

NATIONAL COMPETITION POLICY STATEMENT



Type	Governance
Category	Finance
First Issued/Adopted	April 2021
Minutes Reference	29 February 2024
Review Period	36 months
Last Reviewed	February 2024
Next reviewed	February 2027
Applicable Legislation & Documents	<ul style="list-style-type: none"> • <i>Local Government Act 1999</i> • <i>Government Business Enterprises (Competition) Act 1996 (SA)</i> • <i>Revised Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Agreement</i> • <i>Competition Principles Agreement – 11 April 1995 (As amended to 13 April 2007)</i>
Related Documents	<ul style="list-style-type: none"> • East Waste Charter • East Waste Strategic Plan 2030 • East Waste Long Term Financial Plan
Consultation Undertaken	Audit & Risk Management Committee
Responsible Officer	Manager Business Services

SIGNED:

General Manager

Date: 29 / 02 / 2024

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Chairperson

Date: 29 / 02 / 2024

Purpose

This *National Competition Policy Statement* (NCPS) is implemented for the purposes of *Section 36.2 of the Eastern Waste Management Authority's Charter* (endorsed 28 June 2022).

The object of this NCPS is to outline when the requirements of the Clause 7 Statement apply to East Waste and how East Waste will apply the principles of competitive neutrality.

Interpretation

Act means the *Government Business Enterprises (Competition) Act 1996* (SA).

Clause 7 Statement means the *Revised Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Agreement*.

Constituent Council means at any time a constituent council in relation to East Waste and on the date of publication of the Eastern Waste Management Authority's Charter in the South Australian Government Gazette means Adelaide Hills Council, City of Burnside, City of Campbelltown, City of Norwood Payneham and St Peters, City of Mitcham, City of Prospect, City of Unley and Corporation of the Town of Walkerville.

Core Activity means As defined in the East Waste Charter.

CPA means the Competition Principles Agreement – 11 April 1995 (As amended to 13 April 2007).

East Waste means the Eastern Waste Management Authority.

Non-Core Activity As defined in the East Waste Charter.

NCP means National Competition Policy.

NCPS means this National Competition Policy Statement.

NCP Obligation

Clause 7 of the CPA requires States and Territories to apply the obligations in the CPA to Local Government. The South Australian Government has passed the Act and issued the Clause 7 Statement setting out the application of competition principle to Local Government.

Clause 32, Schedule 2 to the *Local Government Act 1999* provides:

32 - Principles of competitive neutrality

If a regional subsidiary is declared by its charter to be involved in a significant business activity, the charter must also specify the extent to which the principles of competitive neutrality¹ are to be applied to the activities of the subsidiary and, to the extent that may be relevant, the reasons for any non-application of these principles.

Note - 1 See Part 4 of the Government Business Enterprises (Competition) Act 1996

Competitive Neutrality

The concept of competitive neutrality is that an organisation's market competitiveness should not be unfairly strengthened or weakened on account of its public sector ownership.

Competitive neutrality concerns exist where all the following conditions apply:

- a difference exists between a public sector business and a private sector business providing a particular good or service; and
- the difference (for example exemption from certain taxes) is due solely to the government ownership of the public sector organisation; and
- the difference constitutes an advantage or disadvantage for the public sector organisation in providing the good or service in the market.

Notwithstanding the above, there will remain competitive advantages and disadvantages that exist between public and private sector organisations, such as workforce skills and managerial competence which fall outside the ambit of competitive neutrality.

Examples of potential competitive advantages a public sector organisation may receive include (but are not limited to):

- an operational structure that does not separate commercial and non-commercial activities;
- being able to operate without the pressure of business risk e.g. no fear of liquidation;
- exemptions from various government taxes, such as goods and services tax, payroll tax, fringe benefit tax, land tax and council rates;
- access to cheaper finance; or
- exemption from certain legislation that only applies to private sector organisations.

Examples of potential competitive disadvantages a public sector organisation may receive include (but are not limited to):

- restrictions on financial structure and financial management which have no equivalent in the private sector;
- less flexibility or discretion in managing operations arising from the policies and/or practices of central or public-sector wide supervisory agencies; or
- provision of non-commercial goods and/or services which it would not otherwise provide, at the direction of the government without compensation.¹

¹ Department of Treasury and Finance South Australia, A Guide to the Implementation of Competitive Neutrality Policy, 2010.

