstances of business entities that have substantial impacts on the market and where independent price regulation is desirable.

In either case, the relative advantages and disadvantages of providing services through government agencies will need to be identified and integrated with an appropriate measure of reform according to the scale and nature of their business activities.

Common competitive neutrality measures

Common competitive neutrality measures to take into account in either a corporatised or commercialised government business activity follow.

Subject to business regulation

The rules and regulations under which businesses operate influence their efficiency. Regulations can have a major bearing on the cost of inputs, market behaviours and other constraints such as the requirement to meet environmental or occupational health and safety standards.

All government business activities to which competitive neutrality principles are applied will be subjected to at least the same regulatory regime as private enterprises. In some cases, the regulatory requirements of public enterprises are more onerous than for private businesses, such as where industry specific regulation is desirable over a monopoly to support the recovery of efficient costs but not monopoly rents being payable by Canberrans.

Business enterprises will not be responsible for regulatory activities. Regulatory activities will be performed by a separate authority. Government businesses should not determine their own regulatory standards because they may conflict with their commercial objectives.

Taxes, fees and charges

National Competition Policy settings are reflected in the *Taxation (Government Business Enterprises) Act 2003* and its associated regulation. Through it, all government business activities are required to pay Territory taxes, fees and charges. These taxes include payroll tax, financial institutions duty, land tax, stamp duties and any rates and fees and charges that a private enterprise would pay when

engaging with the Government. This ensures the costs of the government business activity is on par with their counterparts in the private sector.

Further, the *Taxation (Government Business Enterprises) Regulations* list those entities subject to the National Tax Equivalent Regime, established in 2001 as part of an agreement among Commonwealth, state, and territory governments to promote competitive neutrality by applying income tax laws uniformly to both public and private sector.

- Territory-Owned Corporations are liable to pay all Territory taxes, fees and charges and the equivalent income tax of their equivalents.
- Commercialised activities, where appropriate, will be subject to the National Tax Equivalent Regime. *The Government's approach has been to make sure its largest business activities are both subject to all Territory taxes, fees and charges and the National Tax Equivalent Regime.*

Debt guarantee fees

Territory owned corporations are subject to a borrowing levy that reflects the value of any concessional borrowing rate by virtue of an implied government guarantee. The levy will increase the cost of debt to the level that the business would be required to pay if it was privately owned having regard to its financial position and risk portfolio.

The level of the fee will take into account any new borrowing or capital injections as well as an estimate of the cost that would apply to past borrowings, based on the level of assets held.

Commercialised activities where appropriate will be subject to the same debt guarantee requirements as fully corporatised businesses.

Explicit Government funding of community service obligations (CSOs)

A government business may be required to deliver services to the community that fall outside its normal commercial activities, or that it could only provide at a higher price. These services should be designated as community service obligations (CSOs), which must be explicitly identified and directly funded by Government.

Clearly identifying and costing these services will enable government businesses to maintain focus on commercial targets and respond effectively to market-based price signals and incentives.

To ensure CSO funding is set at an appropriate level, government businesses delivering CSOs should work with the relevant policy areas to clearly define the primary purpose, policy objectives, and issues their CSOs are intended to address.

The National Competition Principles require high standards of transparency and account separation around the cost and revenue structures of government businesses carrying out community service obligations.

- This should be done by maintaining account separation between commercial and CSO activities around their cost and revenue structures to ensure funding provided for CSOs is not used to cross-subsidise goods or services outside the scope of the CSO.

Policy areas should maintain oversight and monitoring to ensure remuneration is based on clear objectives and efficiently incurred costs, including capital costs. Additionally, CSOs should be transparently and publicly reported through annual reports and in statements of corporate intent.

Recognising that, in practice, CSOs are often embedded within operating models rather than existing as discrete activities, and that attempts to separately identify and cost these services may risk

unintended consequences, a proportionate and staged approach aligned with policy development and budget cycles should be adopted.

