



Review of NSW's competitive neutrality
policies and processes

Public Hearing Transcript

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Tribunal Members

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The Independent Pricing and Regulatory Tribunal

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Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders both past and present.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

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1 Review of NSW's competitive neutrality policies and processes

1.1 Brief welcome

Mr Strate: Morning everyone, let's make a start. Welcome to today's public hearing. That's great to have so many people joining us. My name's Ben Strate. I'm the General Counsel of the Independent Pricing and Regulatory Tribunal (IPART). I'll be facilitating today's public hearing, so I'll start with a few housekeeping notes.

First of all please keep your microphone muted when you're not speaking so we can avoid feedback and background noise. We do encourage you to keep your cameras on if your internet connection is up to it. And if you're comfortable doing so, just because that helps us all to connect.

To ensure that we have an accurate record of the discussion today the hearing is being recorded live to YouTube. However, it won't be made publicly available until after the event and we'll place a copy of the transcript, as well as a link to the YouTube recording on our website in a few days.

Please make sure your name, and if relevant organisation is showing. There are instructions that Monica has posted in the chat to show you how to do that.

With this being a public hearing, the media and any others present today are free to publish and refer to what is said during the event. We also want to remind everyone that we have a responsibility to ensure a respectful environment today, so that everyone feels safe to share their views.

Now today's public hearing will have 4 sessions based around the key areas in which we've made draft recommendations. We'll open each session with a short presentation, and then there'll be some prompt questions on Menti (a survey platform) for discussion. You can access Menti on your mobile device. I recommend that you do so. It'll make things a little bit smoother.

We will then go around the room, virtual room, and ask participants to comment on the topic. This will be followed by the opportunity for everyone to ask questions, discuss comments made by other participants. I please encourage everyone to share your views or ask questions.

After session 2 we'll have a short break and then we'll proceed with sessions 3 and 4. At the end there'll be time for participants to raise any other matters that we haven't discussed before we wrap up with closing remarks and next steps.

I'll hand over now to the IPART Chair Caramel Donnelly to start the hearing.

1.2 Welcome and acknowledgement of Country

Ms Donnelly: Thank you Ben. Good morning everyone. As Ben said, my name's Carmel Donnelly I'm the Chair of Independent Pricing and Regulatory Tribunal known as IPART for short and I'd like to begin by acknowledging the traditional custodians of the lands wherever each of us are today, and I am on Yuin country. We pay our respects to Elders, past and present, and extend that respect to all Aboriginal colleagues and participants in the meeting today.

So welcome to IPART's public hearing into the review of NSW competitive neutrality policies and processes. Thank you very much for joining us. We really appreciate you making the time to participate in this public hearing and value your input.

I'm joined today by my fellow Tribunal Members, Deborah Cope and Sandra Gamble. We also have with us IPART's new CEO, Andrew Nicholls. You've already met Ben our General Counsel but we're also joined by some of the IPART Secretariat staff including Fiona Towers, Ineke Ogilvy, Jessica Hanna, Lovelle D'Souza, Kira Van Os, Sarah Cass and our Chief Economist Mike Smart and we do have a few other team members working behind the scenes just making sure that the Zoom virtual space works.

So I'd like to just say a few words about this review and where we're up to in the process. Starting with really the question of why NSW needs good competitive neutrality policies and processes. The current policies have been in place for over 20 years so it is quite timely for us to be reviewing them because there's been a lot of change since then and into the future we would expect that there'll be growth in sectors where there is both government businesses and non-government private sector or not-for-profit businesses. And so these competitive neutrality policies and processes are really important.

They enable businesses to have the confidence to invest in NSW. They enable concerns about government businesses to be raised and heard. They enable customers to have greater choice and get value for money as a result of competition and they enable taxpayers to also get value for money knowing that subsidies are in the public interest and transparent.

So a little bit about what has come out of our consultation so far in this review. We've been consulting with a range of stakeholders including businesses large and small, including government businesses and private sector businesses, peak bodies, and other stakeholders.

We've noted 2 big categories of issues so far. The first from the perspective of government business, we might go back to the previous slide please. From the perspective of government businesses, we have noticed that they find the current competitive neutrality policies quite complex and difficult to apply.

From the perspective of private sector businesses we have noted that we've been told that people can't find out easily if a government competitor is applying the competitive neutrality policies and processes correctly and it is difficult to make a complaint.

