



**COMMONWEALTH**

**COMPETITIVE NEUTRALITY**

**POLICY STATEMENT**



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## BACKGROUND

In February 1994, all Australian Governments agreed on the need to accelerate and broaden progress with implementing microeconomic reforms. This commitment was expressed, in part, in the Competition Principles Agreement (CPA), executed at the Council of Australian Governments' meeting in April 1995. In this Agreement, the Commonwealth and all the States and Territories undertook to introduce the following nation-wide reforms to competition policy:

- (i) universal application of the competitive conduct rules in the *Trade Practices Act 1974* to all forms of business activity in the economy, including the unincorporated sector and State government business activities;
- (ii) review and reform of anti-competitive legislation;
- (iii) competitive neutrality between government and private business activities;
- (iv) a generalised regime for access to 'essential' infrastructure facilities;
- (v) principles to apply to the reform of public sector monopolies; and
- (vi) reforms to prices oversight arrangements.

An extract of that part of the CPA dealing with competitive neutrality is set out at Attachment A to this Statement. The publication of this policy statement, which details the application of competitive neutrality principles within the Commonwealth sector, is a requirement under the CPA. Jurisdictions are also required to publish annual reports on compliance and progress with implementation.

### **What is competitive neutrality?**

Competitive neutrality requires that government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership.

The implementation of competitive neutrality policy arrangements is intended to remove resource allocation distortions arising out of public ownership of significant business activities and to improve competitive processes. Where competitive neutrality arrangements are not in place, resource allocation distortions occur because prices charged by significant government businesses need 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. It can also distort investment and other decisions of private sector competitors.

Competitive neutrality requires that governments should not use their legislative or fiscal powers to advantage their own businesses over the private sector. If governments do advantage their businesses in this way, it will distort the competitive process and reduce efficiency, the more so if the government businesses are technically less efficient than their private sector competitors. Private competitors also regard such advantages as simply inequitable, as is illustrated by the number of complaints about this issue made to the Independent Committee of Inquiry into National Competition Policy<sup>1</sup>. This inequity is particularly marked where government businesses are not subject to tax and private businesses see their own tax payments as effectively subsidising their government business competitors.

Competitive neutrality policy, as set out in this statement, should be understood in the context of the economic reforms which have been implemented progressively in Australia and elsewhere over the past decade or so. A consistent theme in those reforms, whether in international trade, domestic regulation or public sector management, has been an increased reliance on market based mechanisms and competition to promote efficiency and competitiveness.

In the public sector, increased attention has been given to the core role of government and how government services can be best delivered in an environment of resource constraint. This imperative has driven reforms ranging from privatisation, deregulation of public monopolies, competitive tendering and contracting to various management reforms, including devolution and accountability frameworks. Competitive neutrality requires that where governments choose to provide services through market based mechanisms that allow actual or potential competition from a private sector provider, that competition should be fair. In this sense, competitive neutrality will operate to ensure the integrity of other reforms to improve the operation of government businesses.

Competitive neutrality does not require governments to restructure the delivery of social programs into competitive market based mechanisms such as competitive tendering and contracting or voucher systems. However, if governments do choose to adopt these service delivery mechanisms, with the involvement of a government service provider, then competitive neutrality arrangements will apply to the government service provider.

Competitive neutrality does not require governments to remove community service obligations (CSOs) from their government businesses. Where CSOs exist, competitive neutrality and other competition policy reforms may limit the ability for these CSOs to be financed through cross subsidies within the business. Transparent, non-discriminatory funding of CSOs through budget funding or specific charges is thereby encouraged.

Competitive neutrality does not imply that government businesses cannot be successful in competition with private businesses. Government businesses can achieve success as a result of their own merits and intrinsic strengths, but not as a consequence of unfair advantages flowing from government ownership.

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<sup>1</sup> Hilmer F. et al, 1993 "National Competition Policy", AGPS Canberra, p 298.

It is recognised that there can be both advantages and disadvantages of government ownership. However, it is not generally feasible to measure the net competitive advantage of some government business compared with some notional private sector competitor. Even if complete cost accounting data were available, this basis of comparison may be of questionable quality, the level of aggregation in the cost data may disguise significant net advantages and disadvantages for particular products, or the comparison may be relevant only at a point in time. This reflects one of the advantages of markets where competitiveness is determined by means of competitive process rather than by comparison of accounting data. Consequently, this statement directly addresses the major and specific elements of competitive advantage enjoyed by some government businesses. If, as a result of neutrality measures implemented, a government business believes it is left in a position of net disadvantage, it will be an issue for the Government as to what action, if any, might be taken to redress such situations on a case by case basis.

Some of the competitive advantages enjoyed by government businesses are widespread and relatively easy to observe and correct. The Commonwealth's competitive neutrality arrangements will directly address: exemptions from various taxes, access to borrowings at concessional interest rates, exemptions from complying with regulatory arrangements imposed on private sector competitors and other benefits associated with not having to achieve a commercial rate of return on assets.

Other advantages (and disadvantages) tend to vary across government businesses, and are more difficult to identify and correct. These distortions will be reviewed through the continuing development of the Commonwealth's commercialisation policies which, among other things, address the need to establish appropriate organisational structures for government business activities.

Commercialisation has been a prominent feature of public administration reforms since the mid-1980s (although there have been Commonwealth organisations operating on a commercial basis since Federation). User charging is now widespread, rather than the exception, and many government services are provided on a largely commercial basis (eg by DAS business units). The commercialisation aspects of competitive neutrality policy are part and parcel of continuing developments in this area, as is the greater use of competitive tendering for the provision of government services.

As a consequence of this policy statement, competitive neutrality arrangements will be explicitly required for designated Commonwealth businesses. Other public service provision activities of government are also subject to review and reform processes and, where appropriate, competitive neutrality arrangements may be applied to business activities not identified in this statement.

A competitive neutrality complaints mechanism will be established in accordance with this statement. Competitors of government businesses, and others, will be able to have Commonwealth business activities investigated by the Productivity Commission where they consider that competitive neutrality arrangements are not being applied.

## Where will competitive neutrality be applied?

Competitive neutrality requirements will be applied to significant government business activities, but will not be applied to non-profit, non-business activities.

### *What is a “business”?*

For the purposes of competitive neutrality in the Commonwealth sector, to be considered a “business activity” the following criteria must be met:

- there must be user-charging for goods or services (the user may be in the private sector or public sector);
- there must be an actual or potential competitor (either in the private or public sector) ie users are not restricted by law or policy from choosing alternative sources of supply; and
- managers of the activity have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.

A large number of government activities potentially fall within these criteria.