Corporatisation

In line with government commitments under the NCP IGA, the Territory will consider applying a corporatisation model on a case-by-case basis to significant government business enterprises subject to the provisions of the *Territory Owned Corporations Act 1990*.

- On 1 July 1995, ACTEW Corporation Limited (Now Icon Water Limited) was corporatised. It is presently the ACT's only Territory owned corporation.
- Territory owned corporations are subject to price oversight by the Independent Competition and Regulatory Commission.

Adopting a corporatisation model involves subjecting a government business to disciplines, incentives and sanctions that are effectively the same as that of private businesses. A corporatised entity is likely to possess the following characteristics:

- it is a separate legal entity;
- its predominant activity is trading goods and/or services or is able to earn a substantial part of its operating revenue from user charges;
- it has a predominantly commercial or profit making focus;
- it has or could have a significant impact on the relevant market; and
- the impact of poor performance is substantial.

Corporatised entities will be subject to the following principles of competitive neutrality as appropriate:

Setting commercial target rates of return, capital structures and dividend payments

Corporatisation seeks to subject Government business enterprises to disciplines, incentives and sanctions which are effectively the same as those applying to private business enterprises.

The principal objective is based on their commercial performance including target rate of return.

Dividend payments are determined by considering the need for working capital and the government's revenue requirements. The general minimum dividend pay-out ratio is 50 per cent after-tax profits.

The capital structure and dividend policy of each entity is assessed to determine whether they are comparable with similar private firms.

Where the business is not subject to full market competition, performance targets are set with control of overall price levels to ensure targets are met by real productivity improvements and not simply by taking advantage of monopoly pricing.

Independent performance monitoring

It is widely recognised that quality performance will not be sustained unless performance is subject to continuous improvement.

A major incentive for efficient management in the private sector is the regular scrutiny of a company by the equity and debt markets. Such incentives do not apply to public sector businesses, such as territory owned corporations. An alternative set of performance standards are needed that are appropriate to the public sector.

Territory owned corporations will be subject to independent performance monitoring to mirror the external oversight applied to private sector companies. Performance will be assessed against annually agreed targets established by the Government.

Corporate entities are expected to be self-financing. They must be able to generate sufficient cash flow to remain profitable and to raise adequate capital investment funds. They will also be required to deliver returns on capital that are comparable with private sector benchmarks.

To support the corporation in achieving optimal operational efficiency, the Government's role as owner should be limited to defining core activities and determining the financial distribution policy, including the target rates of return and the broad limits on the capital structure.

Commercialisation

Not all government business enterprises should be corporatised. Corporatisation requires organisations to be commercially sound. It is unlikely that businesses reliant on government funding to meet their operating and investment requirements would be considered for incorporation. Such business activities may benefit, however, from increased exposure to commercial practices and market disciplines.

Even if a business is commercially sound it may not be corporatised given that it may be more advantageous to introduce competitive tendering for some services and allow all tenderers to bid for access to associated government owned assets.

Commercialised entities may operate as statutory authorities with their own enabling legislation or as semi-autonomous business units within a parent agency. However, while they are not fully subject to market forces, commercialised activities where appropriate will be subject to the same costing and pricing principles, taxation and debt guarantee requirements and appropriate regulations as fully corporatised businesses.

The essential policy is to ensure that government businesses are efficient, determined by their ability to effectively compete with their private sector counterparts. To achieve that goal it is important to provide incentives for sensible administration thereby benefiting from more commercially competitive service provision. Removing ownership advantages and disadvantages will ensure that the resources are allocated efficiently and allow clear judgements to be made about commercial performance.

5. Estimate a competitively neutral price

Once an activity has been identified as being subject to competitive neutrality and the appropriate governance framework for the entity that has been chosen, the final step to bring about competitive neutrality is through the price offered to provide their goods or services.

The price charged by a government business should reflect what the market is willing to pay. A government business should not underprice more efficient private businesses as a result of government ownership.

