

**APPLICATION OF THE
COMPETITIVE
NEUTRALITY
PRINCIPLES UNDER
NATIONAL
COMPETITION POLICY**

June 1996

Government of Tasmania

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EXECUTIVE SUMMARY

The National Competition Policy (NCP) Agreements require each State and Territory Government to publish, by 30 June 1996, a statement of the application of the competitive neutrality principles to the State Government sector. These principles require Government businesses to operate without any net competitive advantage accruing simply as a result of their public ownership.

This Policy Statement contains the policy framework for the application of the competitive neutrality principles within Tasmania. Attachment 4 shows this framework in schematic form.

The framework provides that:

- Tasmania's Government Business Enterprises (GBEs), Public Trading Enterprises (PTEs) and Public Financial Enterprises (PFEs) are significant Government business enterprises to which the corporatisation model, provided under the competitive neutrality principles, will apply.
- the GBE Act and associated legislation will be amended to ensure that by 1 July 1997 all significant Government business enterprises, other than the Housing Division of the Department of Health and Community Services, will be subject to tax equivalent, guarantee fee and dividend regimes and pay local government rates. These changes accord with the responsibilities of the Tasmanian Government under the Statement of Policy Intent on taxation which requires all PTEs and PFEs to be subject to a Commonwealth taxation equivalent regime by March 1997.
- Government entities, other than the State's GBEs, PTEs and PFEs, will be subject to the competitive neutrality principles where they engage in significant business activities.
- the definition of 'business activity' includes any activity for the supply of goods and services for consideration as part of a market which is actually or potentially contested. The further tests, relating to significance, cost and the public benefit, provided under the competitive neutrality principles are the appropriate means for identifying those Government business activities which should not be subject to those principles.

- the term 'business activity' does not include isolated and one off transactions, activities of a wholly regulatory or policy nature, or services that are provided entirely within Government. The continuance of 'tied' or monopoly in-house service arrangements within Government will be reviewed as part of the Government's broader commercialisation process.
- any 'business activity' listed in Table 2 of this Statement is a potentially significant business activity. The list will be updated in the annual Competitive Neutrality Report.
- the corporatisation or full cost attribution pricing models will apply to significant business activities, where appropriate, after public benefit and cost assessments.
- Government agencies will report six monthly to the Department of Treasury and Finance (the Treasury) on progress made in the application of the competitive neutrality principles. Treasury will monitor the actions taken, and progress made, by each government agency.
- significant Government business enterprises will report annually to Treasury on progress made in the application of the competitive neutrality principles. Treasury will monitor the actions taken, and progress made, by each significant Government business enterprise.
- during 1996-97, detailed guidelines will be prepared by the Treasury on:
 - the application of the corporatisation model;
 - undertaking public benefit and cost assessments; and
 - full cost attribution pricing.
- the competitive neutrality principles will apply to Government agencies within the broader context, and timetable, of the Tasmanian commercialisation process and financial management strategy.
- the competitive neutrality principles will be introduced in accordance with the timetable contained in Attachment 3.
- the Government Prices Oversight Commission shall operate as the complaints body for investigating competitive neutrality complaints. It will:
 - only consider complaints by a person adversely affected by the failure to comply with the competitive neutrality principles;

- only consider complaints after the Government entity has reviewed the decision resulting in the complaint;
 - report on its findings to Government; and
 - make its recommendations public in its annual report.
- a Competitive Neutrality Report will be published each August, commencing in August 1997. The Report will enable the NCC to review progress made in Tasmania in relation to the implementation of the competitive neutrality principles. This is a condition of the NCP Agreements for the payment of additional financial assistance by the Commonwealth.

1 INTRODUCTION

1.1 NATIONAL COMPETITION POLICY AGREEMENTS

At the April 1995 Council of Australian Governments (COAG) Meeting, Heads of Government signed a number of agreements designed to boost the competitiveness and growth prospects of the national economy into the future. The agreements give effect to many of the recommendations contained in the Hilmer report on National Competition Policy (NCP), which was released in August 1993.

The Prime Minister, Premiers and Chief Ministers signed three Intergovernmental Agreements (the Agreements):

- The Conduct Code Agreement;
- The Competition Principles Agreement; and
- The Agreement to Implement the National Competition Policy and Related Reforms.

This Statement is concerned with the competitive neutrality principles contained in the second of these Agreements.

The competitive neutrality principles require Government businesses to operate without any net competitive advantage simply as a result of their public ownership.

The fundamental objective of the competitive neutrality principles is to promote resource use efficiency in business activities. In particular, the principles seek to ensure that resources are not misallocated by virtue of systemic distortions in the regulatory and pricing arrangements of Government businesses arising from their public sector ownership.

Where competitive neutrality arrangements are not in place, resource allocation distortions can occur because prices charged by Government businesses may not fully reflect resource costs. Consequently, this can distort decisions on production and consumption, for example, where to purchase goods and services, and the mix of goods and services provided by the Government sector.

In turn, these decisions can distort investment and other decisions of private sector competitors.

In applying the competitive neutrality principles, the Competition Principles Agreement (the CPA) places Government businesses in two categories:

- significant Government business enterprises, which are classified as Public Trading Enterprises (PTEs) and Public Financial Enterprises (PFEs) under the Australian Bureau of Statistics Government Financial Statistics Classification; and
- significant business activities undertaken by a Government agency as part of a broader range of functions.

The CPA states that certain reform measures, namely tax equivalents, guarantee fees and economic and social regulations that apply in the private sector, must be imposed on significant Government business enterprises, where appropriate, under a corporatisation model. This model must also be applied, where appropriate, to the second category of Government business activity. If the corporatisation model is not adopted, the prices of goods and services produced or provided by the significant business activity must reflect full cost attribution.

