



**GOVERNMENT OF
WESTERN AUSTRALIA**

**POLICY STATEMENT
ON
COMPETITIVE NEUTRALITY**

JUNE 1996

POLICY STATEMENT ON COMPETITIVE NEUTRALITY

Contents

Background	1
Identification of Net Competitive Advantage	2
- <i>Potential Competitive Advantages</i>	3
- <i>Potential Competitive Disadvantages</i>	4
Agencies/Activities Which Should be Subject to Competitive Neutrality	5
- <i>Identification of “Significant Government Business Activities”</i>	5
- <i>Costs and Benefits of Applying Competitive Neutrality</i>	7
- <i>The Range of Agencies Involved</i>	8
Achieving Competitive Neutrality	12
- <i>Commercialisation or Corporatisation</i>	12
- <i>Reform of Specific Advantages/Disadvantages</i>	14
- <i>Pricing Principles</i>	15
Complaints	16
Annual Report	17
Appendix A : <i>Competitive Neutrality Obligations under the Competition Principles Agreement</i>	18
Appendix B : <i>Definition of Public Trading Enterprise and Public Financial Enterprise</i>	20

POLICY STATEMENT ON COMPETITIVE NEUTRALITY

The principle of competitive neutrality is an integral component of the Competition Principles Agreement agreed by the Council of Australian Governments in April 1995 as part of the National Competition Policy.

This competitive neutrality Policy Statement complies with the requirements of the Competition Principles Agreement. These requirements are detailed in Appendix A to this Statement. This Agreement includes a requirement to develop a timetable for considering the costs and benefits of introducing competitive neutrality for significant government business activities.

Background

The Agreement states that:

“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.”

This objective has its roots in the Hilmer Report, which recommended that a mechanism to deal with competitive neutrality between government businesses and other businesses should form part of a national competition policy for two reasons:

- concern that it is not fair for government businesses to enjoy artificial competitive advantages when competing with private firms; and
- it may be a misallocation of resources to subsidise (by artificially conferring a net competitive advantage) the provision of services by the public sector, if to do so limits or prevents the opportunity for more efficient provision of those services by the private sector.

In the absence of competitive neutrality, government businesses may use any net competitive advantage they enjoy to charge prices which do not match their full resource costs - which has an economic ramification in terms of resource allocation:

- if the prices of goods or services are less than their full resource cost, demand will be exaggerated leading to more resources being devoted to government businesses than may be warranted. As a consequence resources will be drawn from other sectors of the economy which could utilise them more productively; and

- conversely, if the prices charged by a government business exceed their full resource cost then users of the business' goods or services will have fewer resources to apply to more productive uses. Their competitiveness will be adversely affected as a consequence.

In either case the result is an economy which cannot function or grow to its full potential.

The application of competitive neutrality involves the introduction of measures which effectively neutralise any net competitive advantage flowing from government ownership. Its objective is to foster the allocation of resources in the economy to where they can be used to their best effect.

It is important to realise that the implementation of competitive neutrality should not be at the expense of social welfare and equity, economic and regional development, or the interests of a class of consumers or consumers generally. Government can still pursue social and economic development objectives, but needs to do so through more transparent measures. This highlights that competition is not an objective in its own right but is desirable for the broader benefits it brings to the community.

Identification of Net Competitive Advantage

Government businesses face a range of potential advantages and disadvantages relative to existing or potential private competitors.

