

NCP

National Competition Policy Implementation in Queensland

Competitive Neutrality and Queensland Government Business Activities



QUEENSLAND GOVERNMENT

A QUEENSLAND GOVERNMENT
POLICY STATEMENT
JULY 1996

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1 INTRODUCTION

1.1 Purpose of this Statement

The purpose of this statement is to outline the approach to be taken by the Queensland Government in applying the principle of competitive neutrality to its Significant Business Activities(SBAs)¹.

The statement fulfils the commitment of the Queensland Government, under the National Competition Policy(NCP) agreements (notably the Competition Principles Agreement), to publish such a statement by 30 June 1996.

1.2 National Competition Policy

The National Competition Policy(NCP) was agreed to by all Australian Governments in April 1995. Underlying the policy is the recognition that competition is the “engine room” of economic growth, employment and higher living standards. Given the globalisation of markets and the ever increasing competitiveness of the international economy, there is a need for Australia to “break” through domestic barriers to competition if living standards are to be sustained and, indeed, improved. To achieve this, the NCP consists of a number of separate reforms which, in aggregate, seek to deliver a widespread competitive revitalisation of the national economy over the next decade. The Policy seeks a cooperative approach by all Governments to implementing the competition reform agenda.

¹ This statement deals with State Government business activities. A separate statement deals with the application of competitive neutrality to Local Government business activities.

Box 1: Aims of the National Competition Policy Agreements

The National Competition Policy Agreements are essentially designed to achieve:

- a wholesale dismantling of barriers to competition across all domestic markets on a nationally consistent basis; and
- a uniform application of the rules of competitive conduct to all sectors of the economy, regardless of the form of ownership.

The Policy is based on the economic tenet that free and open competition drives efficiency and is the only sustainable means of delivering the productivity improvements and innovation necessary for economic growth and job creation.

The Policy, however, is “*not about the pursuit of competition per se. Rather, it seeks to facilitate effective competition ... while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives.*” (Independent Committee of Inquiry into a National Competition Policy 1993, p. xvi.)

Hence, implementation of the reforms is subject to a public benefit assessment. The Policy is also neutral with regard to the nature and form of ownership.

The National Competition Policy is comprised of three agreements and has seven policy elements. (See Table 1). These elements can be summarised into three broad policy initiatives:

- (i) the extension of the coverage of the anticompetitive provisions of the *Trade Practices Act* (detailed in Table 1 as policy element 1);
- (ii) the reforming of State (and Local) Government significant business activities in a way that introduces incentives similar to those which prevail in the private sector (detailed in Table 1 as policy elements 2 to 6); and
- (iii) reviewing all anticompetitive legislation (policy element 7 in Table 1).

This statement focuses solely on the competitive neutrality element of the Policy (element 5) which seeks to ensure that all significant business activities of Government face the same commercial environment as private sector firms.

Table 1: The elements of National Competition Policy

| Policy element | Purpose | Example | Supporting agreement/legislation |
|--|---|---|---|
| 1. Extension of coverage of <i>Trade Practices Act</i> | to limit the anticompetitive conduct of business entities, regardless of their ownership | coverage of Part IV of the <i>Trade Practices Act</i> is extended to the unincorporated sector (including the professions), and State and Local Governments where they are carrying on a business | Conduct Code Agreement and <i>Competition Policy Reform Act</i> |
| 2. Third party access | to provide a third party with access, at "fair" prices and conditions, to facilities that are essential for competition (<i>i.e.</i> a third party is someone other than the owner/supplier of the facility — <i>e.g.</i> a potential new user or existing user) | access by a third party to facilities such as telecommunication cables, gas pipelines and railway tracks | Competition Principles Agreement and <i>Competition Policy Reform Act</i> |
| 3. Prices oversight of monopoly or near monopoly Government businesses | to prevent the misuse of monopoly powers of Government business activities | introduction of arrangements similar to the former Commonwealth Prices Surveillance Authority to State and Local Government business activities which exercise monopoly powers | Competition Principles Agreement and <i>Competition Policy Reform Act</i> |
| 4. Structural reform | to reform the structure of Government-owned monopoly businesses to facilitate competition | division of the Queensland Electricity Commission into separate generation and transmission entities, to allow the potential for competition in electricity generation | Competition Principles Agreement |
| 5. Competitive neutrality | to remove benefits (and costs) which accrue to Government business activities as a result of their public ownership | <ul style="list-style-type: none"> • requirement for Government business activities to pay taxes (or tax equivalents); and • removal of regulations which provide special advantages for Government business activities when competing with the private sector | Competition Principles Agreement |
| 6. Legislative review | to review (and justify) Government regulations which restrict competition | <ul style="list-style-type: none"> • (at a Commonwealth level) deregulation of domestic aviation and telecommunication arrangements; • (at a State level) deregulation of various State-based agricultural statutory marketing arrangements; and • State reviews of business regulations | Competition Principles Agreement |
| 7. NCP-related reforms | to further reform key sectors of the economy which are already subject to Council of Australian Governments reforms | restructuring and/or introducing further competition into the electricity, gas and water and road transport sectors | National Competition Policy and Related Reforms Agreement |

A more detailed overview of NCP is provided in “*NCP: an Overview*”², available from the NCP Unit, Queensland Treasury.

It is important to recognise that the purpose of NCP is not about the pursuit of competition for its own sake. The aim is to improve the efficiency and productivity of the Australian economy so as to allow higher living standards. As part of this aim, the Queensland Government views NCP as a means for promoting efficient service delivery within a broader social policy framework. As such, the Queensland Government will implement the policy to ensure that competition reforms will not compromise but, rather, enhance delivery of both State and Local Government social and essential services.

1.3 Competitive Neutrality and National Competition Policy

The way in which Government businesses produce and price their goods and services has a major impact on resource allocation outcomes. The goods and services provided by these businesses are significant inputs to the production of goods and services by the rest of the economy. As such, it is vital that they be delivered at benchmark prices and as efficiently as possible if international competitiveness and, consequently, the nation’s standard of living is to be maintained and improved.

Due to their traditional lack of exposure to competition and the significant impact that Government businesses have on resource allocation outcomes, the NCP pays particular emphasis to significant Government businesses.

Clause 3 of the Competition Principles Agreement (CPA) has, as its underlying objective, “*the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership.*”

This objective is based on the premise that, if Government business activities have unfair advantages (or disadvantages), this could promote inefficient production and pricing practices. This would cause an excess flow of resources to the public sector, limiting resource availability to the private sector and increasing the overall costs of service provision to the community.

For example, if a Government business is able to price below its competitors because it does not have to face the same cost structure solely because it is a Government entity, then its competitors are effectively being “penalised” even though they may be producing the good or service more efficiently and in reality more cheaply.

Efficient resource allocation requires these distortions to be removed.

² Queensland Treasury (1995)

The CPA suggests that the preferred way of meeting this objective is to corporatise³ significant Government business activities. Alternatively, some other kind of structural reform may be appropriate. If structural reform is not appropriate then, at the very least, a significant business activity should price its goods and services to include the full cost of provision.

A more detailed description of the requirements under Clause 3 is provided in Section 2.2 of this policy statement.

1.4 What is competitive neutrality?

Competitive neutrality refers to the process of identifying and, where appropriate, removing any advantages (and disadvantages) that may accrue to a Government business by virtue of its Government ownership. Once this has been achieved the Government business competes on the same basis as its competitors.

“Where a Government business enjoys net competitive advantages, it may be able to price below more efficient or equally efficient rivals. This has the potential to reduce economic efficiency and community welfare by distorting the allocation of resources between advantaged Government firms and other firms. If a less efficient Government business is able to rely on a net competitive advantage to take business from a more efficient firm, society’s resources are not being put to their best use. From an equity perspective, the disadvantaged firm may feel justifiably aggrieved in this situation, particularly if its owners consider they are, in effect, subsidising their rival through their tax contributions.” (Independent Committee of Inquiry [1993], p. 297.)

Government business activities compete with private sector businesses in a variety of markets. Private sector firms, however, often find that they are not competing on equal terms with Government businesses.

In particular, Government businesses are often seen as enjoying a unique set of competitive advantages by virtue of their ownership, including:

- exemption from taxes and charges;
- cost of finance advantages — they may have access to less expensive funds because of an implicit or explicit Government backing;

³ Corporatisation is the restructuring of the business activities of Government departments or statutory authorities in such a way that they operate on a commercial basis, whilst remaining Government-owned. Corporatisation aims to replicate the operating environment of the private sector without removing Government ownership. (Discussed further in section 2.3.1.)

- regulatory advantages — they are sometimes not required to comply with certain regulations which apply to private sector businesses; for example, until recently, many Government businesses have not had to comply with the Trade Practices Act or with Government planning and approval procedures; and
- not being required to achieve a commercial rate of return on assets.

Competitive neutrality requires that these advantages be removed.