For both categories, the competitive neutrality principles apply to the extent that the benefits to be realised from implementation outweigh the costs.

The CPA requires that in testing whether the benefits of a particular decision outweigh the costs, or for determining whether an action is 'appropriate', the following matters are to be taken into account:

- Government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations (CSOs);
- 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.

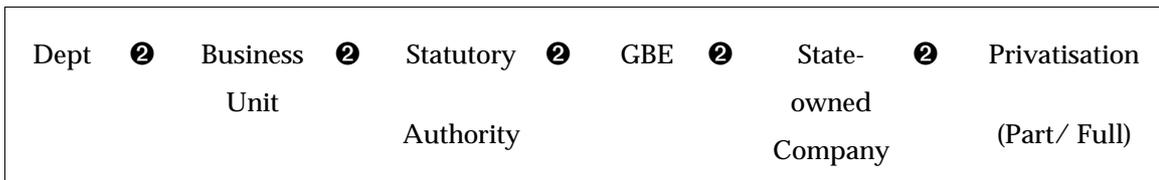
Overall, each jurisdiction is free to determine its own agenda for the implementation of the competitive neutrality principles.

Attachment 1 contains an extract from the CPA outlining State and Territory obligations in relation to competitive neutrality.

1.2 TASMANIAN COMMERCIALISATION MODEL

The Tasmanian Government has recognised for some years that commercialisation enhances the efficiency of Government entities by replacing Government controls over inputs and processes with exposure to market forces. The Tasmanian model of the commercialisation/ corporatisation process involves a Government entity progressing through a number of stages.

Diagram 1 - Stages in the Tasmanian commercialisation process



An entity's progress along the commercialisation continuum will depend on a number of factors, including the nature and size of the business activity, whether the entity is used by the Government for policy delivery purposes and the market environment in which the entity operates. It may be appropriate for some entities to retain many of the characteristics of a public sector agency but to also adopt commercial financial practices and strategic planning procedures. For others, in the long term, full corporatisation or privatisation may be desirable.

The Hilmer Report explains that "full 'corporatisation' is a means of converting a public enterprise into a firm which is as similar in terms of its objectives, incentives and sanctions to a private firm as is feasible, while retaining it in Government ownership". (page 300)

The Report further explains that, while the term has different interpretations between the Australian jurisdictions, it incorporates five basic principles:

- clarity and consistency of objectives;
- management authority;
- performance monitoring;

- effective rewards and sanctions; and
- competitive neutrality.

Different ownership structures can be adopted to implement full corporatisation including:

- a statutory authority incorporated under agency specific legislation;
- a statutory authority incorporated under generic corporatisation legislation; or
- a wholly Government owned company incorporated under the Corporations Law.

Under the Tasmanian corporatisation model a statutory authority is established under its own enabling legislation which is subject to generic corporatisation legislation.

1.3 COMMERCIALISATION REFORMS TO DATE

Commercialisation reforms in Tasmania commenced with the passage of the *State Authorities Financial Management Act 1990* (SAFMA). SAFMA required Government business enterprises to adopt contemporary accounting standards and financial practices and for certain enterprises to pay guarantee fees and limited income tax equivalents. It also provided for returns to accrue to the State from its shareholder/ownership interest in the assets and operations of Government business enterprises. Similar provisions were introduced to Tasmania's ports in 1993 through amendments to the *Marine Act 1976*.

The *Government Business Enterprises Act 1995* (the GBE Act), which took effect from 1 July 1995, replaced SAFMA. The GBE Act clearly states the duties, responsibilities and relationships between each of the States' major trading enterprises (other than its ports) and the Government.

The GBE Act provides the generic legislative framework for the full corporatisation of Tasmania's GBEs. It provides:

- clear and non-conflicting objectives;
- managerial responsibility, authority and autonomy;
- performance monitoring by the owner-Government;
- rewards and sanctions related to performance; and

- competitive neutrality mechanisms.

The competitive neutrality mechanisms contained within the GBE Act, namely tax equivalent, guarantee fee and dividend regimes, are discussed in detail under Part 2.3 of this Statement.

The GBE Act does not deal with the regulation of Government monopolies. The Government Prices Oversight Commission (GPOC), established on 1 January 1996 by the *Government Prices Oversight Act 1995*, oversees and reports on the pricing policies of Tasmanian Government monopolies. GPOC was established in response to Tasmania's obligations under the NCP Agreements.

A note to Attachment 2 shows GBEs which are subject to review by GPOC.

Commercialisation reforms, aimed at improving the management of financial and physical resources, are also occurring in the Tasmanian inner budget sector. Contemporary budgetary, financial management and accountability practices to be introduced include:

- the implementation of accrual accounting in three stages:
 - introduction of accrual reporting for the 1996-97 financial year;
 - introduction of accrual accounting by 30 June 1998; and
 - introduction of accrual-based financial management by 30 June 1999.
- by the 1997-98 financial year, Budget Output information forming an integral part of each Department's corporate planning framework;
- by 30 June 1997 developing a comprehensive commercialisation policy framework for the inner budget sector;
- developing a policy framework for the strategic management of physical assets;
- developing guidelines for the costing and pricing of Budget Outputs; and
- developing guidelines for competitive tendering and contracting within the State public sector.

