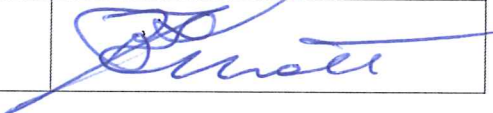




Competition Policy Statement

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| Approved by: | Board of Management |
| Signature: |  |

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1 Purpose

Clause 1.7.1 of the Charter (the Charter) of the Centennial Park Cemetery Authority (the Authority) states that:

“The Authority is involved in a significant business activity as defined in the Clause 7 Statement prepared under the Competition Principles Agreement of the National Competition Policy.”

Clause 1.7.2 of the Charter goes on to state:

“The Authority will implement principles of competitive neutrality by way of annual review of its business operations in the market place and application of the relevant principle or principles where that is appropriate to do so, unless the benefits to be realised through the application of the principles of competitive neutrality outweigh the costs associated with implementation as provided for in part 4 of the Government Business Enterprises (Competition) Act 1996.”

The purpose of the Competition Policy Statement is to outline the principles of the National Competition Policy and identify the means by which the Authority will implement these principles.

For further details on the background to this compliance requirement refer to the section on Legislation and Standards.

2 Competition Policy Statement

The Board of Management of the Authority has considered its obligations as defined in the Clause 7 Statement prepared under the Competition Principles Agreement of the National Competition Policy and has resolved as follows:

- 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 (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, WHS); 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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- 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.
- That the Authority will conduct its affairs in accordance with the relevant provisions of the *Competition and Consumer Act 2010 (Cth)* (the Competition Act).

3 Roles and Responsibilities

3.1. Board of Management

The **Board of Management** have the ultimate responsibility for ensuring the Authority meets its obligations under the National Competition Policy. The Board has delegated that responsibility to the Chief Executive Officer who is responsible for:

- Identifying services and products that may reasonably be seen to compete with other providers;
- Identifying the potential for the Authority to have a cost advantage over other providers;
- Comparing the pricing of the relevant goods and services;
- Ensuring that the Authority will conduct its affairs in accordance with the relevant provisions of the Competition Act;
- Referring any competitive neutrality complaints in accordance with the policy and cooperating with the investigation that may then occur; and
- Ensuring that the operations of the Authority are reviewed annually and advising the Board of Management of whether the current policy remains relevant.

3.2. Policy Author

The Chief Executive Officer as **Policy Author** or their delegate creates or updates the content of this policy and is responsible for:

- Ensuring this policy complies with the Authority's Values including the Board of Management Code of Conduct and the Employee Code of Conduct;
- Following the Governance Documents Management Procedure;
- Ensuring delegates and reviewers are competent persons;
- Capturing all review feedback and providing to Information Services for capture in the recordkeeping system;
- Authorising upload of new or revised Governance Documents on the intranet;
- Identification and scheduling of training requirements; and
- Notification and communications of the release or update of this policy.

3.3. Governance Document Approver

The Board of Management as **Governance Document Approver** or their delegate is the approver of the governance document and is responsible for:

- Ensuring Governance Documents comply with this policy and with the Authority's values including the Board of management Code of Conduct and the Employee Code of Conduct;
- Following the Governance Documents Management Procedure; and
- Ensuring notification and communications of release or updates to this policy take place and staff are trained and competent in their application.

3.4. The Authority Managers and Supervisors

The Authority Managers and Supervisors are responsible for:

- Supporting successful implementation of this policy within their department / section / area.

3.5. The Authority Staff

The Authority staff are responsible for:

- Familiarising themselves with the requirements of this policy; and
- Ensuring they always access current versions of this policy from the intranet when referencing content and taking responsibility for managing/destroying any uncontrolled hard copies they choose to print.