And so we have proposed in our draft report 30 draft recommendations and they aim to improve the ability of businesses to engage with competitive neutrality policy and processes in particular government businesses being able to easily apply the requirements. They aim to have effective compliance so that concerns with government businesses are easy to raise and are resolved effectively. They aim to improve transparency, so it's clear whether the required policies and processes have been applied. And to be responsive to change, to be ready for things that will change in the future. And one of the recommendations relevant to that is that we recommend that the policies are reviewed something like every 5 years, not waiting so long before there are reviews.

So I will just move on now to our objectives from this public hearing. We are here to listen to your views. We're very keen to hear feedback on our draft recommendations, and everything that is said today will be taken into account in preparing the Tribunal's Final Report.

It's an opportunity for you to raise issues that we may have missed, and also ask questions of the Tribunal Members who are present today, and also IPART's Secretariat. We're interested to identify what are the most important issues for you and if there are areas where we need to examine the issues in more depth. And today's hearing will assist us in developing final recommendations that are robust, and that meet your needs and the needs of all stakeholders.

Now we're going to move on, as Ben said, to some presentations and then some question sessions. If you have questions as we're going along please feel free to add those questions in the chat in Zoom, or go to the button at the bottom of your screen that says reactions and raise your hand in Zoom and we will come to the questions as we go along. So you don't need to wait until we ask for questions, so please feel very welcome to do that. I really look forward to hearing what everyone's got to say today and with that we'll move on and I'll invite Ineke Ogilvy to give the first presentation. Thank you Ineke.

1.3 Session 1 – structure and scope of policies

Ms Ogilvy: Thanks Carmel. So as Carmel pointed out we've heard from government businesses about the difficulties they have in identifying which activities they need to apply competitive neutrality to, and what they need to do. We've also heard from non-government businesses and central government that they find it hard to work out whether a particular government business is covered by the policy, and if it is, whether it's met its obligations, and the lack of clarity really starts with the structure of the policies.

The current competitive neutrality policies are spread over several different documents. They discuss a range of obligations, but not always clear about when each applies. Some policies cover the same ground but apply different tests or standards. For example, the local and State government policies have different definitions of business activity with no clear policy reason on why it should differ across the levels of government.

We've made several recommendations aimed at making it easier for government businesses to apply the policies. We've proposed combining the state and local government policies into a single policy. This would make the policies easier to understand and apply and it would also create a more principled approach to key concepts like the definition of a significant business activity.

We understand that state and local government business activities are different. They may differ in terms of size, resourcing, or the nature of the activity. We consider that a best practice approach would recognise the differences within the policy by distinguishing between business activities based on their size and characteristics rather than whether the business activity is carried out by local or state government.

We were also asked to consider the costs and benefits of expanding the scope of the competitive neutrality policy to a broader range of government activities including human services. At this stage we consider that there is not enough evidence to support applying competitive neutrality beyond significant government business activities.

Competitive neutrality obligations including pricing and other costing principles cannot easily be applied to non-business activities, where specific issues were raised through our consultation that sit outside the recommended scope. We consider that they can be appropriately dealt with by other processes.

However, this doesn't mean that human services sit outside the scope of competitive neutrality altogether. Human services comprise 3 main groups of services - welfare, education, and health services. A human services activity will be within scope for competitive neutrality if it meets the definition of a significant government business activity. There are human services that are undertaken by state or local government entities that we consider could fall within the scope under both the current and proposed policies. These include things like childcare, vacation care, aged care, and counselling services.

We are also recommending that the policy is clearer on which activities would fall into the definition of significant government business activities to make it easier to apply. We set out 3 tests to do this. I'm just going to briefly summarise each test that we've proposed. But more detailed information on the tests can be found in the Draft Report.

So the first is the government ownership test, which will capture any entity that's fully owned by government, or partly owned and controlled, and that's by either the NSW state or local government. Examples of entities that would satisfy the test are government departments and agencies, public corporations (such as State Owned Corporations) and local councils, as well as entities that they fully or partially own and control.

The second test is a business activity test. So an activity would be a business activity if it involves regular, systematic supply of goods and services with a commercial character, or is undertaken by a public corporation, or is bidding to provide goods or services.

This is subject to some exclusions for policy or regulatory functions and importantly, it's not necessary for there to be full cost recovery or for the activity to even be profitable for it to be covered by the business activity test.