Potential Competitive Advantages

Examples of competitive advantages that may be enjoyed by government businesses include:

- **exemption from taxes and charges.** For example, government businesses may be exempt from Federal income and wholesale sales taxes, State taxes and local government rates;
- **exemption from Corporations Law reporting requirements** (although governments typically impose their own accountability arrangements, which may be more or less onerous than the Corporations Law);
- **explicit or implicit government guarantees on debts**, which may permit government businesses to operate at a loss and with freedom from the threat of insolvency;
- **the cost of capital may be lower for government businesses** because of the lower risk of dealing with governments which have the power to tax;

- **government businesses may be able to purchase inputs provided by other government businesses at concessional prices relative to those charged to private firms;**
- **government businesses are free from the threat of takeovers; and**
- **government businesses may be immune from particular regulatory requirements.**

Government business activities can also enjoy actual or potential competitive advantages as a result of legislation restricting competition or their ownership of essential infrastructure which constitutes a natural monopoly. However, these advantages do not arise from government ownership and are not directly addressed through the application of competitive neutrality. Other elements of the Competition Principles Agreement do deal with these issues, including:

- the requirement to review legislation which restricts competition; and
- the establishment of regimes which give a right of access to essential infrastructure facilities.

Potential Competitive Disadvantages

Examples of artificial competitive disadvantages potentially faced by government businesses include:

- **government businesses may be subject to a range of whole of government policy and reporting requirements not applicable to the private sector (which may involve administrative or commercial costs), including:**
 - administrative law requirements (such as Freedom of Information, equal employment opportunity, government purchasing practices, and borrowing limits);
 - centralised superannuation, insurance and borrowing arrangements;
 - constraints on capital funding;
 - duplication of accounting and banking systems as a result of government businesses running commercial systems within the Budget sector; and
 - industrial relations policies.

- **government businesses may be subject to varying degrees of Ministerial intervention**, with potential delays in decision-making or the making of decisions on non-commercial grounds. Government businesses can also be subject to Ministerial requests for advice and draft correspondence;
- **government businesses may be subject to employment terms and conditions which are more expensive and less flexible than those available in the private sector**. Examples include superannuation, service-wide pay and conditions, permanency, recruitment processes, redundancy processes and costs, and access to part-time casual and contract labour;
- **governments may restrict their businesses' access to particular classes of customers and place legislative restrictions on the commercial use or disposal of assets;**
- **government businesses may carry the legacy of prior non-commercial decisions by government, giving rise to excessive obligations and liabilities;**
- **government businesses may be subject to Parliamentary scrutiny, which may be more onerous than shareholder accountability in the private sector**. Furthermore, there may be potential for commercial confidentiality to be overridden by public scrutiny requirements; and
- **social equity considerations may require government businesses to provide services at or below costs (eg through unfunded community service obligations)**. This may place a government business at a competitive disadvantage if its ability to cross-subsidise these services is constrained.

By definition, net competitive advantage reflects the extent to which competitive advantages and disadvantages offset each other.

However, it is clear that many of these advantages and disadvantages may be difficult to quantify, so that precise evaluation of net competitive advantage may not be practical. Nevertheless, identification and removal of the impacts of the major competitive advantages and disadvantages (such as exemption from taxes, the presence of government guarantees, special reporting requirements and certain whole-of-government policies) affecting a government business is likely to be feasible. As a consequence, the more serious impacts on resource allocation arising from government ownership should be able to be addressed.

The Competition Principles Agreement, in addressing competitive neutrality, specifically focuses on the imposition of:

- full Commonwealth, State and Territory taxes or tax equivalent systems to government agencies;
- debt guarantee fees directed towards offsetting the competitive advantages provided by 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.

It should be noted that the policy of competitive neutrality is intended to neutralise only those advantages and disadvantages which arise from government measures (as outlined above). It is not intended to neutralise efficiencies or inefficiencies in government operations.

Agencies/Activities Which Should be Subject to Competitive Neutrality

Identification of “Significant Government Business Activities”

The Competition Principles Agreement states that competitive neutrality should apply to the **significant business** activities of publicly owned entities, not to the non-business, non-profit activities of these entities. Moreover, the Agreement requires the Government to apply competitive neutrality only to those activities where the benefits to be realised from implementation outweigh the costs.