4 Glossary of Terms

| Term | Definition |
|-----------------------------|---|
| The Board | The Board of Management of Centennial Park Cemetery Authority |
| Constituent Councils | The City of Mitcham and the Corporation of the City of Unley |
| the Authority | Centennial Park Cemetery Authority |
| Governance Document | A Governance Document is any Charter, Policy, Procedure, Plan, Form or Template which is applicable across a function or the organisation. They are of critical significance in terms of risk management, governance and operational control. |

5 References

- Competition and Consumer Act 2010 (Cth)
- Competition Principles Agreement
- Government Business Enterprises (Competition) Act 1996 (SA)
- Local Government Act 1999 (SA)
- Clause 7 Statement (SA)
- The South Australian Department of Treasury Finance "A guide to the Implementation of Competitive Neutrality Policy"
- Centennial Park Cemetery Authority Charter

6 Legislation and Standards

In order to understand the compliance requirements of this policy refer to Appendix 1

7 Records

Any competitive neutrality complaints received will be files within the appropriate designated folder within the records management system.

8 Training & Competence

To support the implementation of this policy and ongoing compliance the following training and support is available:

- Training provided by an external accredited service provider to those members of the Board or the Authority who require further information other than that included in this policy.

9 Requirements for Review of this Document

Regular periodic reviews of this policy are to be undertaken at a maximum every 3 years from release date and include:

- changes in legislation, codes of practice, industry best practice and Australian Standards;
- changes in peak body requirements / processes;
- changes in organisational structure;
- changes in available or applied technology, processes or practices;
- continuous improvement recommendations;
- trends, actions or recommendations resulting from observations, inspections, hazard reports, audits (internal or external) or incident investigations;
- industry or regulatory body recommendations; and
- key performance indicator (KPI) outcomes.

The process of continuous improvement includes:

- gathering feedback from individuals in the workplace or within specific activities;
- identifying opportunities for improvement;
- conducting quality, risk based investigations to determine the root causes of any incident;
- developing and implementing corrective actions to control those identified root causes; and
- documenting any changes in procedure resulting from the continuous improvement process.

10 Compliance and Assurance

Centennial Park Cemetery Authority is required to comply with this policy. Compliance will be reviewed and reported to the Board as changes occur but at a minimum on an annual basis.

Methods of monitoring compliance with this policy

| Compliance monitoring method | Performed by | Frequency |
|--|-------------------------|-----------|
| All Governance Documents on Intranet and current | Information Services | Quarterly |
| Reporting of compliance to the Board | Chief Executive Officer | Annually |

11 Deviation

Deviations from this policy must be authorised by the Board and the CEO and all deviations recorded.

12 Document Control

| Author (to whom changes are to be recommended) | | | |
|--|---------------|------------------|--------------------------------------|
| Position | | Incumbent | |
| Chief Executive Officer | | Bryan Elliott | |
| Contributors | | | |
| Position | | Incumbent | |
| | | | |
| Reviewed by | | | |
| Position | | Incumbent | Review date |
| Board of Management | | | 29-08-2013 |
| Approved by | | | |
| Position | | Incumbent | Approval date |
| Board of Management | | | 29-08-2013 |
| History | | | |
| Date | Author | Revision | Nature of change |
| 29-08-2013 | Bryan Elliott | V5.0 | Issued for final aproval |
| 07-08-2013 | Bryan Elliott | V4.1 | Updated into new governance template |
| Related documents | | | |
| Title of document | | | Document number |
| | | | |
| Controlled document location (native) | | | |
| TRIM - Governance – Policy – 29.0 Competition Policy Statement | | | |
| Controlled document location (published) | | | |
| On intranet once released | | | |

13 Appendix 1 - History

In 1994 the Council of Australian Governments (COAG) – made up of the Commonwealth Government, each of the State and Territory Governments and the Australian Local Government Association – accepted, in principle, the recommendations of a report entitled *National Competition Policy*, commonly referred to as “the Hilmer report”. This report was the outcome of an inquiry, chaired by Professor Fred Hilmer, into improving resource allocation within the Australian economy through increased competition.

In April 1995 COAG endorsed a package of legislative and administrative reforms to implement most of the recommendations of the Hilmer report. This package of reforms included the Competition Principles Agreement. Clause 7 of that agreement required each State and Territory government to prepare a Clause 7 Statement on the application of competition principles to particular business activities and functions of local government, in consultation with local government.