2. APPLYING COMPETITIVE NEUTRALITY TO SIGNIFICANT GOVERNMENT BUSINESS ENTERPRISES

2.1 INTRODUCTION

The CPA draws a distinction between business activities undertaken by Government business enterprises classified as PTEs or PFEs and business activities carried on by other Government agencies. This Part deals with the application of the competitive neutrality principles to business activities carried on by PTEs and PFEs.

2.2 DEFINING 'SIGNIFICANT GOVERNMENT BUSINESS ENTERPRISE'

It is Tasmania's view that all the State's PTEs and PFEs, together with its GBEs, are significant Government businesses for the purposes of the CPA. Accordingly, in applying the competitive neutrality principles, **significant Government business enterprises** are defined as those enterprises which are classified as PTEs, PFEs and/or GBEs.

Table 1 shows there is significant overlap between Government businesses classified as PTEs and PFEs and those included as GBEs.

As a general principle, Tasmania will apply the corporatisation model provided under the competitive neutrality principles to all its significant Government business enterprises. The application of the corporatisation model will be compulsory for these enterprises, public benefit or cost assessments will not be undertaken. As such the Tasmanian policy framework for the implementation of the competitive neutrality principles goes further than required under the NCP.

With the exception of the Housing Division, which forms part of the Department of Community and Health Services, all Tasmanian significant Government business enterprises are incorporated, either under individual enabling legislation or the Corporations Law.

Table 1 Significant Tasmanian Government Business Enterprises

Significant Government Business Enterprise	PTE or PFE	GBE
Burnie Port Authority	Yes	No

Civil Construction Services Corporation	No	Yes
Derwent Entertainment Centre Management Authority	Yes	No
Egg Marketing Board	Yes	Yes
Forestry Corporation	No	Yes
Hobart Regional Water Board	Yes	Yes
Housing Division	Yes	No
Hydro-Electric Commission	Yes	Yes
Hydro-Electric Commission Enterprises Corp'n	Yes	Yes
Marine Board of Flinders Island	Yes	No
Marine Board of Hobart	Yes	No
Marine Board of King Island	Yes	No
Metropolitan Transport Trust	Yes	Yes
Motor Accidents Insurance Board	Yes	Yes
North West Regional Water Authority	Yes	Yes
Port Arthur Historic Site Management Authority	Yes	Yes
Port of Devonport Authority	Yes	No
Port of Launceston Authority	Yes	No
Printing Authority of Tasmania	Yes	Yes
Public Trustee	Yes	Yes
Rivers and Water Supply Commission	Yes	Yes
Southern Regional Cemetery Trust	Yes	Yes
Stanley Cool Stores Board	Yes	Yes
Tasmanian Dairy Industry Authority	Yes	Yes
Tasmanian Grain Elevators Board	Yes	Yes
Tasmanian International Velodrome Management Authority	Yes	Yes
Tasmanian Public Finance Corporation	Yes	Yes
Totalizator Agency Board	Yes	Yes
TT-Line Company Pty Ltd	Yes	Yes

2.3 APPLYING THE CORPORATISATION MODEL TO SIGNIFICANT GOVERNMENT BUSINESS ENTERPRISES

Significant Government business enterprises will be subject to the corporatisation model referred to in the competitive neutrality principles.

The corporatisation model requires that each enterprise be subject to a tax equivalent regime (TER), pay guarantee fees, State taxes, local government rates and dividends. The enterprise is to be subject to the same planning and regulatory requirements and regimes as other industry operators.

As far as possible, input disabilities which put the enterprise at a disadvantage from its competitors are to be removed. The enterprise should be paid for any community service obligations (CSOs) which it undertakes, and have a separate employing power. The enterprise will then be able to make its own arrangements for superannuation and workers' compensation and generally meet the industry standards for other employment conditions.

The provisions for the application of the competitive neutrality principles contained in the GBE Act will apply to all significant Government business enterprises.

2.3.1 Taxation

The GBE Act provides that, as from 1 July 1995;

- all GBEs are subject to all State taxes and charges including land tax, payroll tax and stamp duties. These charges are paid direct to the State Commissioner of Taxes; and
- certain GBEs are subject to both an income tax and sales tax equivalent regime (TER). Attachment 2 shows the existing TER status of each GBE.

The TER is based upon the application of Commonwealth income tax and sales tax laws and seeks to replicate, as closely as practicable, the tax liability and payments which would be made by those GBEs if they were private sector corporations subject to Commonwealth tax law.

Under the *Statement of Policy Intent On the Taxation Treatment of Government Trading Enterprises* (Statement of Policy Intent) developed from the 1994 Premiers' Conference, the Commonwealth agreed not to tax wholly owned Government business enterprises provided they were subject to a full State TER

by March 1997. Existing exemptions from payment of tax equivalents will be removed by no later than 1 July 1997.

2.3.2 Guarantee Fees

SAFMA imposed a guarantee fee upon loans obtained by certain GBEs. The GBE Act widens the base of 'financial accommodation' upon which the guarantee fee is imposed to include leases, lines of credit and other forms of borrowing.

The guarantee fee is administered by the Treasury under a self assessing regime. The fee is calculated on the difference in interest rate or cost of funds obtained by the GBE and that which would have been obtained if the GBE did not enjoy an implicit or explicit guarantee from Government. The fee is paid directly by each GBE to the Consolidated Fund.

Existing exemptions from payment of guarantee fees will be removed by no later than 1 July 1997.

Attachment 2 shows the existing guarantee fee status of each GBE.

2.3.3 Dividends

The GBE Act requires each GBE to operate as a successful business, maximising the sustainable return to the State in accordance with its corporate plan and having regard to the economic and social objectives of Government. As the owner of GBEs on behalf of the community, the Government has the same interest as an ordinary shareholder - maximising shareholder value and obtaining a commercial return on the resources invested.