Competitive neutrality also requires that the disadvantages of public sector ownership be removed or offset. Unique competitive disadvantages faced by Government businesses may include:

- limitations on the market in which they may operate;
- greater accountability obligations;
- requirement to deliver services that would not be provided, or that would only be provided at a higher cost to consumers, if market conditions prevailed; and
- reduced managerial autonomy.

The issue of how disadvantages will be considered is provided in section 4.7 of this policy statement.

It is important to note that competitive neutrality “*does not require that all firms should compete on an equal footing; indeed, differences in size, assets, skills, experience and culture underpin each firm’s unique set of competitive advantages and disadvantages. Differences of these kinds are the hallmark of a competitive market economy*”.⁴ Competitive neutrality is not aimed at removing comparative advantages or competitive advantages related to the superior performance or inherent advantages of firms operating within the same legal and regulatory framework.

Neither does competitive neutrality mean that the Government is obliged to open up to competition the in-house provision of goods and services, even though they may reasonably be provided by the private sector. While there is a presumption that in such cases exposure to private sector competition will tend to lead to superior outcomes, the Government will decide on a case-by-case basis whether there are net benefits from such exposure. Wherever there is competition, however, then a “level playing field” must apply.

⁴ Independent Committee of Inquiry into a National Competition Policy (1993), p. 293.

2. HOW IS COMPETITIVE NEUTRALITY ACHIEVED?

2.1 Overview

In simple terms, competitive neutrality between a Government business and its competitors is achieved by:

1. identifying areas where a Government business activity enjoys an advantage or disadvantage because of its Government ownership; and
2. where appropriate, introducing measures to address those advantages and disadvantages.

Generally speaking, competitive neutrality is best achieved by restructuring a Government business so that its corporate structure, and its incentives, resemble those in the private sector. Where restructure is not feasible, for example in smaller scale operations, or where a Government business is in the process of restructuring while in competition, then the adoption of an appropriate pricing policy may be a viable alternative.

The following sections explain how the National Competition Policy requires competitive neutrality to be achieved and the Queensland Government's approach to implementation.

2.2 Requirements under the National Competition Policy

In essence, National Competition Policy requires that, where appropriate, significant Government business activities should be either corporatised or placed on a "level playing field" basis in order to remove major competitive advantages or disadvantages arising from their public ownership.

The specific requirements of the policy are outlined in clause 3 of the Competition Principles Agreement. The content of that clause is paraphrased in Box 2 on page 12.

Box 2: Clause 3 of the Competition Principles Agreement — Competitive Neutrality

The substance of clause 3 is contained in subclauses 4 and 5.

Subclause 4 of clause 3 of the Competition Principles Agreement requires all State/Territory Governments and the Commonwealth Government to:

4(a) where appropriate, adopt a corporatisation model for significant Government business enterprises which are classified as “Public Trading Enterprises” and “Public Financial Enterprises” under the Government Financial Statistics Classification (GFS); and,

4(b) impose on these enterprises:

- full Commonwealth, State and Territory taxes or tax equivalent systems;
- debt guarantee fees directed towards offsetting the advantages of Government guarantees; and
- those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.

This does not require the removal of regulation which applies to a Government business enterprise or agency (but which does not apply to the private sector) where that regulation is considered by the Government to be appropriate.

Subclause 5 of clause 3 of the Competition Principles Agreement requires all State/Territory Governments and the Commonwealth Government to:

- where an agency (other than those referred to in subclause 4 above) undertakes significant business activities as part of a broader range of functions:
 - implement the principles listed above, where appropriate; or
 - ensure that the prices charged for goods and services will take account of the items listed in 4(b) above, and reflect full cost attribution for these activities.

In summary, the clause suggests that the objective of competitive neutrality should be met by:

method 1 preferably, but, where appropriate, corporatisation of significant business activities, particularly if they are public financial enterprises or public trading enterprises; or

method 2 alternatively, some other kind of structural reform; or

method 3 at the very least, full cost pricing should be employed; *i.e.* prices should reflect the actual cost of providing the good or service.

The agreement requires that the reforms apply only “where appropriate”. This acknowledges that in implementing the National Competition Policy, due regard should be had to the costs and benefits of reform. How the costs and benefits of competitive neutrality reform may be assessed is outlined in section 4.2 of this policy statement.

2.3 Queensland’s approach

The application of the principle of competitive neutrality to Queensland Government businesses is not new. The reform of Government businesses so that they compete on a level playing field with the private sector has been a central plank of corporatisation and commercialisation reforms which have occurred at the State level.

In keeping with the Competition Principles Agreement, competitive neutrality will be implemented in Queensland by three levels of reform. These are:

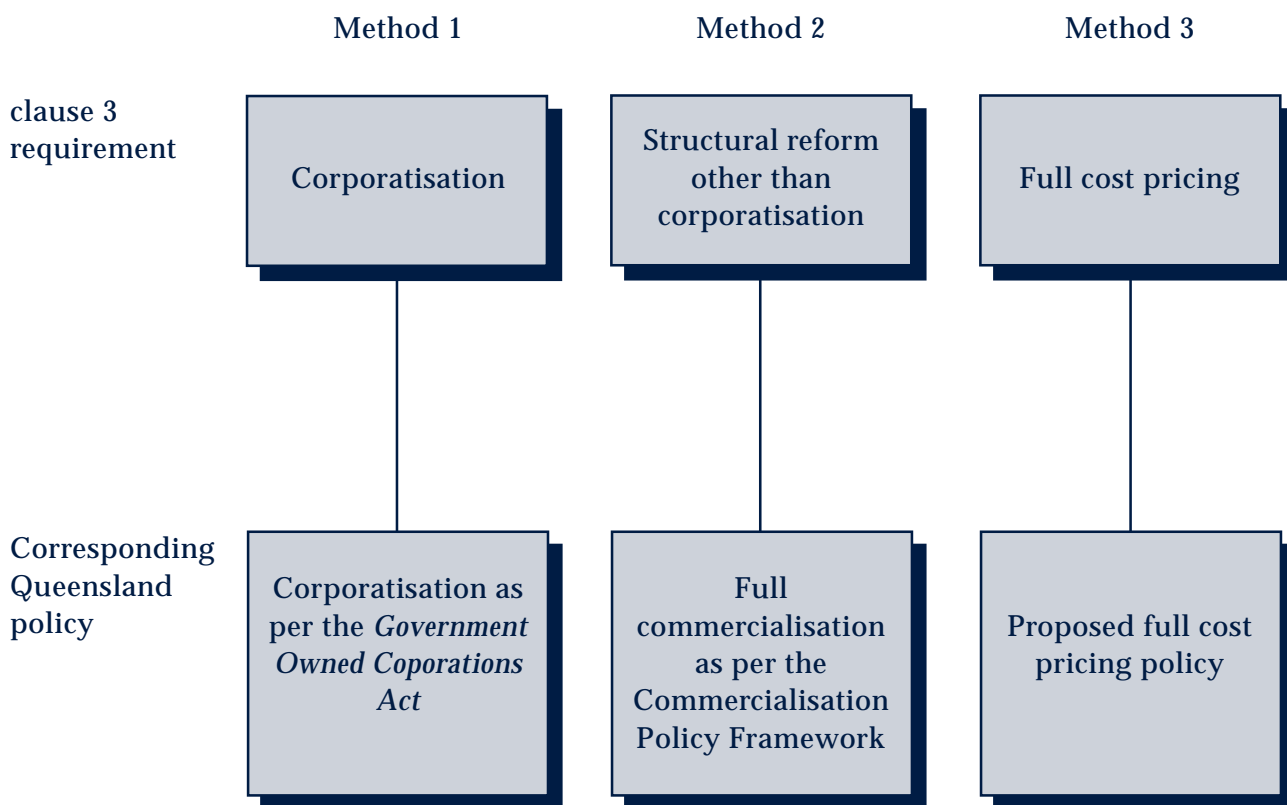
- corporatisation
- commercialisation
- full cost pricing

While the CPA is neutral with respect to ownership, the ownership arrangements pertaining to relevant Government business activities will be reviewed to identify opportunities for activities to be divested.

The main features of each of the three approaches are described below.

Diagram 1 illustrates the link between the approaches and clause 3 of the Competition Principles Agreement.

Diagram 1: Linkage between Queensland Competitive Neutrality Policies and clause 3 of the Competition Principles Agreement



2.3.1 Corporatisation

Corporatisation is a reform process which changes the conditions under which Government businesses operate. It places them on a commercial basis while allowing the Government, as owner, to continue to provide broad direction by setting key financial and nonfinancial performance targets and community service obligations (CSOs).

The aim of the corporatisation process is to improve the commercial performance of Government businesses and increase the efficiency and effectiveness with which the Government delivers its community service obligations.

The corporatisation policy is contained in the Queensland Government White Paper, "Corporatisation in Queensland, Policy Guidelines"⁵ and has the legislative backing of the *Government Owned Corporations Act (GOC Act)*.

The main features of corporatisation in Queensland are outlined in Box 3.