After appropriate consultation an initial Clause 7 Statement was agreed between the South Australian Government and the Local Government Association of South Australia in 1996. The statement was revised in May 2002 after further consultation between the parties.

The Clause 7 Statement and the *Government Business Enterprises (Competition) Act 1996* provide the framework for implementing NCP by local government entities in South Australia.

The revised Clause 7 statement confirms the broad intent of the NCP as follows:

“The main aims of National Competition Policy are to:

- develop an open and integrated Australian market for goods and services by removing unnecessary barriers to trade and competition;
- ensure no buyer or seller in a market 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 market participants, regardless of the form of business ownership – that is government business activities should not enjoy any net advantages solely as a result of their public ownership; and
- ensure that regulation of business activities which restrict competition is subject to an assessment of the likely costs and benefits.”

The Clause 7 statement goes on to state that “the broad intent of competitive neutrality is to ensure that where governments and local governments provide goods and services in a competitive market these business activities do not have an unfair advantage over private sector businesses by virtue of their government or local government ownership. In this situation, these businesses should be subject to the same rules and regulations as private businesses, including the application of similar costs for taxes and borrowings.

Government and local government businesses may enjoy advantages in the running of those businesses that the private sector cannot access. Such advantages could include:

- 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;
- non-payment of taxes;
- access to cheaper finance;
- exemption from certain legislation.”

The objective of competitive neutrality is to eliminate those competitive advantages, either by the removal of the advantage or by applying some surrogate which neutralises the advantage (e.g. a tax equivalent regime, debt guarantee fees).

Competitive neutrality principles should be applied, where appropriate, to a significant business activity carried out by a local government agency, unless the costs of implementing

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the principles are greater than the benefits to be realised from the implementation. Whether a business is significant will depend on its size and influence in the relevant market and is a matter for each local government agency to determine.

This determination should be made taking into account:

- 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.

It is important to understand that competitive neutrality applies only to government and local government businesses and business activities. The non-business, non-profit activities that governments engage in because they are governments are not subject to NCP.

Whether a business is significant depends upon its size and influence in the relevant market. In general terms business activities have been divided into two categories:

- 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.

In general, a Category 2 business activity will be considered significant when:

- a) It possesses market power to create a competitive impact in the market that is more than nominal or trivial; and
- b) Its size relative to the size of the market as a whole is more than nominal or trivial.

There is no doubt that, as detailed in the Charter, the Authority is conducting a significant business activity and is normally considered a Category 1 business activity.

There are three major mechanisms available to implement competitive neutrality:

- Corporatisation
- Commercialisation
- Cost Reflective Pricing.

The state government information indicates that the above list of mechanisms is in order of preference in achieving competitive neutrality. That is corporatisation is the preferred method.

The appropriate measure to be applied to a significant local government business activity will depend on a number of factors including:

- the costs and benefits of applying the policy;
- the organisational context of the activities exposed to competition;
- the level of resources used in the supply of the good or service; and
- any special requirement such as increased accountability or a greater emphasis on efficiency.

The following addresses the differences between the mechanisms available.

Corporatisation

The corporatisation model 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; and
- effective rewards and sanctions related to performance.

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The Clause 7 statement recognises that Local Government has experience in this matter through the creation of separate business entities under sections 42 (subsidiary) and 43 (regional subsidiary) of the Local Government Act 1999.

Centennial Park is a regional subsidiary established under Section 43 of the Act by the City of Mitcham and the Corporation of the City of Unley. The Authority is a body corporate and is governed by the Act and its Charter. The Charter also clearly prescribes the objectives of the Authority as well as the managerial responsibility, authority and autonomy.

Corporatisation also involves the introduction of additional "private sector equivalent" measures including

- the imposition of Commonwealth, State and Local Government rates or taxes (or a tax equivalent regime),
- the payment of debt guarantee fees; and
- compliance with regulations appropriate to the private sector.