As a general rule, financial targets are set on the basis that each GBE should be required to earn commercial returns at least sufficient to justify the long term retention of assets in the business and to pay commercial dividends from those returns.

Some GBEs are not in a position to achieve commercial returns in the short term. Nevertheless, targets will be established and used as a benchmark against which to measure financial performance over time as GBEs move to full commercial operation. The targets serve to define the transition path a GBE faces in achieving fully commercial rates of return.

All GBEs are required, through the corporate planning process, to meet financial performance targets. GBEs must take these targets into account in setting pricing policy even though not all GBEs are required to pay actual dividends to the Consolidated Fund.

The National Competition Council (NCC) has advised that a significant Government business enterprise must be subject to a dividend regime to comply with the corporatisation model.

Attachment 2 shows the existing dividend status of each GBE. The removal of the exempt status for those GBEs not presently liable to pay dividends will occur by no later than 1 July 1997.

2.3.4 Application of Economic Regulations to GBEs

The GBE Act states that GBEs are no longer to be treated as the Crown for the purposes of:

- the Crown Lands Act 1976;
- the Traffic Act 1925;
- the Land Acquisition Act 1993; or
- the Archives Act 1983.

The Government is presently considering the extent to which the *Ombudsman Act 1978* and the *Freedom of Information Act 1990* should apply to significant Government business enterprises.

The application of the Ombudsman Act to GBEs is being considered as part of the general review of the application of that Act being undertaken by the Department of Justice. The application of the Freedom of Information Act to GBEs will be considered when the report of the Select Committee of the Legislative Council into amendments to that Act is released.

The outcome of these reviews, and the implications for the application of the competitive neutrality principles, will be included in the appropriate Competitive Neutrality Report.

The GBE Act provides a mechanism for removing the shield of the Crown from GBEs and a note to Attachment 2 shows which GBEs are generally taken not to have any status, privilege or immunity of the Crown. The Commonwealth *Competition Policy Reform Act 1995*, together with the *Competition Policy Reform*

(Tasmania) Bill 1996 (which has been passed by Parliament and is awaiting Royal Assent), removes the shield of the Crown from all Government business enterprises effective from 21 July 1996.

In accordance with the *Local Government Act 1993*, all GBEs, including those presently outside the shield of the Crown, pay local government service rates but are exempt from the payment of the local government general rate. This exemption will be removed prior to 30 June 1997.

GBEs are presently subject to regulatory, planning and environmental regulations at both the State and local government levels, with a number of exemptions having been removed as part of the GBE Act legislative package.

2.3.5 Application of Social Regulations to GBEs

The GBE Act requires GBEs to concentrate on commercial objectives and respond to market based price signals and incentives. Non-commercial activities performed by GBEs must be clearly identified and their continued performance re-evaluated by each GBE's Board and by the Government.

The GBE Act provides the following criteria for defining a CSO:

- a specific directive from Government must exist;
- there must be a net cost to the GBE from providing the function, service or concession; and
- the function, service, or concession must be one which would not be performed by a private sector business in these circumstances.

In general, the avoidable cost method is to be used for estimating the cost of the provision of CSOs.

The CSO policy will be implemented over the next three years. GBEs must identify non commercial operations by 30 June 1996. Applications for the declaration of non commercial activities as CSOs are to be lodged by 30 June 1997.

Funding and performance criteria for CSOs will be established during the 1997-98 Budget process. The CSO process will be completed when a funding allocation is provided to the Purchasing Minister to contract for the delivery of the CSO. Direct funding of all CSOs is envisaged in the 1997-98 Budget, although some may be funded earlier.

The Tasmanian Government will release detailed guidelines in relation to the costing and funding of CSOs during the 1996-97 financial year.

2.4 APPLYING THE COMPETITIVE NEUTRALITY PRINCIPLES TO NON GBES

The Housing Division of the Department of Community and Health Services (the Housing Division), TT-Line Company Pty Ltd, the Derwent Entertainment Centre Management Authority and the Port Authorities are significant Government business enterprises not subject to the GBE Act.

2.4.1 Housing Division

The Housing Division presently controls the State's housing stock and provides a tenancy management service. It is not subject to any competitive neutrality requirements.

In April 1995, the Commonwealth and State Housing Ministers agreed to a fundamental shift in roles and responsibilities, for the provision of public housing services. The changes will be based upon the 1993 Industry Commission Report into Public Housing and will be negotiated as part of the Commonwealth-State Housing Agreement. An interim agreement takes effect from 1 July 1996.

The Industry Commission Report recommends a separation of the property and tenant management functions. The property manager is to have a commercial focus, while the tenancy manager is to have a social equity focus. Tasmania proposes to incorporate the property manager as a statutory authority prior to July 1999.

Under the general principle stated under Part 2.2 of this Statement, such a statutory authority would be fully corporatised by inclusion in Schedule 1 of the GBE Act. However, under the *Commonwealth-State Housing Agreement* any tax equivalent, guarantee fee or dividend payments must be 'internalised' within the public housing program, rather than remitted to the Consolidated Fund.

In these circumstances, public benefit and cost assessments would be undertaken before applying the corporatisation model. If this model is not appropriate the statutory authority would adopt the full cost attribution model referred to under the competitive neutrality principles.