Examples of existing corporatised entities include Queensland Rail and the State's Port Authorities.

⁵ Queensland Treasury, (1992)

Box 3: Main features of corporatisation

Once corporatised, Government businesses are referred to as Government Owned Corporations (GOCs). The main features of the corporatisation process in Queensland are:

- the separation out of monopoly elements of a GOC's commercial activities to facilitate a more competitive industry structure. For example, the more contestable area of electricity generation has been separated from the monopoly activities of distribution and transmission by the formation of two new GOCs to undertake these activities;
- the dismantling of barriers to competition;
- divorcing GOCs of regulatory functions so that they have a strictly commercial charter;
- neutralising advantages and disadvantages resulting from Government ownership of GOCs to ensure that they operate, as far as possible, on a neutral basis with the private sector. For example, where appropriate, GOCs will be charged guarantee fees to neutralise cost of funds benefits resulting from Government ownership. Also, GOCs are subject to the Trade Practices Act and other regulations that are applicable to the private sector;
- requiring GOCs to operate commercially by imposing long-term rate of return targets on assets and requiring GOCs to make tax equivalent payments and pay dividends;
- making GOCs accountable for their performance. All GOCs are to have highly qualified commercially-oriented boards and are subjected to rigorous performance monitoring, including the establishment of performance targets and benchmarks;
- transparent funding and reporting on Community Service Obligations (CSOs) and the establishment of service contracts in respect of CSO provision;
- independent prudential supervision. For example, the Queensland Industry Development Corporation (QIDC), which was corporatised on 1 October 1994, is now being prudentially supervised by the Reserve Bank of Australia;
- open access to essential facilities such as electricity transmission lines; and
- prices oversight of those GOCs which retain monopoly power, to ensure that they do not abuse their monopoly status.

2.3.2 Commercialisation

Commercialisation is a reform process (similar to, though not quite as extensive as, corporatisation) whereby Government agencies charge for the goods and services they produce and adopt, to varying degrees, other features of the commercial environment. These features range from minor cost recovery and simple “user charging” through to full competition on equal terms with the private sector.

The policy framework is contained in “Commercialisation of Government Service Functions in Queensland: Policy Framework”⁶ and has legislative backing in the *Financial Administration and Audit Act* (Public Finance Standard 350).

Commercialisation generally but not solely applies to intragovernment transactions and is a means for promoting the cost-effective provision of goods and services within the Government sector where:

- consumers (generally other Government departments or other areas within the same department) of the goods and services can be identified;
- charging for the goods and services is technically feasible;
- users are in a position to influence their consumption; and
- there are no public interest or equity reasons why charges should not be attached to the goods and services that are being produced.

Box 4: Commercialisation versus corporatisation

The objectives and underlying principles of commercialisation and corporatisation are wholly consistent and the difference between the two reforms is a matter of degree.

Commercialisation is a similar, though not quite as extensive, reform process as corporatisation. Unlike corporatisation, the process of emulating private sector conditions under commercialisation reform does not extend to the establishment of a full corporate structure, with an independent commercial board of directors and chief executive and shareholding Ministers. Another key difference is that commercialised activities remain within the operations of a Government department, whereas corporatised activities are separate legal entities, subject to a governance regime similar to Companies Law.

Agencies which are identified for corporatisation, or are in the process of being corporatised, may adopt commercialisation principles during the transitional phase in the lead-up to corporatisation.

⁶ Queensland Treasury (1994)

In the Queensland model, there are three distinct stages of commercialisation in recognition of the fact that commercialisation is a significant change process and its implementation must be tailored to the individual needs of agencies concerned. These stages are summarised in Box 5.

Box 5: Stages of commercialisation

The first stage in the commercialisation of a unit involves establishing a general business environment between clients and service providers. This is achieved by steps such as identifying products to be provided, indicative costs and prices, performance standards and the general competitiveness of the unit. At this stage, units are Budget funded.

The next stage (generally referred to as partial commercialisation) involves establishing formal trading relationships on a tied basis. This involves the following steps:

- conflicting roles are separated to promote clear focus on business objectives (*i.e.* structural reform);
- service contracts are negotiated;
- Budget funding is transferred to clients who pay the service provider according to consumption of product. Prices may be fair market equivalent or full costs; and
- service units move off Budget and are required to meet all costs. Performance is assessed against negotiated targets.

Partial commercialisation is appropriate where the Government is providing the good or service to meet market shortcomings, intra-departmental activities (*e.g.* corporate services) or to satisfy particular policy objectives. The agency would typically invoke user-pays principles ranging from partial to full cost recovery (the major mechanism for pursuing partial commercialisation is the use of the user-pays principle in accordance with Public Finance Standard 320 and revenue retention as detailed in the Queensland Treasury Budget Manual).

The final stage, full commercialisation, involves the move to an environment where clients have greater freedom to choose the source of supply. The move is assessed on a case-by-case basis and is generally considered only for those entities which are carrying on significant business activities.

Competitive neutrality is achieved via annual performance contracts which include competitive neutrality measures such as:

- the objectives, nature and scope of the main activities of the business unit, including commercial and noncommercial activities;
- short and medium-term target rates or return and the nature of other financial and nonfinancial measures which will be used by Government to assess performance;
- the dividend target;
- forecast tax equivalent payments (based upon the Treasurer's Tax Equivalents Manual);
- broad financial requirements, such as:
 - maximum debt to equity ratios; and
 - borrowing and investment requirements
- insurance premiums paid to reflect Crown indemnity; and
- guarantee fees to be paid.

2.3.3 Full cost pricing

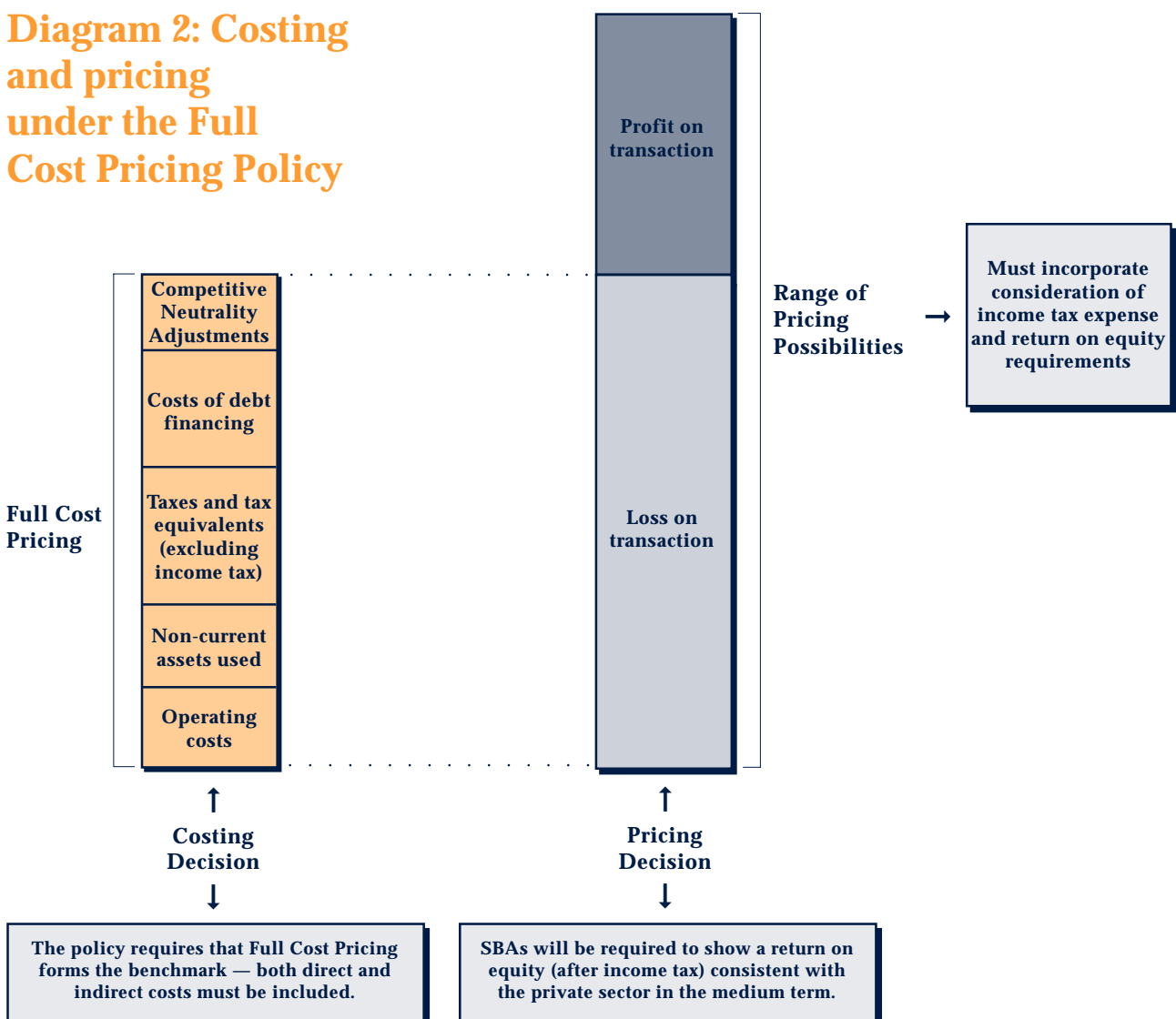
The third approach suggested by the Competition Principles Agreement for introducing competitive neutrality to a significant business activity is by way of employing a pricing policy based on “full cost” attribution.

