



Centennial Park

COMPETITION POLICY STATEMENT

Chief Executive Officer
Centennial Park Cemetery Authority

Date

July 2010

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COMPETITION POLICY

1 Introduction

National Competition Policy – Application to Centennial Park Cemetery Authority (the Authority)

A report entitled *National Competition Policy* was prepared by a committee chaired by Professor Fred Hilmer in 1993. The basic principle underlying the report was that government businesses should neither compete unfairly with private sector businesses nor engage in trade and business practices not in the best interest of the consumer. There have been two major outcomes of the report.

Firstly, the Commonwealth Trade Practices Act, which regulates certain business conduct, has been extended to apply to all government businesses, and the States have passed complementary legislation to apply the provisions of the Act to State and local governments. Secondly, the Commonwealth and the States have agreed to ensure that all their significant businesses do not compete unfairly with the private sector. Clause 7 of the agreement between the Commonwealth and the States required State governments to apply the principles to local government.

In South Australia, the Local Government Association and the State government have agreed on how the principles will be applied to local government through means of a Clause 7 Statement. (A revised Clause 7 Statement was issued in May 2000.) The Clause 7 Statement applies to Regional Subsidiaries and this is confirmed in Schedule 2 to the Local Government Act 1999 which provides as follows:

“Principles of competitive neutrality

32. *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.*


^{1.} See Part 4 of the Government Business Enterprises (Competition) Act 1996.”

2 The Authority And The Clause 7 Statement

The Clause 7 Statement requires that all significant business activities shall be subject to its provisions. A business activity is defined as one which receives the majority of its revenue from user charges and which is set up to make a return. It provides for two categories of significant business activity.

Category 1 business activities are those which have an annual revenue of more than \$2 million or operate with gross assets of more than \$20 million. The Authority clearly falls into this category. The second category is a business that is determined to be significant by the council.

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Where a business activity is determined to be significant it must be conducted on a competitively neutral basis. **The Clause 7 Statement required Category 1 business activities to have completed the implementation of competitive neutrality by December 31, 1999.**

The instruments for achieving competitive neutrality are:

- Corporatisation; or if not Corporatisation;
- Commercialisation; or if not Commercialisation;
- Cost Reflective Pricing.

The Clause 7 Statement defines Corporatisation as:

“This involves the creation of a separate legal entity (business) to provide the relevant goods or services. Such an entity is characterised by:

- clear and non-conflicting objectives;
- managerial responsibility, authority and autonomy;
- effective performance monitoring;
- effective rewards and sanctions related to performance; and
- the acquisition and provision of raw materials, goods and services through competitive markets.”


All of these matters are contemplated by the Local Government Act 1999 in relation to the charter of a Regional Subsidiary. The Authority, as a Regional Subsidiary, is already corporatised.

However, the Competition Principles Agreement, which requires States to apply the principle of competitive neutrality to Local Governments (through the Clause 7 Statement), also requires the following to be imposed on the 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”.

The principle of a **tax equivalent regime** is that the tax itself is not paid to the relevant taxing authority, but that an amount equivalent to the tax that would have been paid be “paid” by the government business, but retained within the sphere of government that the business operates in. This means that a local government business would “pay” the equivalent of taxes foregone, but that the money would be retained within the local government sector (but not by the business “paying” the tax. It would seem appropriate, in the case of the Authority that such “payment” is made to the constituent councils. Note that in calculating the tax the government business is entitled to minimise such payment, but not avoid its potential tax liabilities.

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The Authority does not have any debt. However, the Authority Charter provides that a "Liability Guarantee" is paid to the Constituent Councils. Note that any borrowing from the Local Government Finance Authority already includes a debt guarantee fee in the transaction that is paid to the State Treasury.

In terms of **legislation** and **regulation** the Authority does not enjoy any advantage over private cemeteries and crematoria.

In addition, the models used by the State Government to achieve Corporatisation have imposed a requirement on such government businesses to have a target **rate of return**. The relevant State document suggests a **before tax rate of return on the current value of total assets of 7%** as being appropriate. The use of a before tax rate of return eliminates any bias in the way in which net profit is derived. It seems appropriate that the Centennial Park Cemetery Authority adopt this rate of return.