In terms of the significance test we're recommending that the test which applies to state and local government includes a monetary threshold as is currently the case for local government activities. But that the threshold be increased in line with inflation from \$2 million to \$3.7 million and then indexed in the policy.

Importantly, the turnover threshold must not be exceeded if the price of the business' goods and services was set in line with the market price of non-government providers in the same or similar area.

Retaining a monetary threshold, we think, is a simple, low-cost way of ensuring that government entities don't need to apply competitive neutrality principles where the administrative costs would be too high relative to the overall revenue from the business activity.

Businesses with revenue above \$3.7 million may also undertake a market assessment to determine whether their business activities are in fact significant.

The business activity test would exclude sorry, the significance test would exclude business activities where there's no potential for competition. These are business activities where legislation provides for an exclusive provider because we want to recognise that there are unlikely to be net benefits from applying competitive neutrality to those activities.

It would include business activities which the Minister has declared significant following a recommendation from IPART. Thanks, Ben.

1.4 Menti questions - Structure and scope

Mr Strate: Thank you Ineke. We are keen to hear your feedback on these draft recommendations on scope and structure. So to begin that we've got some Menti questions, and the instructions for logging on to Menti are on the slides. Now you can either use the QR Code or the 8-digit code at the URL that appears there. If you got a phone handy it works well to access Menti on your phone, because that will allow you to keep an eye on the hearing at the same time. Your responses are anonymous, and can't be attributed to you. I notice some thumbs up appearing. Once you reach Menti if you tap the thumbs up that will show us that you're on the slides and ready to go.

So there'll be 4 questions in this set. I'll ask all 4 of those questions and ask for your responses on them. Then at the end we'll come back and review those results, and there'll be an opportunity to expand on your answers. You also have the opportunity to make comments and ask questions after the Menti questions.

So to begin. The first question is do the draft recommendations on structure and scope improve the policy? We're after a yes or no or unsure. We will allow a bit of time for people to log in for this first question and get started.

I know we did have a question earlier about whether the slides will be provided from today and for those who missed it in the chat, we will place the slides on the website after today. Chris, if you missed the QR Code there is a Menti code that you can use at the top of this slide.

So second question is do you have any concerns about combining the state and local government policies. We have a reasonably even split on this one. So it'll be an opportunity to expand on those concerns a bit later.

Third question. Are you confident that you could use the proposed test to work out whether an activity is captured by the policy? Getting quite a few yes' for this one, but also a significant number of people who need more information. If you're in that category, you might want to think about what information would be useful to you and we'll come back to that.

And finally, have we got the scope of competitive neutrality right? The unsure's seem to be predominating here. So again we'll come back to that and find out what more information you might need.

Okay, so I think that's everyone who's logged into Menti is come back. Can we perhaps go back to the first slide, first of those question slides please?

So do the draft recommendations on structure and scope improve the policy. Is there anyone in, we've got some additional votes popping in. Is there anyone in the yes category like to expand on the improvements that they see.

Mr Fernando: Hey, Stephen Fernando here.

Mr Strate: Hi Stephen.

Mr Fernando: Yeah, I'm one of those who said I would like more information, but I do see a few advantages. I see bringing it all together in a single document or location as one advantage. And while I'm sort of going on to a little bit about the next question, but I think on balance having a same set of principles applied to both state and local government. Sometimes local government might think you know get caught up in certain things instead that doesn't really apply or conduce you to ask. But I think on balance that has an advantage too.

Mr Strate: Deborah would you like to respond to that comment?

Ms Cope: I actually had a question for Stephen. You said that there was a level to some extent you're unsure. What is it that you're concerned about? What are the issues that you would like to get more information on?

Mr Fernando: I guess, as we all know, the devil is in the details, so I'd like to see the full detail to be confident that yes, I think this is an improvement, so that's mostly why I said I would like more information.

Ms Cope: Okay. That's good. We are putting together a fair bit of detail through this. We're also planning to develop tools after the report. So if the government accepted our recommendations and we were being implementing the policy. Our plan is to develop up more detailed tools in consultation with stakeholders including government businesses, so that they can be targeted to the sorts of things that the idea is to target them to the sorts of things that you actually need in practice. Would that sort of process help your concerns?

Mr Fernando: Sorry, I took a bit of time to unmute myself. Yes, I think it would. I think it would. So it's just about yeah, getting the detail, looking at the full text of what is being proposed and then understanding how that is likely to impact in principle as well as in practice.