In Queensland, it is anticipated that such a pricing policy will apply to significant business activities which are either:

- proceeding toward corporatisation or third stage (full) commercialisation while in direct competition with other providers; or
- are not suitable candidates for the introduction of a full corporate structure as set out in the corporatisation or commercialisation policies.

While details are still being developed, the underlying approach that Queensland proposes to take in applying “full cost pricing” is depicted in Diagram 2.

Diagram 2: Costing and pricing under the Full Cost Pricing Policy



2.4 General Government sector — Competitive Tendering

Separate from the National Competition Policy, the Queensland Government is introducing competition into the provision of general Government services by a competitive tender process. Under this approach, the right to provide a service is awarded to the external provider (through a contract) or “in-house” service delivery unit (through a service agreement) which has submitted the best competitive tender to deliver that service for a specified period at a specified price. This process of competitive service delivery is likely to result in the creation of innovative and more efficient ways of producing and delivering services to the public.

Where competition is introduced in this way, in-house units will bid against private providers on a competitively neutral basis. The proposed “*Competitive Service Delivery For Budget Sector Agencies Costing Guidelines*” state that the in-house bid must be prepared to the same specification as other bids and work should not be awarded in-house except on the basis of a bid. There must be clear separation between the in-house bid team and those conducting the tender process in order to avoid conflicts of interest.

Because the aim of Competitive Service Delivery (CSD) is to assess the cost of the in-house provision of a service vis-a-vis provision by an external body, cost is most appropriately based on the avoidable cost to the unit. Avoidable costs are those costs that do not continue to be incurred when the service ceases. The avoidable cost will be the full cost modified to exclude any of those costs (generally, indirect or fixed overhead costs) which will remain with the agency regardless of whether the service is provided in-house or is outsourced.

There are links between CSD and the Commercialisation Policy. These links are set out in Box 6.

Box 6: Commercialisation versus Competitive Service Delivery (CSD)

Both commercialisation and CSD are aimed at introducing more efficient delivery of services within the Government sector by making transparent the true cost to the Government (both as purchaser and provider) of providing services.

In the case of commercialisation, this involves a move to partial (or second stage) commercialisation and:

- the establishment of formal trading relationships between intragovernmental clients and the Government service provider on a tied basis; and
- the introduction of commercial pricing principles.

At full (or third stage) commercialisation, intragovernmental clients become untied and are able to choose whether to seek services from the Government provider or elsewhere.

In the case of competitive service delivery, Government departments compare the cost of purchasing from an external service provider with the cost of provision in-house by the department. This is done via a competitive tendering process. Other Government departments may tender but they must be commercialised business units.

CSD generally applies to smaller scale activities.

A list of services which have been delivered through CSD by various Queensland Budget sector agencies is provided in Box 7.

Box 7: Services which Queensland Budget sector agencies have purchased through competitive tendering*

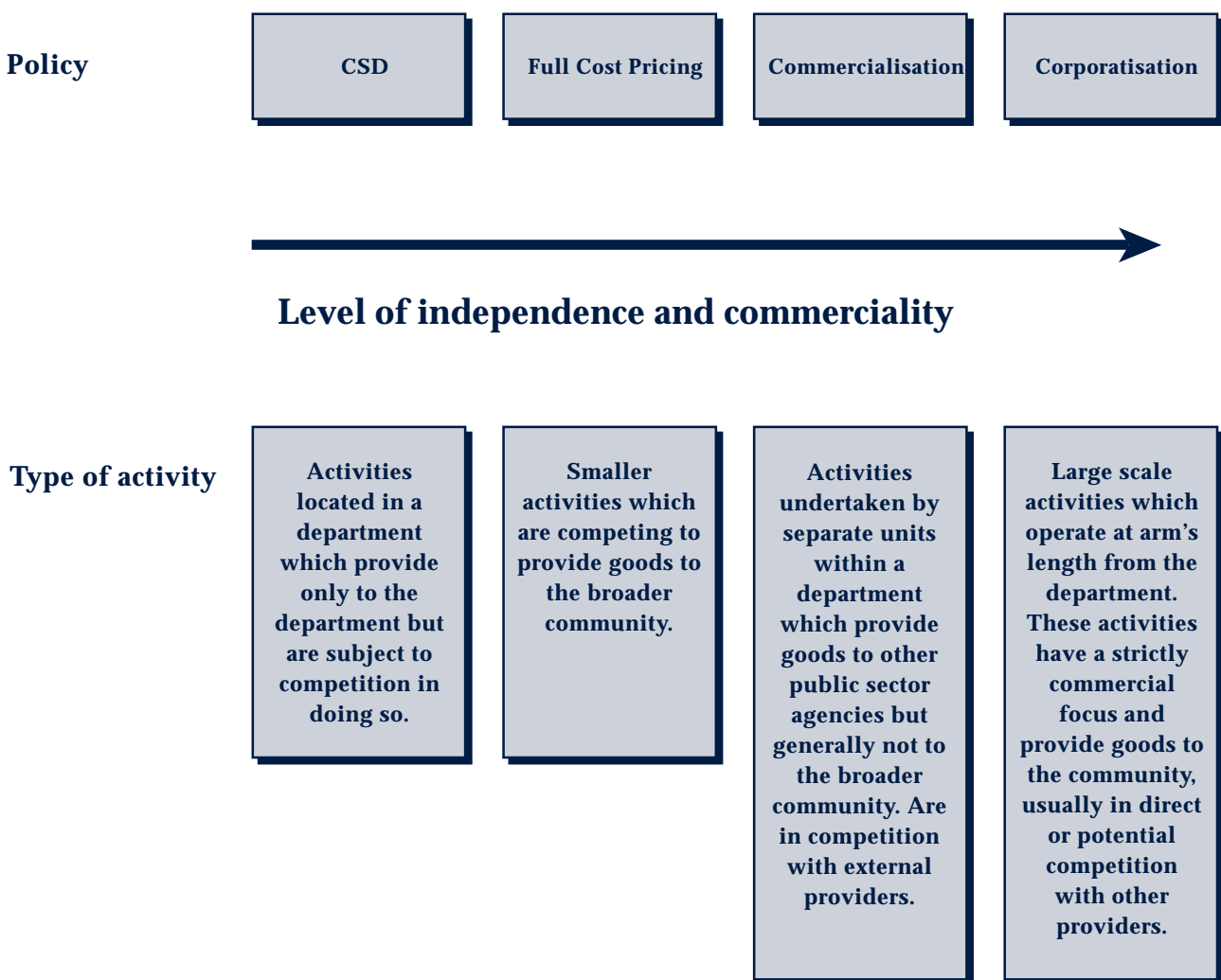
Aircraft maintenance
Audit of grant recipients
Building design and maintenance
Building security
Capital works planning and design
Cleaning
Computer services, including mainframe, management, network and software maintenance, program development, help desk, training and data input
Corporate services including employee assistance, recruitment, payroll and training and development
Criminal custody
Custodial education and training
Debt collection
Examiners
Food for institutional residents
Housing construction
Internal audit
Legal work (routine)
Pharmacy services to institutions
Plant and equipment servicing and repair
Project management
Printing and publications
Property and tenancy management
Purchasing services
Register maintenance
Road construction and maintenance
Security services
Travel arrangements
Warehousing services

* The inclusion of an activity on this list does not imply that, in all cases, the delivery of these sort of activities will be via competitive tender.

2.5 How these policies link together

Diagram 3 shows how the policies outlined in Sections 2.3 and 2.4 link together.

Diagram 3: How Competitive Neutrality Policies link together



2.6 Implementation Issues

2.6.1 Tax Equivalent Regime⁷

For Significant Business Activities (SBAs)⁸ which are corporatised and fully commercialised a Tax Equivalent Regime (TER) providing for the payment of Commonwealth income and sales tax to the State will apply pursuant to the Council of Australian Governments (COAG) Statement of Policy Intent Agreement made in March 1994. The TER is already in operation for State-owned entities that have been corporatised (GOCs). The regime is based on a tax manual released by the Queensland Treasury and an independent tax assessor.

For SBAs which are not corporatised or commercialised, but are applying a “full cost” pricing policy, a tax equivalent payment will be calculated and must be added to the cost base of the SBA’s pricing policy (refer to Diagram 2 in section 2.3.3).

All SBAs will also be liable for State taxes, as if they were privately owned.