3 Policy

The Board of Management of the Authority has considered its obligations under the provisions outlined above and has resolved as follows:

3.1 The methodology for the Authority to achieve Competitive Neutrality is by Cost Reflective Pricing.

In adopting Cost Reflective Pricing the Authority:

- Identifies services and products that may reasonably be seen to compete with other providers;
- Identifies the potential for the Authority to have a cost advantage over other providers; and
- Compares pricing of the relevant goods and services.

Where there is a cost advantage that results in goods or services being provided below that being charged by other providers, the Authority will review its cost of providing the goods or services to arrive at a price which is competitively neutral, taking account of:

- The actual costs of providing the goods or services on a full-cost basis;
- The cost advantages of local government ownership (eg 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 (eg increased accountability and administration, higher award rates or costs associated with enterprise agreements, higher superannuation contributions, OHS&W); and
- Return on investment and dividend payments to local government owners;

Over the long-term, the price for the goods or services provided will largely reflect this cost. However, the price will also take account of the market place, pricing strategies, technological advantages or disadvantages of competitors and the level of competition in the market place.

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3.2 That the constituent Councils be requested to handle and determine any competitive neutrality complaints in relation to the Authority, on the grounds it is unlikely that the Authority would be able to deal with such complaints in an independent manner.

3.3 That the Authority will conduct its affairs in accordance with the relevant provisions of the Trade Practices Act.

4 Dealing With Competitive Neutrality Complaints

The Clause 7 Statement provides as follows:

“Local government entities should establish their own systems for handling complaints about competitive neutrality.

Where a local government entity establishes a system for handling complaints about competitive neutrality or modifies an existing complaints handling process it must ensure that any complaint is dealt with by a party independent of the matter or decision which is the subject of the complaint.

A Competition Commissioner appointed under the Government Business Enterprises (Competition) Act 1996 may receive complaints about local government entities on the same basis as complaints about State government agencies.

Any complaints will initially be referred to the local government entity concerned for investigation and a report back to the complainant and the State Government. In the case of a local government entity that has been established by a council or councils, the complaint will also be forwarded to the establishing council or councils.

It is not the intent of this Clause 7 Statement that commercially sensitive or confidential information be released into the public domain or to potential competitors of local government businesses. Any investigation of a competitive neutrality complaint must ensure that sensitive or confidential information is safeguarded.

Where a complaint is not satisfactorily resolved between the local government entity and the complainant, and the complainant pursues the complaint, a Competition Commissioner may be appointed under the Government Business Enterprises (Competition) Act 1996 to investigate the matter.

Where a complaint against a significant business activity has been previously investigated and the significant business activity has been found to comply with principles of competitive neutrality, the complaint may be determined without further investigation if:

- *the nature of the significant business is unchanged;*
- *the competitive neutrality principles being applied have not changed.”*

Given the relatively small size of the administration it is unlikely that a complaint in relation to competitive neutrality could be dealt with independently. As each of the constituent Councils has adopted a competitive neutrality complaints framework it would

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seem sensible to tap into those mechanisms, in the unlikely event that such a complaint should be lodged.

5 The Trade Practices Act

The Trade Practices Act now applies to government businesses. The Centennial Park Cemetery Authority conducts its business in accordance with the Act. In particular, the Authority:

- does not engage in misleading or false advertising or statements;
- does not engage in price fixing;
- does not attempt to divide up the market with its competitors; and
- does not engage in behaviour which is likely to reduce competition in the market place.

6 Responsibilities

Responsibility has been delegated to the Chief Executive Officer.

7 References:

- 7.1 Government Business Enterprises (Competition) Act 1996
- 7.2 Local Government Act 1999
- 7.3 Centennial Park Cemetery Authority Charter
- 7.4 Commonwealth Trade Practices Act 1974
- 7.5 Clause 7 Statement
- 7.6 National Competition Policy

SIGNED:

Chief Executive Officer

Date: ____/____/____