Ms Cope: Yeah, and we do recognise that there is a lot of detail in this which is one of the reasons why we're proposing a transition and the transition would start after we've got the tools developed, so you've got time to work through the tools and then to transition the implementation of the tools, because it's a complex process, but it's important to get it right, because there are significant benefits with getting it right.

Mr Strate: Thanks Deborah and thank you Stephen. Unless there's anything else on this general question, I think we might move to the more specific questions about do you have any concerns about combining the state and local government policies?

We have quite a few no's in response to that. Is there anyone who'd like to expand on their no response. How about yes, what are the concerns?

Mr Fernando: Sorry I don't want to hog the whole thing but since there's no other comments, I'm a person again who again voted yes, but there is a little bit of a concern in that sometimes local government gets dragged in, and it has to do things that really makes it really difficult for us, because the focus has been on a state government angle as long as that is addressed and is there any specifics that has to be address in the policy for local government. And if that is done, I think I would be happy with that.

Ms Cope: Yeah, definitely hear that comment. Is there anybody else that had any different concerns from that one?

Mr Strate: Thanks everyone a reminder that we've got a comment in the chat just echoing the same concern as Stephen raised.

Let's move on to this third question. Are you confident that you could use the proposed tests to work out whether an activity is captured by the policy? Quite a few yes's in response to that, also a significant number of unsure. What more information might be useful?

So I see that question from you Shaun. We will perhaps come to that, yeah, I'm sorry that's a question for that, and we've got Jenny's hand raised as well. So Shaun's question is does the policy apply to aboriginal land councils? Is that Shaun, are you meaning does the current policy or does the proposed policy?

Mr McBride: The proposed policy.

Mr Strate: Thanks Shaun. Is there any response from IPART on that?

Ms Cope: I'll go to the team in the minute to see because I don't think we've explicitly considered that question but also it would need to be considered to be a government owned or controlled business rather than an Aboriginal Council owned and controlled business would be sort of my initial thoughts. But it is a question that we probably should take away and have a bit of a look at.

So it would need follow up. I have a question first up. Is it really considered to be government owned or controlled and then there would be the significance tests as well, and the other issues which may not mean that it's covered; but as I said, we haven't explicitly considered it. I don't think. Did anybody want to raise anything else? But we will go and have a look at it. Ineke did you have anything to add?

Ms Ogilvy: I think there's a couple of other questions in the chat as well, and I feel like they're all getting at the same thing. I think what's important is to just go through applying the tests, so nothing is in or out. The tests are what determine what's in or out. So you need to go through the process of looking at does it meet the government business like the government ownership test is it a business activity when you apply that business activity test, is it significant when you apply the significance test?

We don't have all the information about individual business activities, or even about Aboriginal Land Councils. I don't think, at this stage for us to be able to tell you today whether or not they're in or out. It's just a matter of going through and kind of systematically applying each of the tests we've proposed to work out whether it's covered.

Ms D'Souza: Yes, and I would add that it's less about the entity undertaking the activity, although that does matter if they are owned or controlled by the government, but also the activity itself, so an entity might undertake business activities and non-business activities. So it's you have to look at each activity on their own.

Ms Cope: There is a question about what sort of activities the Minister will require. We don't have any sort of pre thoughts about there being anything in particular that necessarily falls into that bucket, but it's there in case there is something that for example, because of the combined impact of a broad range of a number of smaller businesses that the government believes that they are significant in total, could be the sort of situation where the Minister might decide that something is significant when it doesn't otherwise fall within the tests.

We're not anticipating that would be something that's used frequently, but we thought it was important to have that provision there in case there are things that are determined to be important for competitive neutrality to apply. But for some reason they're falling outside the tests.

Mr Strate: Thanks, Deb. We have several other comments appearing in the chat or questions. Jenny, would you like to, is there anything you'd like to add to your question about the public hospitals being excluded from the proposed policies.

Ms Sikorski: Yeah sure. I guess I was just seeking some clarification. Earlier on in the presentation we mentioned that humans, you mentioned that human services could be subject to competitive neutrality provisions. It's just a matter of applying the test.

In the draft document however, it says that public hospitals are excluded from the application of competitive neutrality, and one would imagine that they would be excluded on the basis of public interest. So my question is, does that mean that all of the clinical activity associated with public hospitals are therefore excluded from the application of the competitive neutrality policy.

Mr Strate: Thanks, Jenny. Is there a response from the Tribunal?