2.6.2 Debt Guarantee Fee

All SBAs will be charged a fee to neutralise any cost of funds advantage by way of Government ownership. The fee will be based on the entity’s stand-alone credit rating vis-a-vis its actual cost of funds.

Legislation giving effect to this fee will be introduced.

2.6.3 Regulatory requirement

All SBAs will be required to comply with the same regulations as the private sector.

Conversely, some SBAs will not have to comply with various State Acts which impose accountability measures on the general Government sector.

For example, there is the issue as to whether SBAs should be tied to internal service providers and whether their commercially competitive activities should be caught by the *Freedom of Information Act* and the *Judicial Review Act*. This will be assessed on a case-by-case basis.

⁷ The large disparity between the level of revenue collected and expended by the Commonwealth Government on the one hand and the States on the other has long been of concern to State Governments. This “vertical fiscal imbalance” would worsen if taxation revenues generated by State business activities flowed to the Commonwealth. In addition, State retention of revenue is necessary to provide another incentive to undertake major reform of its business activities. For these reasons, the Commonwealth has agreed that any new taxation revenue brought about from reforms such as corporatisation should be retained by State Governments.

⁸ Refer Section 3. Which Government business activities are affected? (page 25) for a definition of Significant Business Activity (SBA).

3. WHICH GOVERNMENT BUSINESS ACTIVITIES ARE AFFECTED?

3.1 Principles underlying the identification of Significant Business Activities (SBAs)

Three principles have been applied in identifying those Government business activities to be subjected to competitive neutrality reform.

The principles will also act as a guide to considering, over time, other activities to which competitive neutrality reforms should apply.

Diagram 4 illustrates how the principles apply.

Principle 1 Must be a “business activity”

Government business activities are taken to include any activity undertaken by Government departments (including business units within departments and trust funds), statutory authorities (not subject to private sector taxation and regulatory regimes), Government owned corporations, and other statutory bodies which:

1. fall within the Australian Bureau of Statistics’ classification of a Public Financial Enterprise (PFE) or Public Trading Enterprise (PTE)⁹; and/or
2. (i) trade goods and/or services as their predominant activity; and
(ii) meet a substantial part of their operating costs or earn a substantial part of their operating revenue from user charges; and
(iii) are expected to have a predominantly commercial or profit-making focus.

Such activities may provide commercial goods and/or services either to the public, private firms or other Government agencies.

While the application of competitive neutrality is clearly pertinent when Government businesses are competing with other (Government or private) firms, allocative efficiency requires the application of competitive neutrality reforms also to monopoly or near-monopoly Government businesses.

⁹ A brief summary of these classifications is provided in the glossary.

“Business activities” do not include activities which:

- provide goods and/or services only to their own department and are not engaging in competition with any other provider outside the department;
- do not have the necessary commercial or profit-making focus. While many Government activities may meet 2(i) and (ii), there may be no expectation that an activity should operate on a commercial basis and yield a commercial rate of return. Merely because an activity earns, or is required to earn, a substantial part of its operating costs or revenue from user charges does not necessarily mean it is a business activity. For example, user charging (including partial and full cost recovery) is a tool for ensuring the prudent, judicious and efficient use of Government resources; *i.e.* as a demand management tool. User charging and full cost recovery may be practised for a number of reasons other than a desire to commercially exploit a particular activity;
- have a predominantly regulatory or policy-making role; or
- have, as their prime function, responsibility for providing a community service obligation or social policy function.

Generally speaking, the predominant role of the following activities is to meet a community service obligation or some other social, environmental or cultural policy objective:

- general public and community health services¹⁰;
- general delivery of primary, secondary, and post-secondary education services, except for fully commercial activities of TAFE and universities¹¹;
- public and community childcare;
- police and emergency services;
- sustainable management of natural resources;
- environmental protection and national parks;
- art organisations;
- libraries;
- museums;
- cultural services;
- correctional services¹²;
- public housing¹³;

¹⁰ This does not include the provision of services in competition with the private sector. For example, the provision of services by public hospitals to private patients will be reviewed for potential competitive neutrality reform. Refer to Table 3.

¹¹ Refer to Table 3 for details of activities which will be reviewed.

¹² Where competition is introduced for the provision of these services, consideration will be given to competitive neutrality measures. Refer to Table 3.

¹³ Where competition is introduced to the provision of these services, consideration will be given to competitive neutrality measures. Refer to Table 3.

- legal aid; and
- publicly funded research and research organisations where there is a public interest foundation for the research¹⁴.

It is emphasised, however, that the listing of these activities does not preclude consideration of alternative means for attaining the Government's social objectives. These alternatives could include the entry of alternative suppliers, possibly in competition with a Government provider.

Where competition is introduced to the delivery of the services listed above, consideration will be given to the appropriateness of introducing competitive neutrality reforms where one of the providers is a Government provider.

In addition, there will be instances where an activity whose predominant function is to deliver social policy may, in delivering that service, be undertaking ancillary or support activities which are in competition with the private sector. Where these operations are easily separable and are of a significant scale (see Principle 2, below), they may be considered as Significant Business Activities.

Principle 2 Must be of a significant scale of operation

The Competition Principles Agreement requires that competitive neutrality reform applies only to **Significant Business Activities** of Government.

There is no single criterion for determining the significance of a government business activity. A range of factors will be taken into account in determining "significance" including the:

- scale of operation as indicated by annual expenditure;

The scale of operation is important in terms of both the measure of resources used and the type of activities which could, realistically, support the various reform options.

The benefits from competitive reform will emanate from the elimination of resource allocation distortions arising from Government ownership. However, implementation of competitive neutrality will incur costs. These costs will include the cost of corporate governance, legislative amendments, the time and resources involved in implementation of the reform and ongoing administrative requirements (see Principle 3 on page 28). As a guide, the implementation costs of corporatisation are such that this type of reform will generally be appropriate only for those Government business activities which have an annual current expenditure¹⁵ in the vicinity of \$15 million or more.

¹⁴ A separate review of the applicability of competitive neutrality reform to public sector research and development activities will be undertaken before any individual research and development activities are assessed.

¹⁵ An expenditure measure has been chosen because, unlike a revenue measure, it is not dependent upon the pricing policy currently used.

Similarly, it is estimated that the implementation costs of commercialisation or adoption of full cost pricing principles are such that, as a guide, these reforms would generally be feasible for business activities which have an annual current expenditure in the vicinity of \$10 million or more¹⁶.

It should be emphasised, however, that these expenditure thresholds are a guide only and activities which do not meet these “thresholds” are not precluded from consideration for competitive neutrality reform.

- market share; and
- the impact on the Queensland economy of poor performance by the business activity.

Principle 3 The benefits of introducing competitive neutrality, taking into account all sectors of the community, must outweigh the costs

The Competition Principles Agreement provides for competitive neutrality reform to be implemented only where the benefits expected from reform exceed the costs.

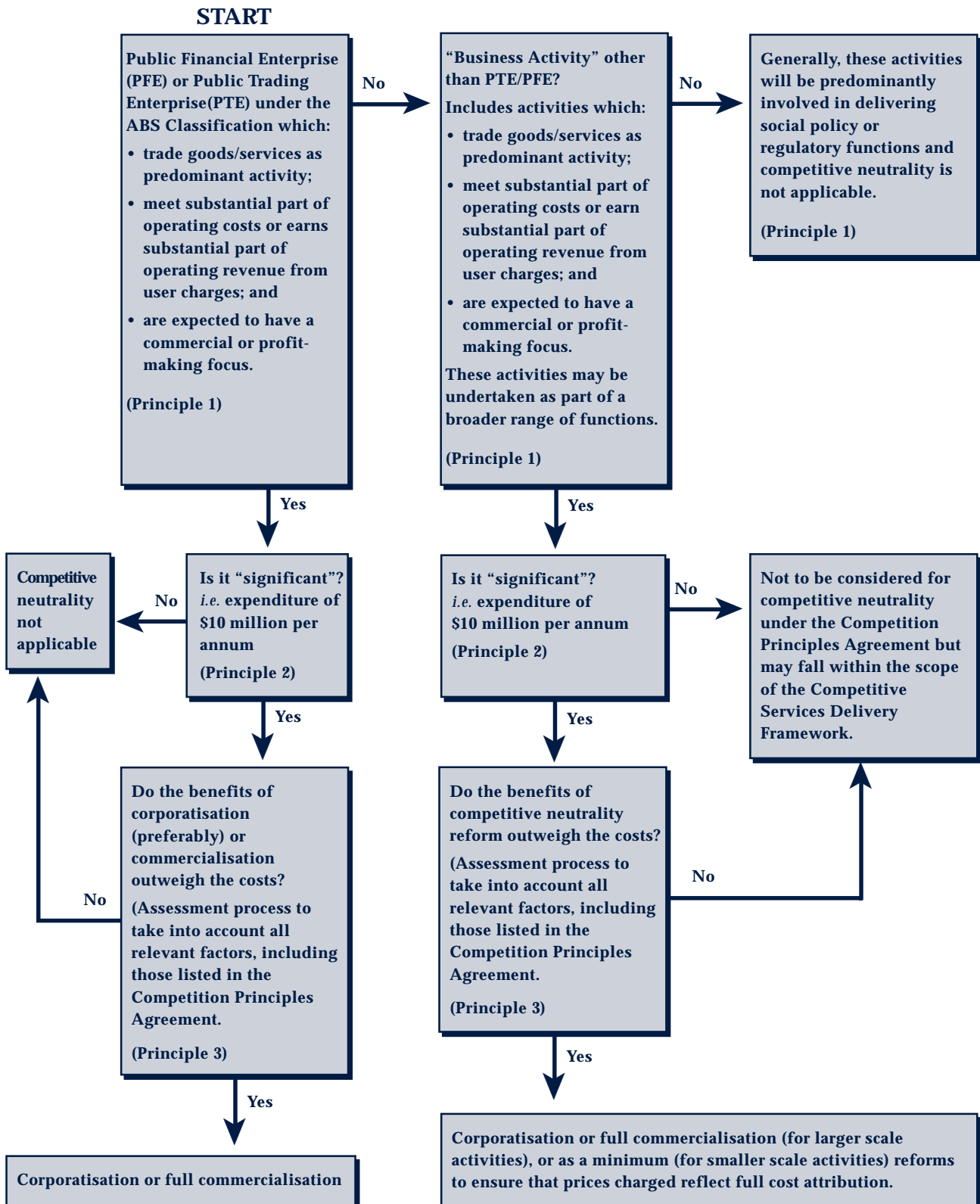
Clause 1(3) of the agreement provides for the following matters, where relevant, to be taken into account in undertaking a benefit/cost assessment:

- Government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

A more specific indication of some of the benefits and costs with regard to competitive neutrality reform is outlined in section 4.2.

¹⁶ Whilst expenditure should consist of the normal operating costs of an enterprise, including wages, capital costs and depreciation, it may not be appropriate, for example, to include a “business activity” whose expenditure is dominated by non-cash items such as depreciation charges, etc.

Diagram 4: Application of Competitive Neutrality to Queensland Government Business Activities



3.2 Significant Business Activities (SBAs) in Queensland

Two lists of Queensland Government activities identified for competitive neutrality reform are provided in Tables 2 and 3 below. Table 2 contains those Significant Business Activities which meet the principles and are either in the process of reform, or have already been reformed. Table 3 contains those SBAs which have met the first two principles but for which an assessment of the costs and benefits of introducing reform has yet to be undertaken. Accordingly, these activities are listed subject to the outcome of such an assessment. Beside each is the anticipated timing for the undertaking of a benefit-cost test.

Once completed, these benefit/cost assessments will indicate which level of reform, if any, will be implemented, and a timetable for the implementation of the reform.

The Government proposes that this list of SBAs will be adjusted over time. The list will be updated in the annual report on implementation as required by clause 3(10) of the Competition Principles Agreement.

Because of the complexities involved, a separate review of the applicability of competitive neutrality reform to public sector research and development activities will be undertaken before any individual research and development activities are assessed.

Table 2: SBAs which have been reformed or are in the process of reform

| SBA | Reform date |
|--|--|
| <p>Mines and Energy</p> <ul style="list-style-type: none"> ● Queensland Generation Corporation ● Queensland Transmission and Supply Corporation (and subsidiaries): <ul style="list-style-type: none"> ➤ Capricornia Electricity Board ➤ Far North Queensland Electricity Board ➤ Mackay Electricity Board ➤ North Queensland Electricity Board ➤ Queensland Transmission Corporation ➤ South East Queensland Electricity Board ➤ South West Queensland Electricity Board ➤ Wide Bay Burnett Electricity Board | <p>Corporatised 1 January 1995</p> <p>Corporatised 1 January 1995</p> <p>Corporatised 1 January 1995</p> <p>Corporatised 1 January 1995</p> <p>Corporatised 1 January 1995</p> <p>Corporatised 1 January 1995</p> <p>Corporatised 1 January 1995</p> <p>Corporatised 1 January 1995</p> <p>Corporatised 1 January 1995</p> |
| <p>Primary Industries</p> <ul style="list-style-type: none"> ● DPI Forestry <p>Natural Resources</p> <ul style="list-style-type: none"> ● Water Commercial | <p>Third stage commercialisation: July 1995</p> <p>Third stage commercialisation: July 1997</p> |
| <p>Public Works and Housing</p> <p>Business Units:</p> <ul style="list-style-type: none"> ➤ CITEC ➤ GOPRINT ➤ QBUILD ➤ QFLEET ➤ Queensland Property Management (QPM) ➤ Project Services ➤ Sales and Distribution Services | <p>Third stage commercialisation:</p> <ul style="list-style-type: none"> ➤ July 1996 ➤ July 1996 ➤ Yet to be determined ➤ Yet to be determined ➤ July 1996 ➤ July 1996 ➤ July 1996 |

| SBA | Reform date |
|---|---|
| <p>Transport and Main Roads</p> <ul style="list-style-type: none"> ● Cairns Port Authority ● Gladstone Port Authority ● Mackay Port Authority ● Port of Brisbane Corporation ● Ports Corporation of Queensland ● Rockhampton Port Authority ● Townsville Port Authority ● Queensland Rail ● Transport Technology Division — provides specialist and technical services (<i>i.e.</i> engineering and research and development) ● Road Transport Construction Service ● Plant Hire Services | <p>Corporatised 1 July 1995</p> <p>Corporatised 1 July 1994</p> <p>Corporatised 1 July 1995</p> <p>Corporatised 1 July 1994</p> <p>Corporatised 1 July 1994</p> <p>Corporatised 1 July 1995</p> <p>Corporatised 1 July 1995</p> <p>Corporatised 1 July 1995</p> <p>Third stage commercialisation: date to be determined</p> <p>Third stage commercialisation: July 1996</p> <p>Third stage commercialisation: July 1996</p> |
| <p>Treasury and the Arts</p> <ul style="list-style-type: none"> ● Queensland Investment Corporation (QIC) ● Queensland Industry Development Corporation (QIDC) ● Suncorp ● Golden Casket Office | <p>Corporatised 1 October 1994</p> <p>Corporatised 1 October 1994 Proposed to be amalgamated with Metway Bank and Suncorp and will be subject to Corporations Law and will operate as a private sector entity.</p> <p>Proposed to be amalgamated with Metway Bank and QIDC and will be subject to Corporations Law and will operate as a private sector entity.</p> <p>To be corporatised by July 1997</p> |

Table 3: Candidate SBAs subject to assessment of the costs and benefits of introducing reform

| Candidate SBAs | Assessment date |
|--|---|
| <p>Education</p> <ul style="list-style-type: none"> ● universities <ul style="list-style-type: none"> ➤ research and development marketing companies | <p>The role, if any, of competitive neutrality in public sector research and development will be the subject of a separate review. Any decision to apply competitive neutrality will need to be made in consultation with other States and the Commonwealth because of national implications and joint Commonwealth/State funding.</p> |
| <p>Health</p> <ul style="list-style-type: none"> ● hotel services <ul style="list-style-type: none"> ➤ catering, cleaning etc. ➤ hospital laundry services ● central pharmacy ● provision of services by public hospitals to private patients, including the provision of clinical pathology services | <p>Currently, these activities are provided in-house. To be reviewed when and if competition is introduced into the delivery of these services.</p> <p>Currently, this service is provided in-house. To be reviewed when and if competition is introduced into the delivery of these services.</p> <p>Review to commence by 31 December 1996. Any decision to apply competitive neutrality will need to be made in consultation with other States and the Commonwealth because of national implications and joint Commonwealth/State funding.</p> |
| <p>Justice and Attorney-General</p> <ul style="list-style-type: none"> ● Public Trust Office (PTO) | <p>31 December 1997</p> |
| <p>Police, Corrective Services and Racing</p> <ul style="list-style-type: none"> ● provision and management of corrective services facilities ● prison industries ● Totalisator Administration Board of Queensland | <p>31 December 1996</p> <p>31 December 1996</p> <p>31 December 1996</p> |

| Candidate SBAs | Assessment date |
|--|---|
| <p>Primary Industries</p> <ul style="list-style-type: none"> ● Brisbane Market Authority ● Queensland Abattoir Corporation ● Queensland Sugar Corporation <p>Natural Resources</p> <ul style="list-style-type: none"> ● South East Queensland Water Board ● Townsville Thuringowa Water Supply Board ● Gladstone Water Board ● Mt Isa Water Board | <p>30 June 1997 30 June 1997 If appropriate, a date will be set following the outcome of the Sugar Industry Review.</p> <p>1 July 1997 1 July 1997 1 July 1997 1 July 1997</p> |
| <p>Public Works and Housing</p> <ul style="list-style-type: none"> ● Business units of the Housing Program: <ul style="list-style-type: none"> ➤ Housing Finance Business Unit ➤ Property Management Business Unit | <p>These units are under review. Competitive neutrality reform will be considered when a decision to introduce competition to the delivery of these services is made.</p> |
| <p>Tourism, Small Business and Industry</p> <ul style="list-style-type: none"> ● Queensland Tourist and Travel Corporation | <p>31 December 1996</p> |
| <p>Training and Industrial Relations</p> <ul style="list-style-type: none"> ● Workers' Compensation Board ● TAFE Queensland, in relation to its commercial activities of: <ul style="list-style-type: none"> ➤ Competitive tendering for publicly funded programs via the Competitive Funding Program ➤ Full-fee-for-service activities | <p>Subject to the outcome of the Inquiry into Workers' Compensation and Related Matters (the Kennedy Inquiry).</p> <p>Commencement of review by 31 December 1996 — any decision to apply competitive neutrality will need to be made in consultation with other States and the Commonwealth because of national implications.</p> <p>Commencement of review by 31 December 1996</p> |
| <p>Treasury and the Arts</p> <ul style="list-style-type: none"> ● Superannuation Services Unit of the Government Superannuation Office ● Office of Gaming Regulation (rental of gaming machines only) | <p>31 December 1996 31 December 1996</p> |