A number of government business activities readily meet these criteria, including fully commercialised and corporatised government trading enterprises (GTEs), such as Western Power, AlintaGas and the Water Corporation. However, drawing a line between government business and non-business activities is not always straightforward. For example, some government activities (such as policy advice) may not generally be thought of as “business” activities, but could potentially take place in the private sector.

In developing an understanding of what significant government business activities take place in Western Australia, it is useful to adopt a two staged approach:

- firstly, identify what are government business activities; and
- secondly, assess what constitutes a **significant** government business activity.

The next step would then be to undertake an examination of the benefits and costs of implementing competitive neutrality to a significant government

business activity to determine whether it should be subject to competitive neutrality.

The following criteria are useful in identifying business activities of government:

- the business activity relates to the production of goods or services for sale in a market;
- there must be user-charging for the goods or services (where the user may be a member of the general public, a private firm or another government agency); and
- the agency supplying the good or service is required to recover all costs (possibly including a margin for profit) or a significant proportion of these costs from the supply of the good or service (whether or not full cost recovery or profits are actually achieved).

The Competition Principles Agreement provides guidance on the type of government business activities which could be subject to competitive neutrality by referring to the Australian Bureau of Statistics' classification of Public Trading Enterprises (PTEs) and Public Financial Enterprises (PFEs) - see Appendix B for definitions. In addition to these enterprises it is also necessary to consider:

- business units within general government which charge on a commercial basis for services provided; and
- general government activities which are the subject of an in-house bid competing with external bids in a formal tender process.

The following activities will not be regarded as business activities:

- the imposition or collection of taxes, levies or fees for licences;
- granting, refusing to grant, revoking, suspending or varying licences;
- policy development and advice; and
- the provision of goods and/or services by an agency **for its own consumption**, where there is no direct competition with any other provider outside the agency.

Identifying what are **significant** business activities in the public sector (and whether the benefits of competitive neutrality are likely to outweigh the costs) will involve an element of judgement. Important elements of such an assessment are:

- the extent of competition (or the potential for competition) between the public and private sectors; and
- the significance of the market in which the government business activity takes place to the Western Australian economy.

However, the use of such criteria is unlikely to allow clear cut identification of significant government business activities in all cases. To assist in the evaluation of a business activity's significance it is also useful to have regard to an activity's revenue base or its asset base. A government business activity is unlikely to be significant unless:

- its annual revenue base or turnover is more than \$10 million; or
- it has an asset base with a value in excess of \$10 million.

Costs and Benefits of Applying Competitive Neutrality

As mentioned earlier, in accordance with the Competition Principles Agreement the Western Australian Government has as its objective the implementation of competitive neutrality to the extent that the benefits to be realised from implementation outweigh the costs.

In assessing the benefits and costs of implementing competitive neutrality the Government will, where relevant, take account of the following:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations;
- 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 a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

In some cases it is likely that implementation of competitive neutrality could lead to potential conflict between the pursuit of efficient allocation of resources and the Government's policy objectives in the other areas listed

above. When this has the potential to occur the Government will also consider the feasibility of alternative means of achieving its desired policy outcomes while simultaneously applying competitive neutrality.

Examples of benefits and costs associated with the implementation of competitive neutrality that could be considered include:

- the economy-wide **benefits** resulting from the more productive use of resources throughout the economy;
- the **costs** of implementing competitive neutrality associated with:
 - amendments to legislation and regulation or changes to administrative policy to facilitate the introduction of competitive neutrality;
 - changing an organisation’s culture and managerial approach as a result of competitive neutrality being applied;
 - development and administration of measures to simulate the impact on government businesses of regulatory and commercial pressures experienced by firms in the private sector; and
 - compliance with competitive neutrality (such as the administrative costs to agencies of complying with tax equivalent regimes) and the monitoring of compliance (including the maintenance of a complaints mechanism); and
- the wider community and distributional impacts of implementing competitive neutrality - this may involve some sectors of the economy **benefiting** while others experience **costs**.