Full cost attribution

Prices should reflect the actual costs of delivering the good or service, which requires clearly identifying the specific inputs involved. These typically include labour directly in service delivery, materials and supplies used in the process, operating costs of equipment and machinery, and utilities consumed as part of delivering the service.

This should include the costs to address externalities, such as environmental impacts, as paid by all other private entities, in providing the good or service. Externalities are the hidden costs and benefits that affect third parties who are not directly involved in a transaction. These can be positive (e.g., improved public health, air quality, reduced greenhouse gas emissions) or negative (e.g., congestion, environmental degradation). Incorporating externalities into pricing ensures that the broader social impacts of a service costs and benefits are recognised and factored into decision making.

- As an example, the ACT's water abstraction charge, which seeks to account for the externality created – less water in the system from use and consequent environmental impacts, by pricing in the cost to an amount to return water to the system, is paid by all users.

Agencies seeking assistance on how to capture the cost or benefits of externalities should consult the Economic and Regulatory Policy Unit within Treasury.

Private sector entities do not charge the bare cost to cover the cost of providing the good or service alone. Rather, private sector pricing will include a margin to allow the business to operate profitably. Government businesses should include a profit margin such that the entity is self-sustaining over time.

- If private sector businesses supply the same good or service as the government business entity, while returning a profit, and the government business activity does not, it brings into question whether the community's resources are being used efficiently.

Overall, the application of full cost attribution enables government agencies to make meaningful comparisons with private sector benchmarks, encourage greater efficiency in the allocation of resources and assist Government businesses to bring about competitive market offerings.

6. Public interest exemption

The revitalised National Competition Principles requires the ACT to ensure its businesses and private sector businesses compete on a level playing field *unless it demonstrated it is in the public interest for a particular activity not to be subject to competitive neutrality*.

The NCP IGA sets out the process that should be undertaken to not apply competitive neutrality principles (i.e. to bring about a circumstance where a business has net competitive advantages from its government ownership). This can be done through a decision of Cabinet where it is demonstrated that a decision to exempt a government business activity from competitive neutrality:

- delivers greater net benefits to the community than its costs; and
- there is no other, less anticompetitive way to achieve the same objectives that has net community benefits that are at least as high.

Upon completion, the outcomes should be documented and made publicly available through the public access statement of Cabinet.

7. Competitive neutrality complaints mechanism

Under the NCP IGA, the Government is required to provide a complaints mechanism for breaches of competitive neutrality which at a minimum should include:

- independent receipt and consideration of complaints;
- allowing complaints from any source;
- undertaking investigations at low or no cost to the complainant where appropriate;
- processes for dealing with vexatious or out-of-scope complaints; and
- publishing investigation reports, to provide transparency over competitive neutrality breaches.

Purpose of the complaints mechanism

The complaints mechanism ensures the competitive neutrality framework works effectively by providing a way for private businesses or other affected parties to raise concerns when they believe a government entity has not properly applied competitive neutrality policy.

It provides a way to determine whether a breach of competitive neutrality policy has occurred and to recommend appropriate actions to address the issue.

The complaints mechanism

There are two options to progress a competitive neutrality complaint in the ACT, being:

- A complaint may be sent to the Treasurer; or
- A complaint may be lodged with the Independent Competition and Regulatory Commission (ICRC).

A flowchart outlining the complaints process is provided at Appendix B.

Complaints to the Treasurer

Competitive neutrality complaints may be submitted to the Treasurer in writing. Complaints should clearly set out the alleged breaches of competitive neutrality principles and include sufficient evidence to support the claim, noting that the burden of proof rests with the complainant.

Potential complainants are encouraged to raise their concerns with the government business involved before lodging a complaint. This helps clarify the issues and determine whether they fall within the scope of competitive neutrality policy and may allow the issue to be resolved informally.

Treasury will prepare advice and recommendations for the Treasurer, consulting relevant Government agencies as required. If a breach of competitive neutrality policy is found, the Treasurer will determine whether to recommend any further actions to Government.