The user charging requirement will identify those activities which are essentially commercial. It is not relevant whether full cost recovery or profits are achieved by the activity, indeed it is precisely situations of loss, or not full cost recovery, which raise the most serious competitive neutrality concerns.

Commercialisation has resulted in devolution of management authority and new organisational structures in the public sector. Public sector managers have become responsible for the management of receipts from service provision and have been expected to fully or partially recover costs. Past public sector reform measures mean that many government services are now provided through ‘businesses’, where clients are no longer tied to that business.

Many government programs continue to be provided by means of direct budget funding — these activities will not be subject to competitive neutrality arrangements as there is no user charging or competitive service provision. (However, government departments are also expected to make greater use of competitive tendering and contracting (CTC) when delivering their programs. Processes governing the in-house tendering for contracts need to be consistent with the principles of competitive neutrality, the interaction between CTC and competitive neutrality is considered in Attachment B.)

The requirement that there be an actual or potential competitor will operate to exclude competitive neutrality requirements from applying to regulatory functions of regulatory bodies, even if there is an element of user charging or cost recovery in these activities.

A number of government agencies are involved in both business activities and other non-business activities, such as the direct delivery of government programs or regulatory functions. Competitive neutrality in these instances will be applied to the activities which meet the business criteria.

While the relevant criteria might capture many forms of government activity, the policy intention is to apply competitive neutrality arrangements to significant government businesses, and even then, only to the extent that the benefits of the arrangements outweigh administrative cost. Hence, small scale ancillary activities will not be subject to competitive neutrality.

***What are “significant” businesses?***

The following organisations are deemed to be significant as they have been specifically structured to operate along commercial lines:

- all Government Business Enterprises (GBEs) and their subsidiaries;
- other share-limited trading companies; and
- all designated business units<sup>2</sup>.

Other activities which operate in accordance with the definition of a business and have commercial receipts exceeding \$10 million per year will be assessed for significance on a case-by-case basis.<sup>3</sup>

This category includes activities undertaken by Commonwealth authorities and their subsidiaries and activities undertaken by Commonwealth Departments and Agencies.

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<sup>2</sup> Australian Industrial Property Organisation is a business unit. Competitive neutrality arrangements will not apply as it does not have actual or potential private sector competitors.

<sup>3</sup> Business activities conducted by Commonwealth Departments of State which exceed this threshold are required to have business and corporate plans and to provide a share of their profits to the Commonwealth.



## HOW THE COMMONWEALTH WILL APPLY COMPETITIVE NEUTRALITY

Significant business activities are conducted in a variety of organisational structures within the Commonwealth. Some of these organisations are legally separate from the Commonwealth while others do not have legal ownership of money or property separate from the Commonwealth. In some situations the significant business activity will be the primary function of the organisation, in other situations the activity will be incidental to the primary function(s) of the organisation. The application of competitive neutrality arrangements will take account of the legal structure of the organisation, its purpose and management processes.

The application of competitive neutrality arrangements will vary according to the organisation's degree of commercialisation. In many instances competitive neutrality will improve transparency of existing commercialisation arrangements. Where this is the case, competitive neutrality will provide certainty of "fairness" for private sector rivals. In some organisations the application of competitive neutrality could involve changes to the legal structure of the organisation. It could also require improvements to accounting and management systems to ensure that all operating costs are fully accounted for. Fully implemented, competitive neutrality arrangements will assist government business activities address certain competitive disadvantages they also face; for example, conflicting non-commercial goals, clarification of community service obligations and funding for those services and more onerous accountability requirements.

Commonwealth organisations which have been identified as conducting significant business activities are listed in the tables in the Appendix to this statement. The tables also indicate what neutrality arrangements are already in place in particular organisations. The details of the implementation arrangements are considered later in this statement.

### **Characteristics of Commonwealth organisations performing business activities**

#### ***Organisations which are legally separate from the Commonwealth***

##### **(a) Government business enterprises (GBEs)**

GBEs have a principal function of selling goods and services in the market for the purpose of earning a commercial return. They are the most commercialised group of legally separate organisations within the Commonwealth sector and can operate in markets which are open to competition. All GBEs are either companies or authorities which have been prescribed by Ministerial decision to be GBEs.

GBEs are required to pay all money received into a bank and may invest any monies surplus to immediate operations in any manner consistent with sound commercial practice. Most GBEs are able to borrow money from financial markets, with borrowings by

trading (but not financial) GBEs requiring approval under Loan Council processes. GBEs are expected to earn profits and are required to pay dividends to the Budget. All current GBEs are identified in section A of Table 1 in the Appendix.

(b) Non-GBE companies and authorities

Companies and authorities which are not GBEs may also operate significant businesses in markets which are open to competition. These activities may be the primary function of the organisation or incidental to its other function(s). Funds received from user charging are paid into the organisation's bank. Money may be invested in government securities or in any other manner approved by the Treasurer (Statutory Marketing Authorities do not require approval to invest in a manner which is consistent with sound commercial practice). Some non-GBE companies and authorities are also able to borrow money from financial markets subject to Loan Council approval and/or borrow from the Budget under a resource agreement with the Department of Finance. Some Budget-dependent authorities may be required to return surplus funds, including funds generated from user charging, to the Budget on a case by case basis.

Non-GBE authorities mainly engage in public interest activities which require subsidies from the Budget to cover annual operating deficits or are financed through receipts from levies and/or industry taxes. Where an authority also operates a commercial activity with a (commercial) sales turnover in excess of \$10 million per annum, then that business activity will be subject to competitive neutrality arrangements. Those authorities and the relevant business activity are identified in section B of Table 1.

Share-limited companies are established when an activity is intended to operate as a commercial business. Share-limited companies have a well developed commercial culture and there is transparent discharge of any community service obligations. Commonwealth share-limited companies are generally expected to comply with all competitive neutrality requirements and, therefore, are not listed in the Appendix to this statement<sup>4</sup>. While no operational changes to share-limited companies are proposed as a result of this statement, share-limited companies will, however, be subject to the complaints mechanism.

Guarantee-limited companies are generally used for non-profit corporate bodies such as training boards or educational institutes. Consequently, competitive neutrality arrangements are not seen as necessary for these organisations and they are not listed in the Appendix to this statement. However, these companies will be subject to the complaints mechanism.

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<sup>4</sup> The Auditor-General provides a list of share-limited companies in the Aggregate Financial Statement (Audit Report No.15, 1995-96)

## ***Organisations not legally separate from the Commonwealth***

### **(a) Business units**

Business units are established through administrative arrangements where an identifiable part of an agency or Department has a primary objective of trading goods and services in the market, for the purpose of earning a commercial return. Business units' management and accounting structures are separate from other parts of the overall organisation.