The Range of Agencies Involved

Significant government business activities which are identified as PTEs and PFEs are listed in Table 1. The current application of major competitive neutrality arrangements to these bodies is also shown.

TABLE 1

**INDICATIVE IMPLEMENTATION SCHEDULE FOR SIGNIFICANT
WESTERN AUSTRALIAN BUSINESS ACTIVITIES**

Entity/Activity	Implementation Schedule					
	Corporatisation / Commercialisation	Loan Guarantee Charge	Tax Equivalent Regime (a)	State Taxes/ Local Govt Rate Equivalents.	Equivalent Regulations to Private Sector	Review of Costs and Benefits of Applying Competitive Neutrality
<i>Public Trading Enterprises</i>						
Electricity Corporation (Western Power)	1995	1992	1995	1995	1995	
Gas Corporation (AlintaGas)	1995	1992	1995	1995	1995	
Water Corporation	1996	1992	1996	1996	1996	
Gold Corporation	1987	1992	1987	1987		1996-97
Albany Port Authority	1996-97	1992	1996			1996-97
Bunbury Port Authority	1996-97	1992	1996			1996-97
Dampier Port Authority	1996-97	1992	1996			1996-97
Esperance Port Authority	1996-97	1992	1996			1996-97
Fremantle Port Authority	1996	1992	1996			1996
Geraldton Port Authority	1996-97	1992	1996			1996-97
Port Hedland Port Authority	1996-97 (2)	1992	1996			1996-97
Metropolitan (Perth) Passenger Transport Trust (MetroBus)	1996-97	1992	1996	1996-97	1996-97	
Western Australian Government Railways (Westrail)	1996	1992	1996	1996	1996	
Bunbury Water Board		1992	1996			1996-97
Busselton Water Board		1992	1996			1996-97
East Perth Redevelopment Authority		1992	1996			1996-97
Subiaco Redevelopment Authority		1992	1996			1996-97
Totalisator Agency Board		1992				1996-97
Western Australian Land Authority (LandCorp)		1992	1996			1996-97
Homeswest		1992				1997-98
Perth Market Authority		1992				1997-98

(a) Subject to income and wholesale sales tax equivalent regimes.

Entity/Activity	Implementation Schedule					
	Corporatisation / Commercialisation	Loan Guarantee Charge	Tax Equivalent Regime (a)	State Taxes/ Local Govt Rate Equivalents.	Equivalent Regulations to Private Sector	Review of Costs and Benefits of Applying Competitive Neutrality
<i>Public Trading Enterprises (Continued)</i>						
Rottnest Island Authority		1992				1997-98
Lotteries Commission		1992				1997-98
Metropolitan Cemeteries Board		1992				1997-98
Grain Corporation of Western Australia Ltd		1992	1996	1975		1998-99
<i>Public Financial Enterprises</i>						
Coal Industry Superannuation Board		1992				1996-97
Government Employees Superannuation Board		1992				1996-97
State Government Insurance Commission		1992				1996-97
Western Australian Fire Brigades Superannuation Board		1992				1996-97
<i>Other Business Activities</i>						
Office of the Public Trustee		1992				1996-97
Western Australian Treasury Corporation		1992				1996-97
Forestry Operation (Department of Conservation and Land Management)		1992				1997-98
Pathology Centre (Health Department)		1992				1997-98
Valuer General's Office		1992				1997-98

(a) Subject to income and wholesale sales tax equivalent regimes.

