

POLICY DOCUMENT

7.63.7

Policy Name	NATIONAL COMPETITON POLICY
Policy No.	7.63.7
Version:	1
Strategic Reference:	3.2 A strategically driven, community aware and accountable Council
Responsible Department:	Corporate, Community & Governance Services
Policy Adopted:	18 January 2021
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Minute reference:	CO 21/011
Next review date:	Council will review this policy 4 years after the adopted date or following significant change to legislation or where required by relevant public policy considerations.
Applicable Legislation:	Government Business Enterprises (Competition) Act 1996; Local Government Act 1999
Related Policies:	
Related Documents:	LGA Guide to National Competition Policy and Competitive Neutrality. Revised Clause 7 Statement on the application of Competition Principles to Local Government under the Competition Principles Agreement.

1. GENERAL

The Revised Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Agreement (as amended to April 2007) and the Government Business Enterprises (Competition) Act 1996 provide the framework for implementing National Competition Policy by local government entities in South Australia.

Council is supportive of the objectives of the National Competition Policy, which aims to:

- Develop an open and integrated Australian market for goods and services,
- Ensure no buyer or seller is able to engage in anti-competitive conduct against the public interest,
- As far as possible, apply the same rules of market conduct to all participants, regardless of the form of business ownership, and
- Ensure that the regulation of business activities which restrict competition is subject to an assessment of likely costs and benefits.

Note: The National Competition Policy does not require local governments to divest themselves of business activities, to contract out services, or to engage in competitive tendering for the purchase of goods and services.

2. **BY-LAWS RESTRICTING COMPETITION**

When considering any by-law or policy restricting competition by placing barriers on market entry or conduct or discriminating against competitors, Council must be able to demonstrate that the benefits of the restriction to the community as a whole outweigh the costs.

3. **COMPETITIVE NEUTRALITY**

Part 4 of the Clause 7 Statement describes the competitive neutrality obligations as they apply to local government. Where local government is involved in a significant business activity, it must apply competitive neutrality principles to that activity. These principles are identified in the Government of South Australia Competitive Neutrality Policy Statement (**SA Policy**).

Significant Business Activity

The SA Policy provides that a business activity is determined to be 'significant' based on consideration of its size and influence in the relevant market. The SA Policy sets out two categories of significant business activity and provides as follows:

- Category 1: Business activities with an annual revenue in excess of \$2 million, or employing assets with a value in excess of \$20 million;
- Category 2: All other significant business activities.

For Category 2 business activities, these will be significant when:

- the government business enterprise possesses market power to create a competitive impact in the market that is more than nominal or trivial;
- its size relative to the size of the market as a whole is more than nominal or trivial.

Where Council provides goods or services in a competitive market, these business activities shall not have an unfair advantage over private sector businesses by virtue of local government ownership. The three options available to Council to implement competitive neutrality are:

3.1. *Corporatisation*

Involves creation of separate legal entity, characterised by clear and non-conflicting objectives; separate managerial responsibility, authority and autonomy; effective performance monitoring; and effective rewards and sanctions related to performance.

3.2. *Commercialisation*

Requires application of commercial practices to business elements of Council without establishing a separate legal entity. Attributes of commercialisation would typically include some or all of:

- a separate business plan
- the determination of an appropriate return on investment
- clear commercial performance targets
- separate financial recording and reporting
- separation of regulatory functions from any commercial activity
- application of tax equivalent regime
- application of debt guarantee fees

- arrangements for allocation of “profits” from the business activity.

3.3. Cost Reflective Pricing

Cost reflective pricing is a mechanism used to arrive at a price which is competitively neutral. Appropriate for smaller business activities, cost reflective pricing is a calculation of the costs of providing the service, taking into account:

- Actual costs of providing the goods and/or services on a full-cost basis
- Cost advantages of local government, (e.g. lower cost of finance, less taxes)
- Cost disadvantages of local government, (e.g. increased accountability and administration)
- Return on investment and dividend payment to Council.

This can be achieved by ring-fencing the business activity from other Council activities.

4. IMPLEMENTATION OF COMPETITIVE NEUTRALITY

Council shall apply competitive neutrality principles, where appropriate to any significant business activity carried out by Council, unless the costs of implementing the principles are greater than the benefits to be realised.

A significant business activity as detailed above includes any activity undertaken where:

- The activity is primarily involved in producing goods and services for sale in the market, and
- The activity has a commercial or profit making focus, and
- There are user charges for goods and/or services, and
- The activity is not primarily funded from rate or grant funding, or
- Council submits a tender as part of a tendering process in competition with the private sector.

However a significant business activity does not include any activity where there is no competition with local suppliers or where the achievement of community benefits is the main priority of the activity.

5. COMPLAINTS PROCESS

Complaints against Council alleging an infringement of the principles of competitive neutrality should be made through the Department of Premier and Cabinet (DPC) and:

- (a) must be in writing; and
- (b) must contain full details of the alleged infringement; and
- (c) must contain any further information required under the regulations.

6. REPORTING

Council will include in its Annual Report, where relevant, information in relation to:

- The commencement or cessation of significant business activities controlled by Council;
- Competitive neutrality measures applied to each significant business activity; and
- Review of any by-laws which restrict competition, including proposals for new by-laws.
- Complaints received alleging breach of competitive neutrality principles.

This information may be presented in summary form.

7. RELEVANT DELEGATED POWERS AND DUTIES

Any actions or decisions made regarding this policy, will be taken in compliance with Council's current Delegations Register.