The ACT Government is responsible for deciding how to respond to any recommendations and is not obligated to implement them.

The Treasurer retains full discretion over the publication of any materials developed in relation to the complaints made through this process and whether to issue a response to the complainants. There are no prescribed time limits for responding to a request made through this option.

There is no fee for lodging a complaint through this process.

Complaints to the Independent Competition and Regulatory Commission

Alternatively, competitive neutrality complaints may also be lodged with the ICRC, as set out in Division 3.2 of the *Independent Competition and Regulatory Commission Act 1996*.

Who may make a complaint to the Independent Competition and Regulatory Commission

Anyone may lodge a competitive neutrality complaint with the ICRC.

Before lodging a complaint, potential complainants are encouraged to discuss their concerns with the government business involved and/or the ICRC. This will help to clarify the issues and to determine whether the concerns fall within the scope of competitive neutrality policy. It may also allow for the matters to be resolved without the need for a formal investigation.

Should a complaint be lodged, the following threshold set of questions will determine whether a complaint should be pursued:

- Is it a genuine situation where an enterprise is being disadvantaged in a market, in which one or more of its competitors are government-owned businesses, because its competitors are benefiting from competitive advantages that arise solely from their ownership rather than from superior capacity, skill, quality, etc.
- Does the complaint involve a matter of public interest? This recognises that there are issues that while of some interest would not give rise to significant benefits to the community, to the extent that a formal investigation is deemed warranted.
- Can the complainant meet the cost of the investigation? The answer to this question may be no. In these circumstances, and where the complaint is legitimate and involves a matter of public interest, the complainant may seek assistance from the government or a member or the Legislative Assembly, or may request that the ICRC make a self-reference.

Cost of a complaint

The complainant is required to cover the reasonable costs of an investigation, as determined by the ICRC.

That said, to ensure that genuine concerns are not excluded due to financial limitations, a complainant may seek support from other potential referring authorities—such as a Minister or member of the Legislative Assembly—to submit a reference on their behalf and in doing so assume responsibility for associated costs. In certain cases, the Government may agree to fund a reference initiated by a member of the Legislative Assembly.

The ICRC also has the discretion to initiate a 'self-reference' at its own expense if it considers that an investigation would serve the public interest.

How are complaints investigated

Once a complaint is accepted, the ICRC issues a written notice outlining the terms of reference, which is published on the ACT Legislation Register and shared with the referring authority.

Investigations may involve various methods such as interviews, public hearings, or data analysis, and may be supported by external experts. The duration of an investigation depends on the complexity of the issues involved and the availability of relevant information.

All investigations will be thoroughly conducted and will take into consideration a wide range of factors including employment impacts, environmental issues, social welfare and community issues, and matters that might have effect on the Territory and national economies.

What happens to the ICRC's report

Once the Commission completes its final report, it must provide copies to the referring authority, the responsible Minister (if the referring authority is not a Minister), and the Legislative Assembly.

The ACT Government must provide a response to the Legislative Assembly within three months of receiving the ICRC's report.

As the report includes recommendations to address the matters uncovered through the investigation, there is no appeal process, and the ACT Government is responsible for deciding how to respond to any recommendations the ICRC may make – it is not required to implement recommendations.

For more information on the complaints mechanism

Inquiries relating to competitive neutrality complaints may be directed to the ICRC, by telephone on (02) 6205 0799 or by email, icrc@act.gov.au.

Appendix A: Intergovernmental Agreement on National Competition Policy (Schedule 4)

Government and private businesses should compete on a level playing field

Policy Intent

Government business activities can enjoy special advantages by virtue of their government ownership, such as beneficial tax treatment, lower financing costs and shared resources. These advantages can allow them to charge lower prices that private businesses may struggle to compete with and, in extreme cases, can lead to private businesses exiting the market.

Competitive neutrality aims to remove any net competitive advantage arising from public sector ownership, levelling the playing field between publicly owned and other businesses, to promote the efficient allocation of resources. This improves the prices, quality and variety of goods and services that consumers are able to access.