2.4.2 Port Authorities

The major ports of Hobart, Launceston, Devonport and Burnie and the minor ports of Flinders and King Islands are statutory authorities established under the *Marine Act 1976*. This Act was amended in 1993 to require the ports to adopt contemporary accounting standards and financial practices and pay limited guarantee fees and income tax equivalents. The ports presently pay guarantee fees on new borrowings only and are not subject to capital gains tax.

Further commercialisation of the ports has been deferred pending the findings of an industry review, which is examining their future structure and functions. In part, the purpose of the review is to fully commercialise the State's major ports by 30 June 1997.

Under the Statement of Policy Intent developed from the 1994 Premier's Conference, the Commonwealth agreed not to tax Government business enterprises provided they were subject to a full State TER by March 1997.

Accordingly, notwithstanding the outcome of the industry review, the Marine Act will be amended to apply the tax equivalent and guarantee fee regimes imposed under the GBE Act to the ports by no later than 1 July 1997.

2.4.3 Derwent Entertainment Centre Management Authority

The ownership and management of the Derwent Entertainment Centre will be transferred to the Glenorchy City Council during 1996. The existing Authority will be disbanded and a new local government entity established to own and manage the Centre.

The new authority, as a local government business entity, will be subject to the National Competition Policy as it applies to local government.

2.4.4 TT-Line Company Pty Ltd

This wholly Government-owned company was incorporated under the Corporations Law in 1993 to operate the 'Spirit of Tasmania' across Bass Strait. The TT-Line Company Pty Ltd has most of the characteristics of a fully corporatised Government business enterprise, but is not required to pay a guarantee fee on its financial accommodation.

A guarantee fee regime will apply to the TT-Line Company Pty Ltd by no later than 1 July 1997.

3 APPLYING COMPETITIVE NEUTRALITY TO GOVERNMENT AGENCIES

3.1 INTRODUCTION

The CPA draws a distinction between business activities undertaken by Government business enterprises, classified as PTEs or PFEs by the ABS, and business activities carried on by other Government agencies.

This Part of the Statement deals with the application of the competitive neutrality principles to significant business activities carried on by Government agencies.

Government agency includes any Government entity which is not a PTE, PFE or GBE.

3.2 DEFINING 'SIGNIFICANT BUSINESS ACTIVITY'

The competitive neutrality principles apply only to those Government business activities of an agency which are 'significant'. The principles leave it to each State Government to determine the meaning of this term.

3.2.1 Meaning of 'Business Activity'

Tasmanian Government agencies provide a great number and variety of goods and services which include:

- health services for public and private patients;
- primary, secondary and post secondary education;
- land valuation services;
- mapping and survey services;
- legal services, both criminal and civil;
- police and justice services;
- prison services;
- quarantine services; and
- parks and wildlife services.

One approach to defining whether the production of these goods and services constitutes a 'business activity' is to define the circumstances where such an activity may occur. For example, a Government agency, or part of a Government agency, only undertakes a business activity where:

- it trades in goods and or services as its predominant activity;
- it meets a substantial part of its operating expenses or earns a substantial part of its operating revenue from user charges; and
- the Government, as owner, expects or requires the activity to have a commercial or profit-making focus.

However, case law indicates that the ordinary meaning of 'business activity' can be extremely broad and can, for example, be held to mean almost anything which is an occupation as distinguished from a pleasure - anything which is an occupation or duty which requires attention is a business. On this basis, it is irrelevant whether the activity is or is not the Government agency's predominant activity, or whether the owner expects, or requires, a commercial or profit-making focus.

In the public sector, it is a common practice to tie the definition of 'business activity' to the costs of providing the goods or service being met predominately by the user, rather than from taxes or other revenue sources.

The Tasmanian Government supports a policy of "user pays" for publicly produced goods and services, and most agencies already charge on a partial cost recovery basis for some services provided. However, a number of Government activities which directly compete against the private sector, for example, training courses offered by TAFE and health care provided in public hospitals, are funded only to a minor extent, if at all, by direct user charges.

The NCC considers that, in defining a business activity, the relevant considerations are the nature of the activity and the contestability of the market, rather than the way the activity is funded.

Tasmania will adopt a broad definition of business activity, requiring only that a Government agency produce goods and/or services in an actually, or potentially, competitive market.

Certain activities are excluded from this definition:

- isolated and one off transactions are not business activities. Business activities must involve repetition and regularity and be conducted in a business like manner;
- regulatory or policy functions are not business activities and neither is the imposition of fees and charges associated with performing such functions;
- taxing and licensing activities excluded under Part IV of the Commonwealth Trade Practices Act; and
- services provided and used solely by State Government departments, whether or not under a tied contract arrangement, will not be subject to the competitive neutrality principles agreed under the CPA.

The continuance of internal and tied service arrangements will be reviewed as part of the Tasmanian commercialisation process. Further, in-house arrangements will be reviewed under the competitive tendering guidelines and in house bids will be made on the basis of full cost attribution.

Tasmania considers that further tests, relating to significance, cost and the public benefit, provide the appropriate means for eliminating those Government business activities that should not be subject to the competitive neutrality mechanism.

3.2.2 Meaning of 'Significant'

One means of defining 'significant' is on the basis of a defined financial threshold measure such as turnover. However, as the NCC has pointed out, financial size is a necessarily arbitrary measure and difficult to apply on a consistent basis across Australia.

The NCC considers that the impact of the activity on the relevant market, or across State Governments generally, is a more appropriate indicator.