Business units have direct access to funds generated by their user charging through the use of trust account funds. They may apply to borrow from the Budget to finance expenditure which is expected to earn commercial returns in the future. Business units are expected to earn profits and are required to pay dividends to the Budget.

Business unit clients have been progressively freed from arrangements which tied them to Business unit suppliers for a good or service. Current business units are identified in Table 2 in the Appendix.

### **(b) Other organisations engaging in business activities**

Commonwealth Departments of State also operate business activities which are incidental to their other responsibilities. At present no business activities with a commercial sales turnover exceeding \$10 million per annum have been identified in these organisations. The business activities of these organisations will, nevertheless, be subject to the complaints mechanisms.

## **Competitive neutrality requirements and implementation**

Organisations identified in Tables 1 and 2 as engaging in significant business activity will have the principal elements of competitive neutrality applied to them in accordance with the processes set out in this statement. For the most part, GBEs already comply with competitive neutrality requirements, as do share limited companies and business units (to a lesser degree). Non-GBE authorities pose a greater implementation challenge — given their involvement in both commercial business and general government program activities, a case by case assessment of structural separation and/or privatisation will need to be carried out for these activities. Similarly, issues of regulatory neutrality will need to be assessed on a case by case basis. Finally, the operational status of many business units is being assessed in the present budget context — the operational form of these businesses will be announced at that time.

Accordingly, the implementation of competitive neutrality arrangements to significant business activities in the Commonwealth sector is as follows:

- arrangements which can be implemented in a straightforward manner by legislative or administrative means. These will be put in place during 1996-97 — these generally apply to GBEs and business units.

- arrangements which require further case by case assessment or which are dependent on the outcome of existing business reviews. A number of these may be implemented during 1996-97 — the remainder will occur according to a timetable to be determined in 1996-1997 — this is generally applicable to designated non-GBE authorities and consideration of other regulatory exemptions.

The objective is to introduce competitive neutrality arrangements to organisations listed in the Appendix on a progressive basis. Implementation will take account of reform arrangements already proposed for the organisation or proposed as a result of reviews in progress.

A task force will be established to develop a detailed implementation strategy for the second category of measures and to progress the implementation of competitive neutrality arrangements. The following implementation matrix summarises the implementation strategy in respect of each neutrality measure and each class of business activity.

*Implementation matrix*

<b>Neutrality Element</b>	<b>Entity</b>				
	<b>GBEs</b>	<b>Non-GBE Authorities</b>	<b>Non-GBE Share Limited Cos</b>	<b>Business Units</b>	<b>Other Business Activities</b>
<b>Significance Threshold</b>	All	>\$10 million commercial receipts	All	All	>\$10 million commercial receipts
<b>Corporatisation, Separation etc</b>	N/A	Task force	N/A	DAS Review, Task force	N/A
<b>Rate of Return Requirements</b>	Finance, Portfolio	Finance, Portfolio, Task force	Finance, Portfolio	Finance, Portfolio	N/A
<b>Tax Neutrality</b>	Legislation or administrative action 96-97 (where appropriate)	Task force	Portfolio	Task force	N/A
<b>Debt Neutrality</b>	Legislation 96-97 (in accordance with review outcome)	Task force, Finance, Portfolio	Portfolio	Task force	N/A
<b>Regulatory Neutrality</b>	Task force	Task force	Portfolio	Task force	N/A
<b>Complaints Mechanism Applies</b>	Yes	Yes, including commercial receipts <\$10 million	Yes	Yes	Yes, including commercial receipts <\$10 million

***Competitive neutrality task force — terms of reference***

The task force will report to Government by March 1997 on a detailed implementation strategy for the following aspects of the Competitive Neutrality Policy Statement:

- corporatisation, taxation neutrality, debt neutrality, rate of return requirements and regulatory neutrality for non-GBE authorities with a significant business activity;
- corporatisation, taxation neutrality, debt neutrality and regulatory neutrality for business units; and
- regulatory neutrality for GBEs.
- When developing its implementation strategy the task force will:
  - integrate its activities with existing review processes and commercial reform programs of the Government; and
  - endeavour to provide recommendations which aim for full implementation of competitive neutrality for each significant business activity as soon as possible after June 1997.

In its examination of the relevant issues, the task force also will:

- consider strategies for addressing competitive disadvantages of government businesses;
- assess the need to separate the provision of an entity's commercial and non-commercial activities;
- report on the most appropriate funding arrangements to support the provision of community service obligations;
- take account of potential staffing and industrial relations implications and develop appropriate guidelines to minimise any potential adverse impact, including comprehensive communication strategies;
- where necessary, consider the need for continued government ownership of the business activity; and
- consider cost-effectiveness of applying competitive neutrality arrangements to an activity.

## (a) Corporatisation

The task force is to use the current GBE accountability arrangements as a model for the corporatisation of significant business activities.

Where incorporation under Corporations Law is considered desirable, the task force should make recommendations on whether the company should be owned directly by the Government or by a Commonwealth authority or company, noting the constraints in seeking implementation through legislative amendments.

Where incorporation is not considered appropriate, the task force should recommend appropriate methods for implementing accounting separation and principles for applying full cost pricing.

In developing recommendations in respect of applying competitive neutrality arrangements to business activities operated by universities, the task force will need to consult with other jurisdictions so as to develop, where possible, consistent arrangements.

## (b) Membership

The task force will be chaired by Treasury and also include the Departments of Finance and Prime Minister and Cabinet. Other membership will be determined by Treasury but will include as appropriate all portfolios which have agencies subject to consideration. The task force will appoint outside experts as required.

## (c) Reporting arrangements

The task force will advise the Government by March 1997 on options for implementing competitive neutrality arrangements, consistent with the Commonwealth's obligations under the Competition Principles Agreement, in the organisations listed in the Appendix to this statement.

***Organisational structure: corporatisation***

A principal component of competitive neutrality is the adoption of appropriate organisational structures for business activities. Although the term 'corporatisation' does not have a precise meaning, the Hilmer committee noted that it embodied five basic principles:

- clarity and consistency of objectives;
- management authority and accountability;
- performance monitoring;
- effective rewards and sanctions; and

- competitive neutrality.<sup>5</sup>

While it is not explicitly required, corporatisation usually involves the establishment of a separate legal structure. On its own, however, incorporation does not fulfil the requirements of an appropriate corporatisation model as required under the CPA.

The Commonwealth has in place Accountability and Ministerial Oversight Arrangements for GBEs. The arrangements are considered to be an appropriate corporatisation framework in terms of the requirement in clause 4(a) of the CPA. Accordingly, no action with respect to corporatisation is required for GBEs subject to these arrangements.