4. MANAGING THE REFORM PROCESS

4.1 Taking care of consumers

In general, stronger competition will deliver significant benefits to consumers. There is evidence that competitive markets provide users with more choice over the provider of the service, resulting in better service and lower prices for industry and consumers.

Notwithstanding this, there are concerns by consumers that, in some cases, competitive neutrality reform could have adverse consequences, primarily:

- by corporatising monopolies, thereby providing incentive for price increases or service deterioration (including the loss of the consumer's right to supply), or both;
- by promoting a commercial ethic within Government, thereby threatening the continuation of those traditional Government services which cannot provide an adequate commercial return; and
- by requiring cost reflective pricing of Government services which could lead to higher prices for, and diminished access to, traditional Government services.

In implementing competitive neutrality, the Queensland Government will adopt three measures aimed at protecting consumer interests:

- (i) assessing the benefits and cost of competitive neutrality reforms so that reforms are implemented only where there is a net public benefit (refer to section 4.2);
- (ii) introduction of a prices oversight mechanism for monopoly or near-monopoly SBAs (refer to section 4.5); and
- (iii) encouraging corporatised entities to establish consumer charters in consultation with major consumer groups (refer to section 4.6).

In addition, where the Government considers that adverse price outcomes have resulted, it may specifically direct an SBA to lower prices. The Government would subsidise the SBA for the shortfall via a Community Service Obligation (CSO) payment.

4.2 Assessing the costs and benefits of introducing competitive neutrality reforms — the public benefit test

“... appropriate recognition [must be given] not only to competition and efficiency considerations, but to all the other policy objectives which Government must balance in making policy decisions, such as ecologically sustainable development, social welfare and equity considerations, community service obligations and the interests of consumers”. (Second Reading Speech to the Competition Policy Reform Bill 1995.)

One of the key principles of competitive neutrality reform is that, on an activity-by-activity basis, the benefits of proceeding with reform must outweigh the costs. That is, there must be a net public benefit.

Accordingly, before any reform takes place, a broad range of factors will need to be considered. The key factors which should be considered are listed in Box 8.

Box 8: Key factors to be considered in assessing the costs and benefits of reform

1. Impact of reform (or the lack of it) on the market, including the impact on prices, other suppliers and the allocation of resources.
2. Impact of reform on the financial position of the business activity, including its profit, return on investment, taxation liability, cost of funding and CSO funding.
3. Impact on the State Government Budget.
4. Impact on consumers, including the impact on the level and variety of goods and services; access to services; prices; quality of service.
5. Impact on social welfare and equity.
6. Impact on employees of the business activity.
7. Impact on the environment and sustainable management of natural resources.
8. Impact on regional development.
9. Impact on the management autonomy and commercial flexibility of the business activity.
10. Implementation costs.
11. Other impacts considered relevant.

An assessment of the costs and benefits of reform will facilitate a more informed decision-making process with regard to implementation and highlight to Cabinet the trade-offs which may occur in proceeding or not proceeding with reform.

The NCP Unit in Queensland Treasury will be developing a set of guidelines to assist departments and agencies to undertake the competitive neutrality cost-benefit assessment. These guidelines will provide guidance on the factors to be taken into account, review processes and procedures, and consultation.

4.3 Consultation

It is proposed that the assessment of the impacts of competitive neutrality reform, will involve consultation with affected groups such as: employees (including relevant unions and the peak union council, *i.e.* Australian Council of Trade Unions Queensland); consumer organisations; industry; and other key stakeholders.

4.4 Ensuring that social policy objectives are not compromised

Competitive neutrality will necessarily give SBAs a clearer focus on their commercial objectives as they seek to achieve performance targets and compete in a commercial environment.

Concerns are often expressed that this will mean a reduction in the non-commercial (or community service) objectives which some SBAs currently deliver.

On the contrary, however, structural reform resulting from competitive neutrality strengthens the delivery of these Community Service Obligations (CSOs) by clearly identifying them and imposing specific performance targets and standards which must be met by the SBA charged with their delivery.

The Government monitors the SBAs' performance in delivering CSOs to assess whether these standards are achieved and whether CSOs are delivered as efficiently as possible.

By way of example, in the case of the Queensland electricity industry, the State Government pays the Queensland Transmission and Supply Corporation a tariff equalisation CSO to provide electricity in rural communities at the same price as urban supplies. However, this CSO is conditional upon the electricity distributors meeting an agreed level of service (including, for example, a minimum level of continuity of supply). Similarly, in the case of Queensland Rail, the State Government provides CSOs for Citytrain (the suburban passenger rail network) and Traveltrain (the intrastate passenger rail network) to provide their services at less than their full cost. These CSOs will be conditional upon agreed levels of service (including, for example, a minimum level of on-time running) and based on efficient costs.

As part of the corporatisation and commercialisation reform process, CSOs will be clearly separated from the commercial objectives of SBAs. This involves the Government giving SBAs clear directions to undertake a CSO which generally would be explicitly and directly funded by the Government.¹⁷ The Government also specifies the standards of service expected and monitors each SBA's performance in delivering CSOs to assess whether these standards are met.

4.5 Prices oversight

One way of addressing consumer concerns regarding prices is to monitor prices charged, particularly by monopoly Government businesses.

The Queensland Government will be establishing a prices oversight body which will oversight the pricing policies of Government businesses operating in monopoly or near-monopoly markets. The body will be independent from the Government and will have the role of making public recommendations on prices charged by those entities with significant market power to ensure they do not price excessively.

The prices oversight body will also seek to ensure that there is an appropriate balance between service standards and prices.

4.6 Consumer charters

There are a number of options for ensuring that the quality and service standards of Government businesses are maintained in a competitive commercial environment. One of the more favoured approaches is by way of consumer charters.

Consumer charters are published standards of service, made by an organisation, which consumers are entitled to expect and include mechanisms for addressing concerns where the service provided does not meet the stated standards.

Typically, charters include standards relating to:

- customer contact (*e.g.* Telstra promises to answer all billing enquiries and communicate with customers on any billing dispute within two working days and if it does not, affected customers will be provided one month of the standard telephone rental free of charge);
- obtaining supply (*e.g.* Optus guarantees its business customers that they will be compensated if their service is not installed on the date agreed);

¹⁷ Other, less preferred, methods of meeting CSOs are:

- adjusting the rate of return required by a business activity; or
- by transparent cross-subsidy.

- continuity of supply (e.g. Sydney Water states that where it is not able to supply its customers with water, sewerage and stormwater drainage services, they may be entitled to a rebate);
- emergency services;
- appointments;
- older or disabled customers; and
- energy efficiency.

They may also set out procedures with respect to:

- consultation with consumers;
- information disclosure;
- complaint handling and redress (both internal avenues and external avenues); and
- periodic monitoring and reviews.

This is not an exhaustive listing of the matters which may be included in a consumer charter.

Such charters are becoming increasingly common with larger organisations in both the private and public sectors and are gaining recognition as being a “best practice procedure”.

A working group with consumer representation will be established to develop guidelines for the development of consumer charters by State utilities and other significant Government business activities. It is proposed that draft guidelines will be released for comment by the end of 1996. These charters would complement prices oversight by the proposed prices oversight body.

4.7 Dealing with the disadvantages of being a Government business

While the focus of competitive neutrality is on identifying and removing the competitive advantages of Government businesses, some Government businesses suffer competitive disadvantages by way of restrictions and obligations that arise because of their Government ownership.

Some key disadvantages are listed in Box 9.

Box 9: Possible disadvantages of being a Government business

Included in the range of disadvantages faced by Government businesses are:

- market limitations;
- public sector requirements in the areas of employment and conditions of service;
- accountability obligations flowing from Government ownership (e.g. dealing with ministerial correspondence and briefings, Freedom of Information requests, judicial review, and reporting obligations required by the *Financial Administration and Audit Act* and the *Public Service Management and Employment Act*);
- reduced managerial autonomy (particularly for SBAs which are not corporatised); and
- being tied to internal service providers.