The principle of a Tax Equivalent Regime (TER) 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). Note that in calculating the tax the government business is entitled to minimise such payment, but not avoid its potential tax liabilities.

The South Australian Department of Treasury Finance "*A guide to the Implementation of Competitive Neutrality Policy*" goes in to state that the corporatisation model basically adopts the principles of corporate governance and introduces commercial principles similar to those faced by private enterprise. A board of directors is appointed which may include directors from the private sector however each member is chosen for their expertise in business administration or commercial knowledge of a specific industry and not as representatives of interest groups. The Introduction of directors from the private sector assists in the establishment of a greater commercial focus for the corporatised entity. "*Corporatisation provides for the portfolio Minister to have effective policy control at the strategic level, and this is achieved by delegating operational, commercial decisions to the business.*"

The guide also goes on to say that the implementation of this reform may result in the entry of new participants into the market, promoting competition and market-driven pricing.

Commercialisation

Commercialisation involves the application of "commercial practices" to business elements of the organisation (e.g. business units), but without setting up a separate legal entity. Typically, there are a number of attributes of commercialisation, not all of which need to be implemented to achieve competitive neutrality. The attributes include:

- 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;

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- clear reporting requirements;
- separate financial recording and reporting; and
- arrangements for the allocation of “profits” from the business activity.

It is important to note that a key difference between commercialisation and corporatisation is that the entity conducting the business does not have a board nor is it a separate legal entity distinct from the government owner.

Based on the above the Authority cannot utilise commercialisation as the mechanism for achieving competitive neutrality as it is a separate legal identity with a board.

Cost Reflective Pricing

The revised Clause 7 statement on the application of competition principles to Local Government recognises that corporatisation or commercialisation can be difficult to apply to smaller business activities. It is stated that it is likely to be the case for most local government business activities, given their generally small scale (e.g. caravan parks) or the likelihood that the activity is a small portion of a broader local government function (e.g. private road works). In such cases the application of cost reflective pricing will be appropriate to comply with competitive neutrality.

Cost reflective pricing is a calculation of the cost of providing the service, taking account of:

- the actual costs of providing the good or service on a full-cost basis;
- the cost advantages of local government ownership including
 - 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 including
 - increased accountability and administration,
 - higher award rates or costs associated with enterprise agreements,
 - higher superannuation contributions;
- return on investment and dividend payments to local government owners;

to arrive at a price which is competitively neutral.

Cost reflective pricing may be introduced by ring-fencing the business from other activities of the local government authority, or within the authority’s structure, depending on the size of the activity.

The estimation of a competitively neutral cost of the outputs is only the first step in the pricing of the outputs as it provides a reference point or benchmark for the price setting decision. In a competitive market, competition will determine pricing sometimes independently from the fixed and variable costs.

The pricing of an output will depend on a number of factors including:

- what the market will bear
- the level of competition between service providers
- any technological advantage available to other service providers; and
- market strategic pricing behaviours, such as
 - the introduction of loss leaders; or
 - cross product subsidisation subject to the prohibitions of certain behaviours under the Competition and Consumer Act 2010 (Cth)

The overarching statement is that prices should be set to achieve competitive neutrality in the medium to long term.

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The treasury guide goes on to say:

It is important that the difference between the process of costing and the pricing decision be understood. Price may be set independently of cost where a market is competitive. The cost of supplying a particular output when compared to its realised sale price may result in:

- *a profit if the selling price is greater than the cost; or*
- *a loss if the selling price is less than the cost.*

The treasury guide also surmises pricing in a competitive market as follows:

As noted above, costs may have little effect on pricing in a competitive market where market forces strongly influence the price of an output. These market forces will provide an incentive to improve the efficiency of operations and investment by the agency. If the price is set by a market, and full cost recovery against that price cannot be achieved over the medium to long term, then it is likely that the supply of that output is unsustainable. In this case the agency should consider:

- *reducing costs through structural reform or seeking alternative cost reduction methods;*
- *identifying any Community Service Obligation requirements; or*
- *ceasing supply of the particular output.*