Further consideration needs to be given to assessing whether current GBE oversight arrangements can or should be applied to other business. The task force will advise the Government on the need to restructure non-GBE business activities and on the time table for applying competitive neutrality arrangements to non-GBE businesses, consistent with announced reforms for particular business activities.

### ***Taxation neutrality***

Taxation neutrality will be achieved by removing taxation exemptions from identified organisations where this can be achieved in a cost effective and administratively simple manner. Alternatively, taxation neutrality may be achieved by retaining taxation exemptions and establishing taxation equivalent regimes (TERs), providing it is cost effective to do so.

Arrangements for implementing TERs in non-GBE authorities and companies will be considered by the implementation task force, taking account of the Commonwealth's policy in this area. TERs in Departments of State will be implemented as an element of the organisation's financial management arrangements in resource agreements with the Department of Finance.

Where GBEs have taxation exemptions provided by enabling legislation or by the Income Tax Assessment Act or Sales Tax Act, the intention is to remove the exemption through legislative amendment before July 1997 (unless TERs are recommended). Depending upon Government consideration, some GBE taxation exemptions may be provided for, however, the reasons for retaining the exemption will be announced.

The timing of the removal of taxation exemptions for other significant business activities identified in this statement will reflect the capacity of the organisation to put in place appropriate accounting and financial management systems. The introduction of taxation neutrality will also need to take account of any changes to business structure and organisation. The schedule for removing taxation advantages from these activities will be announced prior to July 1997, to the extent that these advantages are not removed during 1996-97 as a result of existing reviews.

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<sup>5</sup> Hilmer F. et al, 1993 "National Competition Policy", AGPS, Canberra, p. 300.



## ***Debt neutrality***

### (a) Borrowing in financial markets

Markets confer borrowing cost advantages on government owned entities as a result of explicit government guarantees and perceptions of implicit government support. Debt neutrality will be achieved by subjecting identified organisations to similar borrowing costs to those faced by private sector businesses.

The Commonwealth currently applies a borrowing levy to certain specified organisations in order to promote competitive neutrality objectives. It is proposed that these arrangements be modified to address the debt guarantee charge requirements of the CPA through amendments to the *Commonwealth Borrowing Levy Act 1987*. The operation and coverage of the *Commonwealth Borrowing Levy Act 1987* is currently being reviewed by Treasury.

An enhanced borrowing levy, at levels which take account of the value of any explicit Commonwealth guarantee or perceived implicit support, will be applied to all GBEs from 1 July 1997, with consideration being given to broader coverage where appropriate. The existing borrowing levy, which applies to certain GBEs and non-GBE authorities will continue to apply in the meantime.

The implementation process will be reported on in the Commonwealth 1996-97 Competitive Neutrality Report, if not before.

### (b) Borrowing from the Budget

Where organisations borrow from the Budget for the purpose of a significant business activity they will be required to pay a rate of interest to the Budget equivalent to what would be paid if the borrowing was occurring in the financial markets (without a Commonwealth guarantee).

- The borrowing cost will be set at the time costings for the annual appropriation is settled with the Department of Finance. The complaints mechanism will have access to this information when assessing complaints.

## ***Rate of return requirements***

All Commonwealth organisations identified as engaging in significant business activities will 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 (ie, equivalent to the average for their industry) to the Budget from those returns. Although not specifically identified in the CPA, financial target setting is inherent in the corporatisation process and is implicit in full cost attribution pricing. It is therefore consistent with the overall objective of competitive neutrality policy and principles.

- A positive rate of return over the medium term necessarily implies that prices charged by businesses must on average more than fully cover costs.

GBEs are specifically required to achieve, over time, as a minimum benchmark, economic rates of return on assets for their commercial operations equivalent to the long-term bond rate plus an appropriate margin for risk.

- The required rate of return for GBEs is settled by the Minister for Finance and the responsible portfolio Minister. The Treasurer is also consulted. The financial performance of GBEs is published in the reports of the Steering Committee on National Performance Monitoring of Government Trading Enterprises.
- Significant business activities other than GBEs will also be required to achieve financial targets. The processes will be comparable to arrangements for setting performance targets for GBEs.
- The financial targets for non-GBE authorities will be agreed in advance by the responsible portfolio Minister in consultation with the Minister for Finance. (The Treasurer may also be consulted.) Where a business activity is undertaken by an organisation which does not have a corporate plan, the implementation task force will advise on the need for such plans and appropriate financial targets.
- Financial targets for share-limited companies (including subsidiaries) are to be established and monitored by the responsible portfolio. Consistent with the purpose of establishing share limited companies, responsible portfolios will be required to establish commercial performance indicators so as to establish the long-term viability of the business.
- Business units are required to achieve financial targets for some activities. Where other significant business activities are identified in Departments of State (there are none at present) the activity will be required to develop business plans, including financial targets. The Department of Finance will monitor the financial performance of business units and will establish comparable financial performance monitoring arrangements where new business activities are identified in Departments of State.

### ***Regulatory neutrality***

Regulatory neutrality will be achieved by subjecting, where appropriate, all identified organisations to the same regulatory environment as private sector businesses. In accordance with subclauses 3(6) and 3(7) of the CPA, regulatory amendment will only be made where it is appropriate and cost effective to do so.

Organisations with possible regulatory advantages have been identified in the Appendix. The appropriateness of these regulatory arrangements will be reviewed over the next 12 months. It is expected that further regulatory advantages may be identified in the Legislation Review processes being progressed in accordance with the CPA and through the competitive neutrality complaints mechanism.

- The task force will advise on the need to amend regulations to address competitive neutrality issues.
- The complaints mechanism processes will provide a further means to address net competitive regulatory advantages on a case-by-case basis.

Progress with reforming identified regulatory advantages will be published in the Commonwealth's 1996-1997 Competitive Neutrality Report, and in subsequent reports.

### ***Full cost pricing principles***

The Competition Principles Agreement requires that where Agencies undertake significant business activities as part of a broader range of functions, then agencies, where appropriate, should pay all applicable taxes or tax equivalents and debt guarantee charges. In addition, agencies should ensure that prices charged reflect full cost attribution for these business activities. The Commonwealth considers that this requirement can be met by agencies meeting appropriate financial targets for specified business activities. Accordingly, it is not proposed to review individual prices charged by businesses, but to assess the overall financial performance of the business activity.