The Government proposes that, as much as possible, the major disadvantages of Government ownership should be identified and dealt with in the transition to corporatisation, full commercialisation or the adoption of “full cost” pricing.

When investigating complaints regarding the competitive neutrality of a particular SBA, the proposed complaints mechanism (refer to section 5) will take into consideration arrangements between the Government and the SBA with regard to remaining disadvantages.

5. ENSURING THAT COMPETITIVE NEUTRALITY PREVAILS (THE COMPLAINTS MECHANISM)

The Competition Principles Agreement (clause 3(8)) requires that a mechanism be established to provide an avenue for complaint that a SBA is not competing on a competitively neutral basis.

This section outlines the proposed role and main features of a competitive neutrality complaints mechanism. The mechanism will be administered by a body independent of the Government.

New legislation will give effect to the mechanism.

5.1 Role of the complaints mechanism

The role of the complaints mechanism body is one of receiving complaints, undertaking investigations and making recommendations. The complaints body will not have powers to make determinations or to enforce any of its recommendations. This accords with the recommendation made by the Committee of Inquiry into a National Competition Policy (the Hilmer Report) with respect to the role and function of such a mechanism.

5.2 The main features of the complaints mechanism

5.2.1 Who may lodge a complaint?

A complaint may only be lodged by a genuinely disaffected party.

A genuinely disaffected party should be a firm, Government business or person:

- which is in competition with a SBA; and
- whose complaint is based upon one or more of the prescribed grounds (see section 5.2.3).

5.2.2 Against whom may a complaint be lodged?

A complaint may only be lodged against Government business activities:

- (i) listed in Table 2, **or**;
- (ii) those listed in Table 3 which, following the benefit/cost test are subjected to competitive neutrality reform **or**;

- (iii) additional activities which are subsequently identified as SBAs in the Queensland Government's annual competitive neutrality implementation report to the National Competition Council.

With respect to those business activities of the Government which do not constitute SBAs, existing arrangements for dealing with complaints will remain. Matters related to Government purchasing will be dealt with by a complaints mechanism to be established by the State Purchasing Council, except when one of the parties is a SBA.

5.2.3 Basis upon which a complaint may be lodged

A complaint may be lodged on the basis that a SBA enjoys a competitive advantage by virtue of its public ownership.

That is, a complainant must show that the SBA in question enjoys a competitive advantage relating to:

- financial advantage (e.g. taxes, cost of funds);
- legal or administrative advantage (e.g. due to exemption from regulation); or
- procedural advantage (e.g. in a tender process).

The complaints mechanism will be concerned only with complaints regarding competitive neutrality. The mechanism will not deal with anticompetitive behaviour as this is dealt with by the *Trade Practices Act*. Neither will it investigate complaints relating to which market/s a Government business activity should or should not enter.

5.2.4 When can a complaint be lodged?

Complaints may be lodged at any time during the course of competition. However, a complaint lodged during a tendering process will not result in either the suspension or unwinding of the tender process. Neither will compensation be awarded in the event of a complaint being substantiated.

SBAs may elect to submit to a "competitive neutrality audit" which would, if the outcome is positive, effectively bar complaints for a period of time.

5.2.5 Process

It is proposed to develop an informal process. The key elements will be:

1. The claim must be in writing.
2. There will be clear timeframes within which a complaint should be dealt with.
3. There will be a requirement that aggrieved competitors and the SBA concerned must attempt to resolve any complaints face-to-face before resorting to the complaints mechanism.
4. The investigatory process should allow key stakeholders (including the Government/minister as owner) to make submissions.
5. Where appropriate, there should be a process of consultation with key stakeholders. While not meant to be an exhaustive list, key stakeholders would include consumers, the SBA concerned, and competitors.
6. There will be an option of initiating mediation between the parties as an alternative, or as a preliminary step, to the investigatory route.
7. There will be provision for maintaining commercial confidentiality.
8. There will be provision for the written reporting of outcomes.

5.3 Where an allegation of noncompliance is substantiated

Where an investigation into an alleged noncompliance with the principles of competitive neutrality results in the allegation being substantiated, the body will present a report to the Treasurer stating that a business activity is not complying and make recommendations for remedial action.

Upon receipt of the report, the Treasurer will, in consultation with the minister responsible for the SBA in question, either accept or reject the recommendations. Reasons for the decision will be made available.

The body will publish an annual report setting out all allegations of noncompliance, including those which are not substantiated, and the findings of the associated investigation.

6. WHO TO CONTACT FOR FURTHER INFORMATION

For further information on:

- any matter discussed in this Policy Statement — contact the National Competition Policy Unit, Queensland Treasury, telephone (07) 3224 5673; facsimile (07) 3229 3501.
- National Competition Policy — contact the National Competition Policy Unit, Queensland Treasury, telephone (07) 3224 5673; facsimile (07) 3229 3501.
- Corporatisation — contact the Government Owned Enterprises Unit, Queensland Treasury, telephone (07) 3225 8259; facsimile (07) 3224 6457.
- Commercialisation — contact the Government Owned Enterprises Unit, Queensland Treasury, telephone (07) 3225 8259; facsimile (07) 3224 6457.
- Full cost pricing — contact the Government Owned Enterprises Unit, Queensland Treasury, telephone (07) 3225 8259; facsimile (07) 3224 6457.
- Competitive Service Delivery — contact the Public Sector Reform Directorate, Queensland Treasury, telephone (07) 3224 4582; facsimile (07) 3225 1600.
- Competitive Neutrality Complaints Mechanism — contact the National Competition Policy Unit, Queensland Treasury, telephone (07) 3224 5673; facsimile (07) 3229 3501.

7. GLOSSARY

| | |
|---|---|
| Commercialisation | A reform process designed to improve the quality and performance of Government business activity through the introduction of commercial incentives and disciplines which exist in the private sector. Commercialisation is a similar, but not quite as extensive, reform process as corporatisation; the key difference is that commercialised business activities remain within the operations of a Government department, whereas Government-owned corporations are separate legal entities with their own boards of directors. |
| COAG | Council of Australian Governments. |
| Community Service Obligations (CSO) | Noncommercial activities which Government businesses are directed to pursue by Governments. They are activities which would not be undertaken in a “purely” commercial environment. CSOs often relate to the social objectives of Government. |
| Competition Principles Agreement (CPA) | One of the three NCP agreements. It sets out principles and deadlines for the development and implementation of the key reforms (with the exception of the <i>Trade Practices Act</i>) of NCP. |
| Competitive neutrality | Competitive neutrality refers to the process of identifying and, where appropriate, removing any advantages (and disadvantages) that may accrue to a Government business by virtue of its Government ownership. Once this has been achieved the Government business competes on the same basis as its competitors. (Refer to section 1.4 for further detail). |
| Corporatisation | The restructuring of the business activities of Government departments or statutory authorities in such a way that they operate on a commercial basis, whilst remaining Government-owned. Corporatisation aims to replicate the operating environment of the private sector, without removing Government ownership. A similar, but more extensive, process to commercialisation. |
| Debt Guarantee Fees | Fees levied on public sector businesses to remove the cost of funds advantage they may obtain by reason of a Government guarantee on their debt. |

| | |
|---|--|
| Full Cost Pricing (FCP) | Refer to section 2.3.3. |
| Government Business Enterprise (GBE) | The term which collectively refers to PTEs and PFEs (see below). |
| Government Owned Corporation (GOC) | A Government business which has been corporatised pursuant to the <i>Government Owned Corporations Act</i> . |
| National Competition Policy (NCP) | Refer to section 1.2. |
| Public Financial Enterprise (PFE) (ABS definition) | <p>A “public financial enterprise” is Government-controlled and has one or more of the following characteristics:</p> <ul style="list-style-type: none"> • it performs central bank functions; • it accepts demand, time or savings deposits; or • it has the authority to incur liabilities and acquire financial assets in the market on its own account. |
| Public Trading Enterprise (PTE) (ABS definition) | <p>The primary function of a “public trading enterprise” is to provide goods and services which are mainly market, nonregulatory and nonfinancial in nature, financed mainly through sales to consumers of these goods and services.</p> <p>In the case of public trading enterprises, all or most of the production costs are recovered from individual consumers who, in a market-like environment, receive tangible goods and services directly in exchange for their payments.</p> <p>Public trading enterprises do not set out to finance the bulk of their operations from the general taxation revenue of Government. Some enterprises however would receive subsidies for provision of “community service obligations”. Public trading enterprises vary in their degree of “commerciality”, from those heavily dependent on Government subsidies to those which are net contributors to Government revenue.</p> |
| Significant Business Activity (SBA) | A Government activity which satisfies the three principles outlined in section 3. |
| Tax Equivalents | Proxy tax payments which are paid to the “Owner” Government in lieu of taxation liability to the Commonwealth Government. |

8. REFERENCES

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