Entity/Activity	Implementation Schedule					
	Corporatisation / Commercialisation	Loan Guarantee Charge	Tax Equivalent Regime (a)	State Taxes/ Local Govt Rate Equivalents.	Equivalent Regulations to Private Sector	Review of Costs and Benefits of Applying Competitive Neutrality
<i>Other Business Activities (Continued)</i>						
Government Employees Housing Authority		1992				1998-99
Private Patient Acute Care in Public Hospitals		1992				1998-99
Technical and Further Education		1992				1998-99
Rural Adjustment and Finance Corporation of Western Australia		1992				1998-99
Western Australian Tourism Commission		1992				1998-99
Dairy Industry Authority of Western Australia		1992				1999-2000
Western Australian Egg Marketing Board		1992				1999-2000
Western Australian Meat Marketing Corporation		1992				1999-2000
Western Australian Potato Marketing Authority		1992				1999-2000
Grain Pool of Western Australia		1992		1975		1999-2000
Other Business Activities Within General Government (as yet unspecified)		1992				As Appropriate

(a) Subject to income and wholesale sales tax equivalent regimes.

Table 1 also provides an indicative schedule for the full implementation of competitive neutrality to these PTEs, PFEs and other significant government business activities where considered appropriate given the benefits and costs of introducing of competitive neutrality.

Government business activities for which the implementation or potential implementation of competitive neutrality is a high priority (or has already been achieved) have been placed in the early part of the schedule. Activities expected to have a lower priority have been placed later in the schedule.

It is proposed to review all significant government business activities and, if necessary, implement competitive neutrality for relevant agencies by the year 2000. This deadline corresponds to the deadline for the review by the Government of all legislation restricting competition. However, the implementation schedule will be subject to revision as necessary to ensure that it reflects the policy priorities of the government of the day.

In the case of in-house bids competing against external bids as part of a formal tender process, costing guidelines issued by the Government in 1995 already require competitive neutrality to be applied regardless of the size of the contract.

Achieving Competitive Neutrality

An agency's net competitive advantage can be removed through a number of means - which by their very nature tend to have a reform thrust. These measures include:

- commercialisation or corporatisation of the agency;
- reform of specific advantages and/or disadvantages affecting the agency;
or
- requiring the agency to adopt commercial principles in the pricing of its goods or services.

The approach selected will depend on the nature of the agency, the extent of competition and the costs and benefits of competitive neutrality. However, it is expected that:

- corporatisation or commercialisation would be the preferred approach for the largest PTEs;
- smaller or less significant PTEs are more likely to be subject to specific reforms to address material net competitive advantages; and

- commercial business units within general government and in-house bids from general government agencies competing with external tenderers in a formal tendering process will be required to price their services on a fully commercial basis.

Commercialisation or Corporatisation

For the larger PTEs with influential activities (in terms of their economic impact), competitive neutrality is more likely to be effectively achieved through commercialisation or corporatisation. Commercialisation or corporatisation is a comprehensive package of reforms aimed at improving the efficiency of government businesses. It seeks to establish an arm's length relationship between an agency and its Minister through the constitution of an independent board of directors. The board takes responsibility for all aspects of the agency's operations, while the agency's strategic direction is negotiated between the board and the Minister.

The reform package is designed to achieve:

- clarity and consistency of agency objectives;
- greater autonomy and authority for agency management;
- external monitoring of agency performance;
- effective rewards and sanctions for agency management reflecting the agency's performance; and
- competitive neutrality.

PTEs which have already been corporatised include Western Power, AlintaGas and the Water Corporation. Westrail, MetroBus and the port authorities are expected to be commercialised in 1996-97.

Key features of the corporatisation model as it applies to the energy and water utilities include:

- a principal commercial objective (namely to endeavour to make a profit consistent with maximising the agency's long term value). The cost of community service obligations which the Government directs these agencies to undertake is met from the Consolidated Fund to ensure that this objective is not compromised;
- the agency's board and executive management are responsible for its day to day operation. The Government has an input into the strategic direction of the agency through the annual negotiation of statements of corporate intent (which set out performance targets) and strategic

development plans (containing operational strategies to achieve the agency's objectives) between the agency's board and the responsible Minister and the Treasurer. The responsible Minister has the power to direct the agency at any time to carry out activities - these directions must be tabled in Parliament and published in the agency's annual report;

- the performance of the agency is monitored on a quarterly basis by the relevant regulatory agency and Treasury; and
- the agency is exposed to competitive neutrality including :
 - full Commonwealth and State taxes or tax equivalents.