### **Competitive neutrality oversight arrangements**

The Commonwealth already has in place systems to monitor and report on compliance with financial and management policies. Monitoring and reporting on the implementation of the Commonwealth's competitive neutrality policy will, for the most part, utilise existing reporting processes.<sup>6</sup>

- Financial target setting and assessment of performance against targets is covered in consultations about business/corporate plans and interim reports. Published financial statements will indicate the financial performance of the significant business activities.
- Payment of taxes are audited by the taxation bodies of the relevant jurisdiction.
- Where tax equivalent arrangements are in place, an audit trail would automatically be established through the Department of Finance establishing appropriate accounts and through separate entries in Budget Paper No.2 (Table 5 — Other Estimates of Receipts.) In addition, the Auditor General will audit these transactions as part of the financial statements of the agency.
- The application of a debt guarantee charge to a business able to borrow in its own right will be indicated in a schedule to the *Commonwealth Borrowing Levy Act 1987*.

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<sup>6</sup> It is noted that new legislation relating to financial monitoring of Commonwealth entities has been proposed. However, it is not expected that any changes to current legislation will affect the monitoring or compliance with competitive neutrality arrangements.

- For agencies borrowing from the Budget, the Department of Finance will ensure that interest rates charged reflect private sector rates. The Department of Finance will promulgate this in a circular to its Supply Divisions and to Departments.

## **The complaints mechanism**

The complaints mechanism is a central element in the operation of competitive neutrality arrangements.

The complaints mechanism will respond to complaints that:

- Commonwealth organisations identified in this statement are not complying with the competitive neutrality arrangements where required; or
- other Commonwealth organisations should be required to comply with competitive neutrality arrangements, notwithstanding that activities are smaller than the 'significant' criteria set out in this statement.

The complaints mechanism will be administered by the Productivity Commission. As a catalyst for structural reform, the new Productivity Commission is well equipped to undertake the complaints mechanism. The Commission's work on microeconomic reform is aimed at establishing institutional, regulatory and policy frameworks conducive to competition, entrepreneurship and investment which are required to sustain growth. Reviews of possible resource allocation distortions arising from public ownership fall logically within this work. The Commission has a wealth of experience in examining the operations of government trading enterprises and the impact of government regulations.

### ***Who can lodge a complaint?***

It is expected that most complaints will come from businesses in the private sector. However, there may be markets where various government businesses compete and a complaint might come from one of those businesses. There is no restriction on who can raise a competitive neutrality complaint. The complaints mechanism will operate from July 1997.

### ***The role of the complaints mechanism***

The role of the complaints mechanism is to:

- respond to concerns that Government businesses are not complying with the competitive neutrality principles;
- advise on whether resource allocation distortions are being caused by significant government businesses; and

- consider whether Government businesses have net competitive advantages resulting from public ownership.

Where the Productivity Commission is investigating whether specified business activities are complying with the competitive neutrality arrangements, it will take account of:

- arrangements set out in this statement and subsequent announcements following reviews of business activities;
- corporate plans and the approved business plans of the organisations under investigation; and
- regulatory arrangements which distort competition between the government business and its private sector competitors.

Where the Productivity Commission is investigating a complaint that a government business activity should be subject to competitive neutrality arrangements, not withstanding that the business falls below 'significance' thresholds in this statement it will assess whether:

- the business activity has a significant competitive advantage resulting from government ownership;
- the business activity has a substantial degree of market power in a market;
- the pricing behaviour of a government business has had the effect of eliminating or substantially damaging a competitor, preventing entry, or preventing or deterring competitive conduct in that or any other market; and
- it would be cost effective to apply competitive neutrality principles to the activity.

After receiving a complaint, the Productivity Commission will need to establish through preliminary inquiries whether the complaint should be proceeded with.

Where the Productivity Commission (after preliminary investigations) considers that there is a strong possibility that competitive neutrality arrangements are not being followed or potentially should be implemented it will be able to propose to the Treasurer, if it thinks necessary, that there be a public inquiry into the circumstances surrounding the complaint. Alternatively, the Productivity Commission could establish that an entity has competitive disadvantages as a result of government ownership and make recommendations to ameliorate those disadvantages.

The Treasurer will determine the need for a public inquiry and approve all public inquiries concerning competitive neutrality. The findings of the inquiry and any recommendations to the Treasurer will be made public. Within 90 days of receipt of a report the Treasurer, in consultation with the relevant portfolio Minister, will make a

determination on whether competitive neutrality will be applied by the business entity or other remedial action to be taken.

The Productivity Commission will also be able to advise government business entities where it believes that there are inadequacies in their competitive neutrality arrangements and of modifications to pricing practices and accounting arrangements which would improve compliance with the policy. If a suitable resolution of a complaint can be achieved by this advisory role there may be no need for a formal inquiry.

Commonwealth business organisations will not be subject to penalties for non-compliance with the competitive neutrality principles, nor can the Commission award or recommend damages to parties who have lodged complaints which have been supported by the Commission. However, an organisation's non-compliance will be reviewed when the Government is evaluating the performance of the organisation's management.

### **Compliance and whole of government reporting arrangements**

Competitive neutrality is an important additional element in the financial management and accountability arrangements of government business activities. Each organisation subject to competitive neutrality arrangements is required to note that it is subject to the policy in its annual report to Parliament. This statement will indicate where exemptions from taxation and borrowing levy arrangements have been provided by the Government and the reasons for any exemptions. This statement will also indicate whether any changes to an organisation's competitive neutrality arrangements have been made in the previous 12 months and the outcome of any public inquiries under the complaints mechanism.

The Productivity Commission will publish on an annual basis the number of complaints it receives in relation to the policy and the outcome of its inquiries into those complaints.

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

- amendments to the list of Commonwealth organisations subject to the policy;
- refinements to the policy requirements;
- progress in implementing this policy statement; and
- the operation of the complaints mechanism over the preceding twelve months.

The statement will also note the activities of the Productivity Commission and Department of Finance in implementing and overseeing the competitive neutrality arrangements. Commentary on any reports prepared by the Australian National Audit Office which report on compliance with competitive neutrality principles will be included in the Report.





## APPENDIX: GOVERNMENT BUSINESS ACTIVITIES SUBJECT TO COMPETITIVE NEUTRALITY: IMPLEMENTATION SCHEDULE

**Table 1: Organisations legally distinct from the Commonwealth**

**A. Government business enterprises<sup>7</sup>**

Current Status				Implementation Strategy			
Name (C) = company (A) = authority	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding borrowings	Identified regulatory advantages	Reviews of operations and ownership <sup>8</sup>	Remove taxation exemptions or impose TERS	Review regulatory arrangements	Review of borrowing levy <sup>9</sup>
Australian Defence Industries Ltd (ADI) (C)	1. Y 2. Y	1. N 2. Y	N	✓			✓

<sup>7</sup> The Pipeline Authority is a Commonwealth GBE but has not been included in this list as it is in the process of being wound up following the sale of the Moomba-Sydney Pipeline.

<sup>8</sup> Includes reviews which have already been announced.