Competitive neutrality requires these publicly owned businesses to be subject to the same rules and regulations as private businesses, including the application of similar costs for taxes and borrowings.²

The principles of competitive neutrality are defined in the Act as:

'Principles designed to neutralise any net competitive advantage that a [State] government or local government agency engaged in significant business activities would otherwise have, by virtue of its control by the [State] government or local government, over private businesses operating in the same market.'

Business Activity

Competitive neutrality principles should be applied, where appropriate, to a significant business activity carried out by a council. Whether a business activity is significant business activity will depend on its size and influence in the relevant market.³

Pursuant to Section 5.1 of the Clause 7 Statement, a business activity is defined as follows:

A business activity includes any activity undertaken:

- (a) *which falls within the Australian Bureau of Statistics classification of 'Public Trading Enterprise' and 'Public Financial Enterprise'; or*
- (b) *where:*
 - (i) *the activity is primarily involved in producing goods and services for sale in the market; and*
 - (ii) *the activity has a commercial or profit-making focus; and*
 - (iii) *there is user charging for goods and/or services; and*
 - (iv) *the activity is not primarily funded from rate or grant revenue; or*
- (c) *where the local government agency submits a tender as part of a tendering process in competition with the private sector.*

For the purposes of Section 5.1(a) of the Clause 7 Statement, the following definitions apply to the terms contained therein (as defined in Appendix 1 of the Clause 7 Statement):

- *Public trading enterprises - Commonwealth, State/Territory and local government undertakings which aim at covering most of their expenses by revenue from sales of goods and services, including major commodity marketing authorities.*
- *Public financial enterprises - Commonwealth, State/Territory and local government bodies primarily engaged in financial transactions in the market involving both incurring liabilities and acquiring financial assets.*

² Government of South Australia, *Revised Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Agreement*, 2002.

³ Government of South Australia, *Revised Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Agreement*, 2002.

Section 5.1 of the Clause 7 Statement provides two exceptions from the definition of business activity:

... an activity will not be a business activity if:

- (d) it provides goods or services to the local government agency and for reasons of policy or law there is no competition with alternative suppliers; or*
- (e) it is clear that the intention of the local government agency is that the activity's predominant role is regulatory or policy-making, or where the achievement of community benefits is the main priority of the activity.*

East Waste will review each Non-Core Activity it undertakes to determine whether it satisfies one (or more) of the three requirements of a business activity pursuant to Section 5.1(a) – (c) of the Clause 7 Statement. Following this review:

- in the event that one (or more) of the three requirements of a business activity applies to a Non-Core Activity, East Waste will then determine whether that Non-Core Activity fall within one (or more) of the two exceptions pursuant to Section 5.1(d) – (e) of the Clause 7 Statement;
- if the Non-Core Activity falls within one (or more) of the two exceptions, the Non-Core Activity will not be deemed a 'business activity' and no further action will be taken;
- if the Non-Core Activity does not fall within one (or more) of the two exceptions, the Non-Core Activity will be deemed a 'business activity'. East Waste will then determine whether the Non-Core Activity is a 'significant business activity'.

Significant Business Activity

East Waste will determine whether or not a business activity is a 'significant business activity' to which the principles of competitive neutrality apply. In making its determination, East Waste will take into account the following factors (pursuant to Section 5.1 of the Clause 7 Statement):

- the intent of National Competition Policy;
- whether the business activity possesses sufficient market power to create a competitive impact in the market that is more than nominal or trivial;
- whether the size of the business activity relative to the size of the market as a whole is more than nominal or trivial.

Significant business activities are categorised as follows:

Category 1: business activities with an annual revenue in excess of \$2 million or employing assets in excess of \$20 million.

Category 2: all other significant business activities.