Alternatively, the State could define those Government agencies or parts of agencies to which the competitive neutrality principles are to apply. Government departments undertake a variety of business activities in competitive markets. Statutory authorities which are not already GBEs generally have a predominately regulatory function, but some of these authorities either:

- undertake business activities in conjunction with their regulatory role, for example, the State Fire Commission; or

- undertake business activities solely, but are too small to be considered as a GBE, for example, the Theatre Royal Trust; or
- undertake business activities while being funded almost totally from the Consolidated Fund, for example Private Forests Tasmania and Tasmania Development and Resources.

An initial review of the activities of Government agencies has established that each of the activities listed in Table 2 below constitutes a potentially significant business activity. As the commercialisation process proceeds within Tasmania, further significant business activities may emerge. The list will be updated in the annual Competitive Neutrality Report.

Table 2 - Potential significant business activities undertaken by Government agencies

Govt Agency	Potentially significant business activity
Department of Premier & Cabinet	Communications and Computing Division Private Forests Tasmania Tasmanian Audit Office
Department of Treasury & Finance Tasmania Development & Resources	State Purchasing and Sales Division Public Offices Administration Lending activities
Department of Community & Health Services	Significant business activities undertaken within public hospitals, such as non-clinical services including laundry services, cleaning and catering, clinical services including medical imaging, pathology, pharmacy, allied health services and GP services. Treatment of private patients in public hospitals
Department of Education, Community and Cultural Development	Theatre Royal Trust Significant business activities of the University of Tasmania. Tuition of full fee paying students at the University of Tasmania.
Department of Justice	Correctional enterprises Legal services
Department of Primary Industry & Fisheries	Research Farms Research and laboratory facilities
Department of Vocational Education and Training	Significant business activities of post-secondary institutions including TAFE Colleges, the Adult and Migrant Education Service and the Council of Adult Education.
Department of Tourism	Tourism marketing activities
Department of Transport	Bruny Island ferry service
Department of Environment & Land Management	Discretionary tourism services in National Parks, comprising camp ground type accommodation Inland Fisheries Commission Crown land management Valuation, survey and mapping services Botanical Gardens

Department of Police and Public Safety	Sale of fire fighting equipment
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3.3 APPLICATION OF THE COMPETITIVE NEUTRALITY PRINCIPLES TO GOVERNMENT AGENCIES

3.3.1 Introduction

A Government agency that is undertaking a significant business activity will apply the competitive neutrality principles within the broader context of the Tasmanian commercialisation process and financial management strategy.

Each agency will, by 30 June 1997, provide the Treasury with a statement on the application of the competitive neutrality principles to its significant business activities, including an implementation timetable. Each agency will report to the Treasury at six monthly intervals on progress in implementing the competitive neutrality principles.

Application of the competitive neutrality principles will include a public benefit assessment to determine where application of the principles is 'appropriate' for a significant business activity.

The Government will, as part of its commercialisation reforms, also evaluate existing arrangements for competitive tendering, tied contract arrangements and services provided and used solely by State Government departments.

Where competition is being introduced to the supply of Government services previously supplied internally or under a tied contract arrangement, the Government agency will apply the competitive neutrality principles as part of the Tasmanian commercialisation process.

3.3.2 Meaning of 'Where Appropriate'

The corporatisation model or the full cost attribution model will apply, 'where appropriate', to significant business activities undertaken by Government agencies. In general terms, application of the competitive neutrality principles is most appropriate where there is a strong and mature private market. However, even in a non-contested market, application of the principles can improve the allocation of resources.

Issues to be considered, as part of the public benefit and cost assessments, to determine whether application of the competitive neutrality principles is

'appropriate', include those specified in the CPA and listed under Part 1.1 of this Statement.

Other relevant matters will include:

- accessibility to services provided by the business activity;
- the state of the private market;
- the views of key stakeholders, which may include the Commonwealth, other States, unions, consumers and competitors;
- whether the Government, as owner, expects the activity to have a predominately profit making focus;
- the size of the activity;
- the extent to which the activity should be commercialised for reasons other than competitive neutrality, for example enhanced governance and accountability arrangements or performance monitoring; and
- the net public cost of adopting either reform model.

The State Government will, by 31 December 1996, prepare detailed guidelines for undertaking public benefit and cost assessments.

3.3.3 Corporatisation Model

Application of the corporatisation model involves a number of costs, including legislative, governance and compliance costs and risks to Government. This being the case, it is unlikely that the corporatisation model will apply to smaller significant business activities. The State Government, by 30 June 1997, will produce detailed guidelines for the application of the corporatisation model.

Where the corporatisation model is to apply:

- to a significant business activity being undertaken by an existing statutory authority, that authority will be included as a GBE by order under the GBE Act; or
- in any other case, a separate Government business enterprise, incorporated under the Corporations Law, or its own enabling legislation will be established to undertake the business activity.

The enterprise established will be considered a significant Government business enterprise and the principles outlined under Part 2.4 of this Statement will apply to it.

3.3.4 Full Cost Attribution Model

Where the full cost attribution model is to apply, the total cost of the resources used in providing the activity are to be accounted for by the Government agency, irrespective of who pays for those resources. The full cost will include the direct cost of providing the activity and a proportional share of indirect costs.

The full cost attribution model requires the Government agency to separately attribute to the business activity the full costs of production, including tax equivalents, guarantee fees, costs of capital, and the cost of complying with regulations applying to the private sector.

Costs will include:

- staff costs, including wages and salaries and pay related allowances, workers' compensation and superannuation;
- accommodation, including rents, rates, maintenance, heating and light etc;
- other running costs, including materials and supplies, travel expenses, telephones, postage, stationery, printing, IT costs, consultancies etc;
- annual operating costs, including maintenance of equipment, insurance etc; and
- capital and finance costs, including depreciation, finance and leasing costs, guarantee fees, Commonwealth and State tax equivalents and an economic rate of return on capital.