Ongoing Requirements

4a. Application to significant government business activities

Competitive neutrality applies to all significant government business activities that compete (or could compete) with private or other entities. This includes where there are no existing competitors to the Party's business activity but the activity is contestable.

Competitive neutrality only applies to the business activities of publicly owned entities, not to the activities of these entities that are both non-business and non-profit.

4b. Maintain a competitive neutrality policy

Parties are responsible for setting their own competitive neutrality policies and regularly updating them as market circumstances change. The policy will provide:

- an objective of promoting efficient allocation of resources, by eliminating distortions arising from the public ownership of entities engaged in significant business activity;
- a clear definition of 'significant government business activity';
- guidance for government entities to determine which of their activities fit this definition;
- guidance on when to apply competitive neutrality to government start-ups;
- guidance on debt neutrality, which encompasses new and more complex forms of debt; and
- clear processes for when multiple jurisdictions are involved.

For significant government business enterprises classified as Public Non-Financial Corporations and Public Financial Corporations Parties will, where appropriate, adopt a corporatisation model and impose:

- full Commonwealth, state and territory, and local government taxes or tax equivalent systems;
- debt neutrality fees directed towards offsetting the competitive advantages provided by government guarantees (explicit or implicit) and other forms of beneficial financing; and
- regulations to which private sector businesses are normally subject, for example, regulations relating to the protection of the environment and planning and approval processes.

For a government entity not classified as Public Non-Financial Corporation or Public Financial Corporation that undertakes significant business activity as part of a broader range of functions, a Party may instead ensure that prices charged reflect full cost attribution for these activities, considering the items listed above where appropriate.

Parties will also encourage government entities to correct for other less explicit advantages, such as sharing government resources, including operating rent-free in government-owned buildings and accessing whole-of-government procurement contracts.

4c. Community service obligations

Community service obligations should be funded by the Party imposing the community service obligation. Parties should:

- limit compensation for community service obligations to the amount required to meet the policy objective of the community service obligation at least cost; and
- have oversight and monitoring that is independent of the government business enterprise to ensure remuneration for community service obligations is calculated based on clear targets and objectives and efficiently incurred costs, including capital costs.

Government business enterprises carrying out community service obligations will:

- transparently and specifically identify the issues being targeted and the services provided under the community service obligation relevant to the government business enterprise; and
- impose high standards of transparency and account separation around their cost and revenue structures to ensure that funding for the community service obligation is not used to cross-subsidise the offering of goods or services not covered by the community service obligation.

4d. Provide a complaints mechanism

Parties will maintain complaints avenues for breaches of competitive neutrality and will make efforts to simplify, streamline and continuously improve their complaints processes. At a minimum, the complaints mechanism should include:

- independent receipt and consideration of complaints;
- allowing complaints from any source;
- undertaking investigations (where warranted) at low or no cost to the complainant where appropriate;
- processes for dealing with vexatious or out-of-scope complaints; and
- publishing investigation reports, to provide transparency over competitive neutrality breaches.

Parties are encouraged to publish responses to competitive neutrality investigation reports

4e. Public interest exemption and review

Government decisions must not allow significant government business activities to receive a net competitive advantage from their government ownership unless it can be demonstrated that:

- the benefits of the restriction to competition to the community as a whole outweigh the costs; and
- the objectives of the policy, decision or action cannot be achieved by another approach that:

    - does not restrict competition or lessens the restriction on competition; and
    - has net community benefits that are at least as high.

To ensure any public interest test exemptions under this Principle remain appropriate:

- any decisions that restrict competition will be reviewed at the earliest of:
    - whenever decisions or policies are being reviewed, for example, as part of a sunsetting review of legislative instruments, renewal of contracts or as part of policy evaluations, or
    - every 10 years.
- the review must consider whether the public interest test exemption is still valid or whether the decision can be implemented in an alternative way that is more consistent with the Principle.

Appendix B: Competitive Neutrality Complaints Flowchart