Western Power and AlintaGas have been subject to the State's income and wholesale sales tax equivalent regime (TER) since 1 January 1995, while the Water Corporation entered the TER on 1 January 1996.

These agencies are also subject to the range of State taxes and are required to pay local government rate equivalents to the Consolidated Fund;

- debt guarantee fees directed towards offsetting the competitive advantages provided by Government guarantees;
- being subject to regulations normally affecting private sector businesses, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.

Western Power, AlintaGas and the Water Corporation are each required to comply with any written law. Furthermore, these agencies are not required to comply with any direction or administrative request given by or on behalf of the Government, except as provided by their enabling legislation or any other written law; and

- financial reporting according to the Corporations Law rather than under the Financial Administration and Audit Act.

Reform of Specific Advantages/Disadvantages

Corporatisation or commercialisation may not be a cost-effective means of achieving competitive neutrality for less significant government business activities. In these cases targeting individual advantages and disadvantages which have a material impact on net competitive advantage may more appropriately be pursued as a means of achieving competitive neutrality.

A minimum requirement for competitive neutrality will be for government business activities to be subject to the TER, State taxes, debt guarantee fee and

appropriate planning and environmental approval arrangements (having regard for the economic effects of such action). Other measures which would usually apply include the payment of dividends to the Consolidated Fund and payment from the Fund for CSOs (it is expected that the latter two arrangements would apply simultaneously).

Already, a number of specific competitive neutrality issues have been addressed in Western Australia, including:

- all government business activities (whether in the general government or PTE sectors) are currently subject to a loan guarantee charge, which was introduced in 1992-93;
- the majority of PTEs (including Westrail, MetroBus, the port authorities and LandCorp) will enter the TER on 1 July 1996; and
- a dividend policy will be introduced for the ports and Westrail in 1996-97, while from 1996-97 onwards Westrail will receive payments from the Consolidated Fund for CSOs that it performs.

Planning and environmental approval processes will apply to these agencies having regard for the whole of State benefits of their activities. That is, the expected benefits must outweigh the expected costs before they will be applied.

Where a GTE is exempt from regulatory burdens imposed on the private sector, the Government will examine removal of the GTE's exemption or lifting the burden from its private sector competitors as a means of ensuring equal treatment for all parties.

The Government will also investigate the scope to reduce the impact of whole-of-government policies (such as reporting requirements and centralised purchasing arrangements) on these agencies.

Pricing Principles

Where a government agency, other than a GTE, undertakes a business activity as part of a broader range of functions, it will be required to charge prices for goods and services which it currently provides that fully recover all costs incurred in their supply. These costs will include:

- the cost of labour directly associated with production of the product or provision of the service;
- the cost of materials and services directly consumed in the production process;
- an appropriate share of indirect labour costs;

- accommodation costs;
- a share of indirect materials and services;
- capital costs including depreciation of fixed assets and a commercial return on operations; and
- adjustments to the government business' cost structure to take account of any artificial competitive advantages or disadvantages including, where appropriate, tax equivalents, State taxes, debt guarantee fees and regulatory costs.

In July 1995 the Government published costing guidelines to apply these principles to the costing of in-house bids taking part in a formal tender process, to ensure all internal and external tenders are fully comparable and capable of being evaluated on a consistent basis.

In keeping with commercial practices employed by firms in the private sector, agencies will have the ability to price new goods or services at marginal cost. Where an agency sells its products in a competitive market it should have the option of setting its prices according to the market rather than its cost of inputs.

The Government is also investigating development of a budgetary and accounting framework for general government activities which reflects the full cost (including a return on capital) of these activities.