East Waste will determine whether a Non-Core Activity, that is a business activity, is also a 'significant business activity' for the purposes of Section 5.1 of the Clause 7 Statement in accordance with the following:

- if a Non-Core Activity is not a significant business activity, the competitive neutrality principles will not apply to that Non-Core Activity and no further action will be taken; or
- alternatively, if East Waste determines that a Non-Core Activity is a significant business activity, then the competitive neutrality principles will apply and East Waste will consider the competitive neutrality measures.

COMPETITIVE NEUTRALITY IMPLEMENTATION

Methods of compliance

Competitive neutrality can be achieved through the implementation of one of the following methods:

- corporatisation;
- commercialisation, or;
- cost reflective pricing.

East Waste acknowledges that whether or not a method is implemented will depend on whether the benefits to the public outweigh the costs of the implementation. Further, the appropriate method to be applied to a significant business activity will depend on a number of cost-benefit factors including:

- the costs and benefits of implementation;
- the organisational context of the activities exposed to competition;
- broad economic and regional development considerations;
- the level of resources used in the supply of the good or service;
- impact on competitors and the local community; and
- any special requirement such as increased accountability or a greater emphasis on efficiency.⁴

East Waste may obtain expert economic and financial advice to ensure the extent of implemented method is sufficient to achieve competitive neutrality.

⁴ Government of South Australia, *Revised Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Agreement*, 2002.

Corporatisation

Corporatisation will generally involve the adoption of a corporate model (which may be in relation to the significant business activity) (a separate legal entity). The new entity will be characterised by:

- clear and non-conflicting objectives;
- managerial responsibility, authority and autonomy;
- effective performance monitoring; and
- effective reward and sanctions related to performance.

Commercialisation

Commercialisation means the application of commercial practices to the significant business activity without requiring establishing a separate legal entity. A range of practices for the purposes of commercialisation (as prescribed in Section 4.2 of the Clause 7 Statement), can be implemented including:

- the clear definition and delineation of commercial and non-commercial activities, generally through a business plan;
- separate accounting for and funding of non-commercial activities;
- clear commercial performance targets;
- the separation of regulatory functions from any commercial activity;
- the valuation of all assets used in the specific business activity on a deprival value basis;
- the determination of an appropriate return on investment based on the assets employed in the business activity;
- the application of a tax equivalent regime;
- the application of debt guarantee fees;
- clear reporting requirements;
- separate financial recording and reporting; or
- arrangements for the allocation of 'profits' from the business activity.

Cost Reflective Pricing

Cost reflective pricing is the process of ensuring goods and services of a significant business activity fully reflect the costs incurred in their production or provision.

If cost reflective pricing is implemented, the price will be calculated to take into account (in accordance with Section 4.3 of the Clause 7 Statement):

- the actual costs of providing the good or service on a full-cost basis;
- the cost advantages of local government ownership (e.g. non-payment of taxes, lower cost of finance, mix of commercial and non-commercial activities, exemption from the

operation of legislation);

- the cost disadvantages of local government ownership (e.g. increased accountability and administration, higher award rates or costs associated with enterprise agreements, higher superannuation contributions); and
- return on investment and dividend payments to local government owners.

Complaints

Affected persons may complain if East Waste determines not to apply (or allegedly misapplies) the principles of competitive neutrality. Complaints can be made either:

- pursuant to the Act, to the Minister responsible for the Act (namely, the Premier); or
- pursuant to Section 6 of the Clause 7 Statement, addressed to the Competitive Neutrality Complaints Secretariat in the Department of Premier and Cabinet, 200 Victoria Square, Adelaide, SA 5000.

The complaint will then be referred to East Waste for investigation, response and possible resolution in accordance with the *East Waste Complaints Handling Policy*.

Annual report

East Waste will include any significant business activity in its Annual Reports in accordance with Section 7 of the Clause 7 Statement. The following information in respect of any significant business activity will be, where relevant, summarised and included in the Annual Reports:

- the commencement or cessation of significant business activities controlled by East Waste;
- the competitive neutrality method of compliance applied to each significant business activity controlled by East Waste; and
- complaints received alleging a breach of competitive neutrality principles by East Waste.

Document History:	Version No:	Issue Date:	Description of Change:
	1.2	February 2024	Amendments to the definitions to reference the Charter.