<sup>9</sup> The current borrowing levy arrangements under the *Commonwealth Borrowing Levy Act 1987* are being reviewed to determine what organisations should be subject to the levy and at what level the levy should be applied.

Current Status				Implementation Strategy			
Name (C) = company (A) = authority	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding borrowings	Identified regulatory advantages	Reviews of operations and ownership <sup>10</sup>	Remove taxation exemptions or impose TERS	Review regulatory arrangements	Review of borrowing levy <sup>11</sup>
Airservices Australia & Subsidiaries. (A)	1. Y 2. Y (payroll only)	1. Y 2. Y	N		✓		✓
Australian National Line Ltd (ANL) & Subs. (C) <sup>12</sup>	1. Y 2. Y	1. Y 2. Y	N				✓
Australian Industry Development Corporation (AIDC) & Subs. (A) <sup>13</sup>	1. Y 2. Y	1. N 2. Y	Y <sup>14</sup>				

<sup>10</sup> Includes reviews which have already been announced.

<sup>11</sup> The current borrowing levy arrangements under the *Commonwealth Borrowing Levy Act 1987* are being reviewed to determine what organisations should be subject to the levy and at what level the levy should be applied.

<sup>12</sup> ANL is currently undergoing a restructure prior to it being offered for sale.

<sup>13</sup> AIDC Ltd (Sub) to be sold. Operations of AIDC Corp are to be reviewed subsequently.

<sup>14</sup> AIDC is exempt from prudential supervision.

Current Status				Implementation Strategy			
Name (C) = company (A) = authority	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding borrowings	Identified regulatory advantages	Reviews of operations and ownership <sup>15</sup>	Remove taxation exemptions or impose TERs	Review regulatory arrangements	Review of borrowing levy <sup>16</sup>
Australian National Railways Commission (AN) (A) <sup>17</sup>	1. Y 2. Y	1. Y 2. Y	N				✓
Australian Postal Corporation (AP) & Subsidiaries (A) <sup>18</sup>	1. Y 2. Y	1. Y 2. Y	Y	✓		✓	✓
Australian Technology Group Ltd (ATG) (C) <sup>19</sup>	1. Y 2. Y	1. N 2. N	N				

<sup>15</sup> Includes reviews which have already been announced.

<sup>16</sup> The current borrowing levy arrangements under the *Commonwealth Borrowing Levy Act 1987* are being reviewed to determine what organisations should be subject to the levy and at what level the levy should be applied.

<sup>17</sup> The current review of AN is examining its ownership and operations. The report is to be considered in the context of the 1996-97 Budget.

<sup>18</sup> AP has a legislated monopoly to carry out specific (reserved) services and is scheduled for review.

<sup>19</sup> ATG is a partially privatised company. Under the terms of its shareholders agreement it is not able to borrow.

Current Status				Implementation Strategy			
Name (C) = company (A) = authority	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding borrowings	Identified regulatory advantages	Reviews of operations and ownership <sup>20</sup>	Remove taxation exemptions or impose TERS	Review regulatory arrangements	Review of borrowing levy <sup>21</sup>
Avalon Airport Geelong Ltd & Subs (C) <sup>22</sup>	1. Y 2. Y	1. N 2. N	N				
Commonwealth Bank of Australia (CBA) & Subs. (C) <sup>23</sup>	1. Y 2. Y	1. N 2. N	Y <sup>24</sup>				

<sup>20</sup> Includes reviews which have already been announced.

<sup>21</sup> The current borrowing levy arrangements under the *Commonwealth Borrowing Levy Act 1987* are being reviewed to determine what organisations should be subject to the levy and at what level the levy should be applied.

<sup>22</sup> Subject to sale processes.

<sup>23</sup> The sale of the remainder of CBA is intended to be completed in the second half of 1996.

<sup>24</sup> Certain CBA liabilities are guaranteed by the Commonwealth.

Current Status				Implementation Strategy			
Name (C) = company (A) = authority	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding borrowings	Identified regulatory advantages	Reviews of operations and ownership <sup>25</sup>	Remove taxation exemptions or impose TERs	Review regulatory arrangements	Review of borrowing levy <sup>26</sup>
Commonwealth Funds Management Ltd (CFM) & Subs. <sup>27</sup>	1. Y 2. Y	1. N 2. N	N				
Defence Housing Authority (A)	1. N 2. N	1. N 2. Y	N	✓	✓		✓
Export Finance and Insurance Corporation. (A)	1. N (pays sales tax) 2. N	1. Y 2. Y	N	✓	✓		✓

<sup>25</sup> Includes reviews which have already been announced.

<sup>26</sup> The current borrowing levy arrangements under the *Commonwealth Borrowing Levy Act 1987* are being reviewed to determine what organisations should be subject to the levy and at what level the levy should be applied.

<sup>27</sup> A scoping study is currently in progress to determine the CFM's potential for a sale.

Current Status				Implementation Strategy			
Name (C) = company (A) = authority	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding borrowings	Identified regulatory advantages	Reviews of operations and ownership <sup>28</sup>	Remove taxation exemptions or impose TERS	Review regulatory arrangements	Review of borrowing levy <sup>29</sup>
Federal Airports Corporation (FAC) & Subs. (A) <sup>30</sup>	1. Y (not customs) 2. Y	1. Y 2. Y	Y <sup>31</sup>		✓	✓	✓
Housing Loans Insurance Corporation (HLIC) (A)	1. Y 2. Y	1. Y 2. N	Y <sup>32</sup>	✓		✓	

<sup>28</sup> Includes reviews which have already been announced.

<sup>29</sup> The current borrowing levy arrangements under the *Commonwealth Borrowing Levy Act 1987* are being reviewed to determine what organisations should be subject to the levy and at what level the levy should be applied.

<sup>30</sup> The ownership and operation of FAC is being considered in its sale process.

<sup>31</sup> The FAC is not subject to State/Territory planning laws except where land or buildings at a Federal airport are used for activities not directly related to aviation in which case the use of the land or the design and construction of the building would need to be sanctioned under State/Territory law. This could give it an advantage in leasing shops and car parks at airports.

<sup>32</sup> HLIC is exempt from Insurance and Superannuation Commission (ISC) supervision. A review of its regulatory situation will commence after corporatisation in 1996-97.

Current Status				Implementation Strategy			
Name (C) = company (A) = authority	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding borrowings	Identified regulatory advantages	Reviews of operations and ownership <sup>33</sup>	Remove taxation exemptions or impose TERs	Review regulatory arrangements	Review of borrowing levy <sup>34</sup>
Snowy Mountains Hydro-electric Authority (SMHEA) (A) <sup>35</sup>	1. Y (doesn't pay sales tax) 2. Y	1. Y 2. Y	N		✓		✓
Telstra Corporation Ltd & Subs. (C) <sup>36</sup>	1. Y 2. Y	1. Y 2. Y	Y <sup>37</sup>			✓	✓
National Rail Corporation (NR)	1. Y 2. Y	1. N 2. Y	N	✓ <sup>38</sup>			✓

<sup>33</sup> Includes reviews which have already been announced.