Ms Cope: Again, as Ineke said, we haven't gone through and applied the tests for every individual government service out there at this stage, so it's difficult to give you a definitive view one way or the other.

It's up to the government businesses to apply that test in the first instance, but it would be necessary for it to meet the conditions that are in the test. I'm sorry, I'm not sure that that's completely helps you at this point in time.

If the government business applied the test, and you disagree with the outcome that they had as a result of that. Under the recommendations it would give you the option to raise that as a concern with the complaints handling body, which we have proposed should be IPART and that would be the point at which we would go through the detail of looking at whether the tests had been applied, and whether the business is significant government business or not. And again, Ineke, did you want to add anything?

Ms Ogilvy: Yeah, I will. I just wanted to add. So our comment in relation to the public hospitals and the public schools, I think we included as well, was just to clarify that there are some things that won't be covered as business activities because they don't meet the test for business activities and things like, you know, inpatient services in public hospitals included in that, because they don't have the requisite degree of sort of commerciality, and they also the businesses or the hospitals themselves don't have control over what they charge. They don't have control over which patients they have, so they don't kind of meet that business requirement, but that's not to say that every activity that happens in a public hospital falls into the same category. So it's still important to go through a kind of systematic process of applying the test to each activity.

Ms Sikorski: Thanks so much, I think the same position would be able to be made for outpatient activity. You have no control over that, and it has to be bulk billed as well.

Mr Strate: Thanks for that for the comment, Jenny. We do have a few more questions in the chat and we've got one from Melissa asking about council signoff, and also processes for disagreeing with how a service is characterised. This question of, we will come to the question of complaints later but is there a response on this question of what if we disagree with the scope or whether it is within scope or not. Deb is that are you...

Ms Cope: Yeah, Melissa. Would you be able to sort of just ask your question, so I can make sure I understand what the question is, if you're not able to do that, I'm happy to have it have a go.

So the processes that councils use to determine what is and isn't out, is up to the individual councils. We don't prescribe a particular process. I'm not sure in the second part whether you're asking what happens if a business disagrees with the council, if the council staff disagree with the council, or if the Tribunal disagrees with the council in case of a complaint.

If a business disagreed with the council's conclusion then the business would be able to raise the complaint. If there's disagreement within the council that's an issue for the council. You'll need to work that out within your own systems.

If IPART disagreed with the council, then that would be raised in the context of us considering a complaint. We don't go, and individually check everything without there being a complaint raised. And we don't have the power to, we're not proposing that there's an enforcement power, and we'll talk about this a little bit more detail with the complaints process. But we would be publicly identifying that, and that would be reported to the Minister as well as the council, and also reported publicly. So I hope that covers what the question was.

Mr Strate: Thanks Deb. Can we perhaps move on to the next slide. I know there are a couple of more questions appearing in the chat. I think we've kind of moved off the slides a little bit.

So have we got the scope of competitive neutrality right? Again we're getting lots of unsure-need more information. Is there and there are several no's as well for no's, is there anyone from either of those responses who'd like to expand? And then perhaps we will cover off as many of those questions in the chat as we can.

Mr Rob: May I ask what's the point of having a policy on competitive neutrality if you're not going to enforce it because the Council for example, just reclassified things a little bit and say no we're fine, we meet the guidelines when in fact they probably don't.

Ms Cope: I expect that the ability to be able to easily make a complaint and for that information to be made public is likely to have a big impact on councils and their implementation of the policy. Our expectation is that that will drive a change in behaviour on its own.

We are proposing that the policy be reviewed in 5 years. We will be reporting on the complaints and the council's responses to those complaints through our annual report and it'll be required for councils to report in their own annual reports about their implementation of the policy and their public interest tests.

So if it proves that those systems haven't worked as intended. One of the things that could be looked at in that 5-year review is whether more significant powers are needed. But at this stage we really don't think that they're going to be necessary because we think that the transparency, the ability to complain, and the more clarity around the processes will actually help a lot.

You know a lot of councils are saying that the reason why they may not be implementing at the moment it's because they are having trouble just working out what to do, so just making that easier is likely to have a big impact in its own right.

Mr Strate: Thanks, Deborah. Is there any other comments on whether we've got the scope of competitive neutrality right?

Alright well, let's perhaps say to some of those, a couple of the other questions that are in the chat. And again a reminder if you do have any more questions on scope and structure, you can raise your hand or pop them into the Zoom chat. So we have a further question from Shannon. Shannon is, are you is there anything further you'd like to add to that question.