Complaints

Western Australia's obligations under the Competition Principles Agreement include the establishment of a complaints mechanism to deal with allegations of non-compliance by public sector agencies with competitive neutrality.

The complaints mechanism will apply only to public sector agencies which are required to comply with competitive neutrality and to in-house bids taking part in a formal tender process.

Where a competitor or a potential competitor to a public sector agency (whether operating in a competitive market or operating as a monopoly) believes that the agency has not complied with competitive neutrality, it can lodge a complaint with the Public Sector Management Sub-Committee of Cabinet (PSMSC), which will be serviced by Treasury and the Public Sector Management Office. Allegations of non-compliance should be accompanied by sufficient evidence to establish a prima facie case for investigating an agency's pricing strategy, cost structure and behaviour, but the clear burden of proof will rest on the complainant.

In the course of its investigation, the PSMSC will fully protect the commercial confidentiality of each party involved in the dispute. No information relating to the cost structures of any party will be revealed to a competitor. The PSMSC will also consult fully with relevant regulatory agencies as required, particularly if the complaint is of a technical nature.

On completion of its investigation the PSMSC will make available to the complainant a copy of its findings and (subject to commercial confidentiality) material supporting its conclusion. In the event that the PSMSC finds that there has been no breach of competitive neutrality there will be no scope for appeal by the complainant. If the PSMSC concludes that non-compliance with competitive neutrality has occurred, then it will make recommendations to the Government on future action that could be taken.

While the Government will decide on a case by case basis what action should be taken if an allegation of non-compliance is proven and will take account of the seriousness and nature of the non-compliance. Consideration of options available will include:

- the offending agency being required to exit from the transaction, pay any termination or exit costs, and reprice its goods or services to remove the artificial competitive advantage; or
- payment of an appropriate penalty or fine.

The investigation of allegations of non-compliance with competitive neutrality may involve significant Government resources. To discourage the submission of frivolous or vexatious allegations, an investigation fee (payable in advance) will be charged to the complainant. This fee will be refunded in the event that the allegation of non-compliance was proven.

Annual Report

The Competition Principles Agreement requires Western Australia to publish an annual report on the implementation of competitive neutrality, including any allegations of non-compliance.

These reports will be prepared by Treasury and will cover agencies which have been subjected to competitive neutrality (and how this has been achieved), the results of assessments of the costs and benefits of applying competitive neutrality, and allegations of non-compliance.

APPENDIX A

COMPETITIVE NEUTRALITY OBLIGATIONS UNDER THE COMPETITION PRINCIPLES AGREEMENT

The obligations of participating jurisdictions relating to competitive neutrality are set out in Section 3 of the Competition Principles Agreement as follows:

- 3.(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 [National Competition] Council. The Council may provide such assistance in accordance with the Council's work program.
- (4) Subject to sub-clause (6), for **significant** [emphasis added] 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** [emphasis added], 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 full 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 costs** [emphasis added].
- (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 later date 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.

APPENDIX B

DEFINITION OF PUBLIC TRADING ENTERPRISE AND PUBLIC FINANCIAL ENTERPRISE

Public Trading Enterprise

The primary function of enterprises in the public trading sector is to provide goods and services which are mainly market, non-regulatory and non-financial in nature, financed mainly through sales to the consumers of these goods and services.

Enterprises in the public trading sector recover all or most of their production costs from individual consumers who, in a market-like environment, receive tangible goods or services directly in exchange for their payments.

Expressed alternatively, public trading enterprises do not set out to finance the bulk of their operations from the general taxation revenue of government. Some enterprises, however, receive subsidies to make up for shortfalls incurred as a result of deliberate government policy.

Public Financial Enterprise

Public financial enterprises are government controlled and have one or more of the following characteristics:

- they perform central bank functions;
- they accept demand, time or savings deposits; or
- they have the authority to incur liabilities and acquire financial assets in the market on their own account.