<sup>34</sup> The current borrowing levy arrangements under the *Commonwealth Borrowing Levy Act 1987* are being reviewed to determine what organisations should be subject to the levy and at what level the levy should be applied.

<sup>35</sup> The SMHEA is expected to be incorporated under the Corporations Law during 1996-97. At that time it will be subject to all taxes.

<sup>36</sup> The Government has announced its intention to partially sell Telstra. A review of telecommunications legislation is planned for 1997.

<sup>37</sup> Telstra and the other carriers are exempt from some building, heritage and environment regulations. This may give them an advantage over non-carrier providers of telecommunications products and services.

<sup>38</sup> The operations of NR will be considered in the AN review.

**B. Non-GBE authorities**

Current Status				Implementation Strategy			
Name ( <i>business activity</i> )	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding loans?	Identified regulatory advantages	Reviews of operations and ownership <sup>39</sup>	Remove taxation exemptions or impose TERs	Review of regulatory arrangements	Review of borrowing costs
Albury Wodonga Development Corp ( <i>commercial services</i> )	1. N 2. N	1. N 2. N	N	✓	✓		✓
Army and Air Force Canteen Service (AAFCAN) ( <i>retailing services</i> )	1. N 2. N	N/A	Y <sup>40</sup>	✓	✓	✓	✓
Australian Broadcasting Corporation (ABC) & subs ( <i>consumer goods and studio rentals</i> )	1. N 2. N	1. N 2. Y	Y <sup>41</sup>	✓	✓	✓	✓

<sup>39</sup> Includes reviews which have already been announced.

<sup>40</sup> AAFCAN is exempt from State liquor licence laws and may have other competitive advantages.

<sup>41</sup> The ABC has exemption from Australian Broadcasting Authority regulations. It also has first refusal on some television event rights and has its transmission provided at no cost.



Current Status				Implementation Strategy			
Name ( <i>business activity</i> )	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding loans?	Identified regulatory advantages	Reviews of operations and ownership <sup>42</sup>	Remove taxation exemptions or impose TERs	Review of regulatory arrangements	Review of borrowing costs
Australian National University & Subsidiaries ( <i>some teaching and consulting services</i> )	1. N 2. N (pays payroll)	1. N 2. Y	N	✓	✓		✓
Australian Wheat Board (AWB) ( <i>domestic sales</i> ) <sup>43</sup>	1. N 2. Y	1. N 2. Y	Y <sup>44</sup>	✓	✓	✓	✓
Commonwealth Scientific & Industrial Research Organisation (CSIRO) ( <i>research and consulting services</i> )	1. N 2. N (pays stamp duty in some States)	1. N 2. Y	N	✓	✓		✓
Health Insurance Commission (HIC) & Subsidiaries ( <i>private health insurance</i> )	1. Y 2. Y	1. Y 2. N	N	✓			✓

<sup>42</sup> Includes reviews which have already been announced.

<sup>43</sup> In the case of the AWB, competitive neutrality will be implemented in a manner which is consistent with the Government's reform agenda.

<sup>44</sup> AWB's domestic trading arm is subsidised by a compulsory levy.

Current Status				Implementation Strategy			
Name ( <i>business activity</i> )	Taxation 1. Commonwealth 2. State	1. Borrowing levy 2. Outstanding loans?	Identified regulatory advantages	Reviews of operations and ownership <sup>45</sup>	Remove taxation exemptions or impose TERs	Review of regulatory arrangements	Review of borrowing costs
Reserve Bank of Australia ( <i>financial services</i> )	1. N 2. Y	1. N 2. N	Y <sup>46</sup>	✓	✓	✓	
Special Broadcasting Service (SBS) ( <i>consumer goods</i> )	1. N 2. N	1. N 2. Y	Y <sup>47</sup>	✓	✓	✓	✓
University of Canberra ( <i>consulting services</i> )	1. N 2. N	1. N 2. Y	N	✓	✓		✓
Wool International ( <i>wool sales</i> ) <sup>48</sup>	1. Y 2. N	1. N 2. Y	N		✓		✓

<sup>45</sup> Includes reviews which have already been announced.

<sup>46</sup> The issue of currency notes is reserved to the RBA.

<sup>47</sup> SBS has the same regulatory advantages as the ABC.

<sup>48</sup> In the case of Wool International, competitive neutrality will be implemented in a manner which is consistent with the Government's reform agenda.

**Table 2: Status of Budget sector agencies — business units**

Current Status				Implementation Strategy			
Name (* non-commercial activities will be exempt)	Notional Tax Payments <sup>49</sup>	Notional Debt Charges	Identified regulatory advantages <sup>50</sup>	Review of ownership and operating principles <sup>51</sup>	Review of funding costs	Review of regulatory arrangements	Remove tax exemptions &/or impose tax equivalence regime
Artbank	N	N	N	✓	✓		✓
Asset Services	Y	Y	N	✓	✓		✓
Auscript*	N	N	N	✓			✓
Australian Government Analytical Laboratories *	Y	Y	tied clients	✓	✓	✓	✓

<sup>49</sup> DAS business units are currently required to pay fringe benefits tax, fuel excise and customs duty. Notional indirect taxes (eg. state payroll taxes) are paid on non-Commonwealth work. Business units only have tied clients for a portion of their services. In most cases, clients are tied for reasons which may not constitute an advantage under competitive neutrality principles.

<sup>50</sup> Business units have the advantage of being exempt from State regulations such as planning, environment and fair trading (but comply with these regulations where possible.)

<sup>51</sup> A review of all DAS business units has been commissioned by the Minister for Administrative Services. The review will be wide-ranging and will make recommendations in relation to operating principles and practices of those units.

Current Status				Implementation Strategy			
Name (* non-commercial activities will be exempt)	Notional Tax Payments <sup>52</sup>	Notional Debt Charges	Identified regulatory advantages <sup>53</sup>	Review of ownership and operating principles <sup>54</sup>	Review of funding costs	Review of regulatory arrangements	Remove tax exemptions &/or impose tax equivalence regime
Australian Government Health Service *	N	N	N	✓	✓		✓
Australian Government Publishing Service*	Y	Y	tied clients	✓	✓	✓	✓

<sup>52</sup> DAS business units are currently required to pay fringe benefits tax, fuel excise and customs duty. Notional indirect taxes (eg. state payroll taxes) are paid on non-Commonwealth work. Business units only have tied clients for a portion of their services. In most cases, clients are tied for reasons which may not constitute an advantage under competitive neutrality principles.