Ms Lakic: Thanks, Ben. No, that's okay. It's it pretty much covers what I was wanting to get info on, but it's a good recommendation so we just wanted to maybe get a bit more detail around how it would work. Thanks.

Mr Strate: And for clarity that's the recommendation the Minister have a power to make a declaration that a particular activity is significant for the purpose of the policy. So is there a response from IPART? Thanks Deb.

Ms Cope: Yeah, I didn't have anything to add. Was there anything else anybody else wanted to add to that?

Ms Ogilvy: Sorry, I think I'll just add that there was a question in the chat. I think about a state government entity tendering for a Commonwealth Government tender, and I think that would be covered as a business activity. So you'd still need to apply all the tests is it government owned, is it significant? But I think it would pass the business activity test because there is a part of that test which basically, says, if you're tendering for services, then that's included.

Ms Cope: Yeah and I was slightly distracted because I was busy reading that question, trying to get my head around it, because the question says, would they be included if they said they applied competitive neutrality policy. They would be included if they were a significant business, they'd be included whether or not they said they were complying competitive neutrality policy. It's a significant NSW government business competitively tendering against private businesses, then they are within the policy as long as they meet the tests.

Mr Strate: Thank you, Michael, does that answer your question?

Mr Cox: Yes, I think just to clarify it because NSW state entities these are multimillion dollar contracts so they would actually meet the financial threshold. But there is a declaration that the NSW entity in preparing their tender response, where they say that they have complied with the competitive neutrality regulations requirements, and so forth. So there is actually an explicit declaration by the NSW entity in their tender response to the Commonwealth, and this, of course goes back to the Commonwealth State agreements from the 1990s regarding competitive neutrality. So just that's a bit of background.

Ms Cope: Thank you for that.

Mr Strate: Are there any, oh we do have one more question in the chat and that comes from Melissa. Melissa, did you want to expand on your question about whether competing with the public for the service to be reported.

Ms Cope: Depending on whether you've managed to get your microphone sorted out. Melissa was having trouble with the microphone.

Mr Strate: So Melissa is not able to expand on the question.

Ms Cope: So you do need to be competing with, the services that are applied internally within an organisation are not subject to competitive neutrality. It's when the services provided externally in competition with either private or not-for-profit businesses.

Mr Strate: Thanks Deborah, thanks for that question, Melissa.

We're coming to the end of this session on our time. Are there any final questions, or any questions from the Tribunal before we move on. In that case, thank you all very much for your feedback on that topic. Of course, if you have more detailed comments please feel free to contact the review team. We'll have their contact details at the end of the hearing. We might move on to our second session now, and I'll ask Lovelle D'Souza from the IPART Secretariat to introduce that one.

1.5 Session 2 – Obligations and public interest test

Ms D'Souza: Thank you Ben. So during the review we've heard from government businesses that it's not always clear what applying competitive neutrality involves and some government businesses are also concerned that competitive neutrality may require them to act in a way that is not in the public interest. So I'll be talking to our recommendations that seek to clarify and make transparent how competitive neutrality should be applied and this includes when it is likely to be in the public interest to not apply competitive neutrality.

So, firstly on the competitively neutral price. So this is the main obligation on significant government businesses when they're applying competitive neutrality principles. So there are several factors that go into estimating the competitively neutral price.

Firstly, a government business activity must estimate its cost-base and then the cost base must be adjusted for advantages or disadvantages arising from the business's government ownership and this adjusted cost base is the competitively neutral price.

So dealing firstly with the cost base. The current competitive neutrality policies don't have clear recommendations on when different costing approaches should be used, and this is especially the case where a government business shares resources like staff or buildings with a non-government business activity a non-business government activity sorry.

We're recommending that the policy set out the circumstances where it would be more efficient to use avoidable costs, which is an activity's direct cost rather than fully distributed cost, which is the direct cost plus a share of joint costs, where you're sharing resources with a non-business activity.

So turning to the adjusting for net advantages. Typical advantages of government ownership that should be reflected in the competitively neutral price include things like exemptions from taxes and no obligation to make a profit or rate of return on investment. Disadvantages of government ownership could include things like restrictions on investments or buying local policies.