The Government agency will adjust the costs which it incurs in undertaking the significant business activity for any input disabilities arising from public ownership.

The State Government, by 30 June 1997, will prepare a detailed manual for the pricing of significant business activities based upon full cost attribution.

4. COMPLAINTS AND NON COMPLIANCE

4.1 INTRODUCTION

The Agreement requires each State and Territory to have in place a mechanism to deal with complaints about breaches of, and non-compliance with, competitive neutrality principles.

4.2 PROPOSED APPROACH

The complaints body will consider whether significant Government business enterprises and Government agencies which are subject to the competitive neutrality principles, are complying with those principles as stated in Tasmania's policy statement.

The complaints body will:

- only consider complaints by a person adversely affected by the failure to comply with the State's policy statement on the application of the competitive neutrality principles and any associated implementation guidelines;
- only consider complaints after the significant Government business enterprise or Government agency against which the complaint is made has had the opportunity to review its actions;
- report on its findings jointly to the Treasurer and the Minister responsible for the administration of the significant Government business enterprise or Government agency against which the complaint is made; and
- make its recommendations public in an annual report.

Government agencies will report all complaints lodged for review, and the outcome of the review, in their six monthly reports to Treasury and in their annual reports. Significant Government business enterprises will report the same information in annual reports to Treasury and in their published annual reports.

The State Government, by 31 December 1996, will develop guidelines for the internal review of complaints lodged with Government agencies and Government business enterprises regarding the application of the competitive neutrality principles by that entity.

The State has several options available to provide the required complaints/compliance mechanism. These include:

- enlarging the role of an existing State regulatory authority, such as GPOC, to deal with competitive neutrality complaints;
- contracting a competitive neutrality regulatory authority established in another State to undertake that function in Tasmania; or
- legislating to enable the NCC to investigate complaints that occur within Tasmania.

Tasmania does not consider it appropriate that an entity from another jurisdiction should investigate complaints concerning the actions of State Government agencies. GPOC oversees the pricing policies of Government monopolies and has particular expertise and experience in examining pricing issues. It is anticipated pricing will be the main subject of complaints concerning the application of competitive neutrality principles.

As from 1 July 1997, the role of GPOC will be expanded to include the investigation of competitive neutrality complaints.

5 COMPLIANCE AND REPORTING ARRANGEMENTS

Competitive neutrality is an important additional element in the financial management and accountability arrangement of Government business activities. Each entity subject to the competitive neutrality principles will report on its compliance with those principles in its annual report.

In addition, each Government agency will, as from 1 July 1997, report to the Treasury every six months on progress made in implementing the application statement. Each agency will also report any complaints against that agency's application of the competitive neutrality principles and the outcome of the internal review of those complaints.

Each significant Government business enterprise will report annually to the Treasury about any complaints against that enterprise's application of the competitive neutrality principles and the outcome of the internal review of those complaints.

Treasury will be monitoring the actions taken, and progress made, by each Government entity in meeting the competitive neutrality principles.

The State will publish a Competitive Neutrality Report each August subsequent to this statement, as required by clause 3(10) of the CPA. The Report will note:

- amendments to the list of Government business enterprises and Government agencies subject to the principles;
- progress in implementing this policy statement over the preceding twelve months;
- progress made by each Government agency in implementing its individual application statement;
- the results of any internal review of complaints against the application of the competitive neutrality principles undertaken by significant Government business enterprises or Government agencies;
- the role of the Treasury in implementing and overseeing the competitive neutrality principles; and
- the operation of the complaints mechanism over the preceding twelve months.

6 GLOSSARY OF TERMS

Terms used within this Statement have the following meaning:

'ABS' means the Australian Bureau of Statistics;

'the Agreements' means

- The Conduct Code Agreement;
- The Competition Principles Agreement; and
- The Agreement to Implement the National Competition Policy and Related Reforms.

signed by all Heads of Government at the April 1995 Council of Australian Governments Meeting. These Agreements are intended to boost the competitiveness and growth prospects of the national economy into the future;

'business activity' means an activity undertaken by a Government agency to produce goods and or services for use in an actually or potentially competitive market;

'competitive neutrality principles' means the principles stated in the CPA that require Government businesses to operate without any net competitive advantage simply as a result of their public ownership. Attachment 1 of the Statement contains an extract from the CPA stating how the principles are to be achieved;

'CPA' means the Competition Principles Agreement is one of the Intergovernmental Agreements relating to NCP;

'CSO' means a function, service, or concession performed by a GBE:

- under a specific directive from Government; and
- at a net cost to the GBE; and
- which would not be performed by a private sector business in these circumstances;

'GBE' means a statutory authority included on Schedule 1 of the GBE Act;

'GBE Act' means the *Government Business Enterprises Act 1995*;

'Government agency' includes any Government entity which is not a PTE, PFE or GBE;

'GPOC' means the Government Prices Oversight Commission established by the *Government Prices Oversight Act 1995*;

'NCC' means the National Competition Council;

'NCP' means National Competition Policy;

'PFE' means an enterprise classified as a Public Financial Enterprise under the Australian Bureau of Statistics Government Financial Statistics Classification;

'PTE' means an enterprise classified as a Public Trading Enterprise under the Australian Bureau of Statistics Government Financial Statistics Classification;

'SAFMA' means the former *State Authorities Financial Management Act 1990*;

'significant Government business enterprise' means an enterprise which is classified as a PTE, PFE and/or a GBE;

'Statement of Policy Intent' means the *Statement of Policy Intent On the Taxation Treatment of Government Trading Enterprises* developed from the 1994 Premiers' Conference;

'TER' means a taxation regime imposed upon a Government business enterprise by the State which equate with Commonwealth income tax and wholesale sales tax from which the enterprise is exempt by virtue of it being owned by the State;

'Treasury' means the Department of Treasury and Finance;

ATTACHMENT 1

CLAUSE 3 OF THE COMPETITION PRINCIPLES AGREEMENT

Clause 3 of the CPA is reproduced below.