<sup>53</sup> Business units have the advantage of being exempt from State regulations such as planning, environment and fair trading (but comply with these regulations where possible.)

<sup>54</sup> A review of all DAS business units has been commissioned by the Minister for Administrative Services. The review will be wide-ranging and will make recommendations in relation to operating principles and practices of those units.

Current Status				Implementation Strategy			
Name (* non-commercial activities will be exempt)	Notional Tax Payments <sup>55</sup>	Notional Debt Charges	Identified regulatory advantages <sup>56</sup>	Review of ownership and operating principles <sup>57</sup>	Review of funding costs	Review of regulatory arrangements	Remove tax exemptions &/or impose tax equivalence regime
Australian Operational Support Services	Y	Y	N	✓	✓		✓
Domestic Property Group	Y	Y	tied clients	✓	✓	✓	✓
Australian Protective Service *	N	Y	tied clients	✓	✓	✓	✓

<sup>55</sup> DAS business units are currently required to pay fringe benefits tax, fuel excise and customs duty. Notional indirect taxes (eg. state payroll taxes) are paid on non-Commonwealth work. Business units only have tied clients for a portion of their services. In most cases, clients are tied for reasons which may not constitute an advantage under competitive neutrality principles.

<sup>56</sup> Business units have the advantage of being exempt from State regulations such as planning, environment and fair trading (but comply with these regulations where possible.)

<sup>57</sup> A review of all DAS business units has been commissioned by the Minister for Administrative Services. The review will be wide-ranging and will make recommendations in relation to operating principles and practices of those units.

Current Status				Implementation Strategy			
Name (* non-commercial activities will be exempt)	Notional Tax Payments <sup>58</sup>	Notional Debt Charges	Identified regulatory advantages <sup>59</sup>	Review of ownership and operating principles <sup>60</sup>	Review of funding costs	Review of regulatory arrangements	Remove tax exemptions &/or impose tax equivalence regime
Australian Surveying and Land Information Group *	Y	Y	N	✓	✓		✓
Australian Valuation Office *	Y	Y	tied clients	✓	✓	✓	✓
DAS Centre for Environmental Management *	Y	Y	N	✓	✓		✓

<sup>58</sup> DAS business units are currently required to pay fringe benefits tax, fuel excise and customs duty. Notional indirect taxes (eg. state payroll taxes) are paid on non-Commonwealth work. Business units only have tied clients for a portion of their services. In most cases, clients are tied for reasons which may not constitute an advantage under competitive neutrality principles.

<sup>59</sup> Business units have the advantage of being exempt from State regulations such as planning, environment and fair trading (but comply with these regulations where possible.)

<sup>60</sup> A review of all DAS business units has been commissioned by the Minister for Administrative Services. The review will be wide-ranging and will make recommendations in relation to operating principles and practices of those units.

Current Status				Implementation Strategy			
Name (* non-commercial activities will be exempt)	Notional Tax Payments <sup>61</sup>	Notional Debt Charges	Identified regulatory advantages <sup>62</sup>	Review of ownership and operating principles <sup>63</sup>	Review of funding costs	Review of regulatory arrangements	Remove tax exemptions &/or impose tax equivalence regime
DAS Distribution	Y	Y	N	✓	✓		✓
DAS Removals	Y	Y	N	✓	✓		✓
DASFLEET	Y	Y	tied clients	✓	✓	✓	✓
Interiors Australia	Y	Y	N	✓	✓		✓
Legal Practice *	N	Y	tied clients	✓	✓	✓	✓
Royal Australian Mint *	N	N	N	✓	✓		✓

<sup>61</sup> DAS business units are currently required to pay fringe benefits tax, fuel excise and customs duty. Notional indirect taxes (eg. state payroll taxes) are paid on non-Commonwealth work. Business units only have tied clients for a portion of their services. In most cases, clients are tied for reasons which may not constitute an advantage under competitive neutrality principles.

<sup>62</sup> Business units have the advantage of being exempt from State regulations such as planning, environment and fair trading (but comply with these regulations where possible.)

<sup>63</sup> A review of all DAS business units has been commissioned by the Minister for Administrative Services. The review will be wide-ranging and will make recommendations in relation to operating principles and practices of those units.

Current Status				Implementation Strategy			
Name (* non-commercial activities will be exempt)	Notional Tax Payments <sup>64</sup>	Notional Debt Charges	Identified regulatory advantages <sup>65</sup>	Review of ownership and operating principles <sup>66</sup>	Review of funding costs	Review of regulatory arrangements	Remove tax exemptions &/or impose tax equivalence regime

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<sup>64</sup> DAS business units are currently required to pay fringe benefits tax, fuel excise and customs duty. Notional indirect taxes (eg. state payroll taxes) are paid on non-Commonwealth work. Business units only have tied clients for a portion of their services. In most cases, clients are tied for reasons which may not constitute an advantage under competitive neutrality principles.



Current Status				Implementation Strategy			
Works Australia	Y	Y	N	✓	✓		✓

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<sup>65</sup> Business units have the advantage of being exempt from State regulations such as planning, environment and fair trading (but comply with these regulations where possible.)

<sup>66</sup> A review of all DAS business units has been commissioned by the Minister for Administrative Services. The review will be wide-ranging and will make recommendations in relation to operating principles and practices of those units.



## **ATTACHMENT A: EXTRACT FROM COMPETITION PRINCIPLES AGREEMENT**

### **Competitive Neutrality Policy and Principles**

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 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 costs.
- (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 B: COMPETITIVE NEUTRALITY AND COMPETITIVE TENDERING AND CONTRACTING**

Competitive tendering is a process of selecting a preferred supplier from a range of potential contractors by seeking offers and evaluating those offers on the basis of one or more selection criteria. It is anticipated that an increasing number of public sector agencies will organise their activities so that they are able to choose between an in-house supplier of a service or an external contractor in performing core functions. This will include the non-profit programs of Government.

Where in-house providers supply a service under contract there is a need to ensure that appropriate competitive neutrality arrangements and management practices are in place. As a rule, in-house tenders will need to:

- be prepared in isolation from those in the organisation responsible for evaluating tenders and awarding contracts; and
- reflect full cost attribution, including taxation, return on capital and all relevant overheads.

The Industry Commission report on *Competitive Tendering and Contracting by Public Sector Agencies* examined the issues surrounding the implementation of competitive tendering and contracting out. More detailed procedures for ensuring competitive neutrality for in-house tenders will be outlined in the Government's response to that report.