- "(1) The objective of competitive neutrality policy is 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. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.
- (2) Each Party is free to determine its own agenda for the implementation of competitive neutrality principles.
- (3) A Party may seek assistance with the implementation of competitive neutrality principles from the Council. The Council may provide such assistance in accordance with the Council's work program.
- (4) Subject to subclause (6) for significant Government business enterprises which are classified as "Public Trading Enterprises" and "Public Financial Enterprises" under the Government Financial Statistics Classification.
- (a) the Parties will, where appropriate, adopt a corporatisation model for these Government business enterprises (noting that a possible approach to corporatisation is the model developed by the inter-governmental committee responsible for GTE National Performance Monitoring): and
- (b) the Parties will impose on the Government business enterprise:
- (i) full Commonwealth, State and Territory taxes or tax equivalent systems:
- (ii) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees: and
- (iii) 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.

- (5) Subject to subclause (6), where an agency (other than an agency covered by subclause (4)) undertakes significant business activities as part of a broader range of functions, the Parties will, in respect of the business activities:
 - (a) where appropriate, implement the principles outlined in subclause (4); or
 - (b) ensure that the prices charged for goods and services will take account, where appropriate, of the items listed in paragraph 4(b), and reflect full cost attribution for these activities.
- (6) Subclauses (4) and (5) only require the Parties to implement the principles specified in those subclauses to the extent that the benefits to be realised from implementation outweigh the cost.
- (7) Subparagraph (4)(b)(iii) shall not be interpreted to require the removal of regulation which applies to a Government business enterprise or agency (but which does not apply to the private sector) where the Party responsible for the regulation considers the regulation to be appropriate.
- (8) Each Party will publish a policy statement on competitive neutrality by June 1996. The policy statement will include an implementation timetable and a complaints mechanism.
- (9) Where a State or Territory becomes a Party at a date later than December 1995, that Party will publish its policy statement within six months of becoming a Party.
- (10) Each Party will publish an annual report on the implementation of the principles set out in subclauses (1), (4) and (5), including allegations of non compliance.

ATTACHMENT 2

SUMMARY OF THE COMPETITIVE NEUTRALITY ARRANGEMENTS PRESENTLY APPLYING UNDER THE GBE ACT

GBE	TER	Pays div'ds	Pays guar. fees
Civil Construction Services Corporation *	Yes	Yes	Yes
Egg Marketing Board	No	No	No
Forestry Corporation	Yes	Yes	Yes
Hobart Regional Water Board ^	No	No	Yes
Hydro-Electric Commission * ^	Yes	Yes	Yes
Hydro-Electric Commission Enterprises Corporation *	Yes	Yes	Yes
Metropolitan Transport Trust ^	Yes	Yes	Yes
Motor Accidents Insurance Board ^	Yes	Yes	Yes
North West Regional Water Authority ^	No	No	Yes
Port Arthur Historic Site Management Authority	No	No	No
Printing Authority of Tasmania *	Yes	Yes	Yes
The Public Trustee	Yes	Yes	Yes
Rivers and Water Supply Commission	No	No	No
Southern Regional Cemetery Trust *	No	No	No
Stanley Cool Stores Board	Yes	Yes	Yes
Tasmanian Dairy Industry Authority	No	No	No
Tasmanian Grain Elevators Board	Yes	Yes	Yes
Tasmanian International Velodrome Management Authority	No	No	No
Tasmanian Public Finance Corporation	Yes	Yes	No
Totalizator Agency Board *	Yes	Yes	Yes

Note:

* means that the GBE Act removes the shield of the Crown from the GBE

^ means that the GBE's pricing regime is subject to review by GPOC

ATTACHMENT 3

COMPETITIVE NEUTRALITY PRINCIPLES IMPLEMENTATION TIMETABLE

DATE	ACTION
By 1 July 1996	GPOC appointed as complaints mechanism for the implementation of the competitive neutrality guidelines.
By 31 December 1996	Guidelines prepared that will enable Government agencies and significant Government business enterprises to undertake: <ul style="list-style-type: none"> • public benefit assessments; • cost benefit assessments; and • reviews of complaints against the application of the competitive neutrality principles.
By 30 June 1997	Guidelines prepared for the application of: <ul style="list-style-type: none"> • the corporatisation model; and • full cost attribution pricing. <p>Government agencies provide Treasury with a statement on the application of the competitive neutrality principles to their significant business activities, including an implementation timetable.</p>
By 1 July 1997	Exemptions from tax equivalent payments, dividends and/or guarantee fees removed from GBEs, port authorities and TT-Line Company Pty Ltd.
By 31 August 1997	Initial Competitive Neutrality Report published. <p>Initial report on complaints received during the preceding twelve months on the application of the competitive neutrality principles within Tasmania published by GPOC.</p>

By 31 December 1997

Initial reports received from Government agencies on the implementation of their application statements.

ATTACHMENT 4

SCHEMATIC SHOWING THE APPLICATION OF THE COMPETITIVE NEUTRALITY PRINCIPLES TO THE TASMANIAN STATE GOVERNMENT SECTOR