Current policies provide guidance on dealing with cost advantages and disadvantages, but they lack guidance on dealing with non-cost advantages. Non-cost advantages are things like preferential access to information or customers and bundling of commercial and non-commercial products. We're recommending that further guidance be provided on non-cost advantages in particular, that the non-cost advantages be removed or if that's not possible that the business should try to quantify the advantage and reflect this in the price.

So on structuring a business activity, the options for structuring government business activities tend to fall on a spectrum from full structural separation (where an entity is only undertaking business activities) to no separation from general government (where it's undertaking a mixture of business and non-commercial activities using the same set of resources).

The current policies take the decision on how to structure a government business as a choice that has largely already been made. However, the nature of government businesses is likely to change over time and as a result, so may the appropriate structure. We are proposing guidance be provided on when different business structures may be appropriate.

However, this guidance is designed to help decisions on how to structure a business, but not be the final word on it. The decision will still sit with the government, relevant government entity, and will not be subject to the complaints process. And this is because there are a range of factors that influence the choice of business structure, including but not limited to competitive neutrality.

Finally, on the public interest test. Significant government business activities are only required to implement competitive neutrality principles to the extent that the benefits of applying the principles outweigh the costs, and this weighing up of costs and benefits is the public interest test.

The first recommendation relates to when a public interest test should be done. So currently, an entity doesn't have to go through the process of estimating a competitively neutral price if they can establish that the cost of applying competitive neutrality outweighs the benefits.

We consider that applying the public interest test after a competitively neutral price is estimated is preferred and this is because it exposes the full cost of the subsidy, and allows the public interest test to be informed by a full set of costs and benefits.

Another recommendation relates to the test itself. Currently local councils can subsidise the price of goods or services for any reason once they've identified the competitively neutral price for their goods and services.

We're proposing that councils undertake a simple qualitative public interest test at this stage. State government entities should continue to undertake the public interest test with quantitative calculations of costs and benefits where this is possible.

We've also heard in our consultation that competing businesses are interested in greater transparency concerning competitive neutrality and we considered that there is a strong case for transparency around public interest assessments given the subjective nature of the assessments.

We're therefore recommending the publication of public interest assessments subject to the removal of confidential, commercially sensitive information to assist government businesses with applying the public interest test. We're proposing to develop a template that identifies information for inclusion and information that might be considered commercial in confidence. So over to you, Ben.

1.6 Menti questions- Obligations and public interest test

Mr Strate: Thanks, Lovelle. We will kick off the discussion on this topic with another set of 4 Menti questions. The QR code is back up on the screen, and so for anyone who has joined us in the last few minutes please use your phone to log on to Menti and we'll go ahead with the questions in just a moment.

Now, first question on this topic is there enough information to easily identify and apply the relevant costing approach? We're getting quite a few yes's, and also it's significant number of unsure in response to that. I think we are still having a few people who are logging on to Menti as well. So I just need to allow another moment.

A second question is, how easy will it be to account for the advantages and disadvantages of government ownership. Quite a few moderates. Again, we'd be grateful for any further comments you can provide expanding on those answers in just a moment.

So do you agree with publishing public interest tests, subject to the removal of confidential information? Quite strong agreement generally in response to that proposal.

Then, finally, do you agree with allowing local government businesses to take a more qualitative approach to the public interest test? So very even split between yes, and unsure response to that. So that seems to be everyone. So thank you very much for those responses.

Let's go back again to the first question in the set. Is there enough information to easily identify and apply the relevant costing approach. Quite a few people have answered that they're unsure would need more information. Is there anyone who'd like to expand on that. Anyone who's unsure.

Ms Cope: I've got a question for people too around Ben and that is would the approach that I'd mentioned before about developing up tools help address that uncertainty. I think it's relevant to this question and the following one about the ease of accounting for advantages and disadvantages of government ownership, or is there another, or is there something else you need as well. I don't know, Jenny, whether you had any views on that.

Ms Sikorski: I was actually just about to say that you know I think there needs to be some further tools developed. That's exactly what I was going to say so you know the case study that I think there was one case study at the back of the document was kind of a useful example, but I think the development of tools and resources to be able to determine which is the appropriate costing would be really beneficial, because I think that's a very difficult position to make as to which costing what we need to apply.

Ms Cope: Thank you.

Mr Strate: Thanks, Jenny and any other comments on that identifying and applying the relevant costing approach. I'm not seeing any. So perhaps we could move on to the next slide. How easy will it be to account for the advantages and disadvantages of government ownership. Is there anyone who'd like to talk to the challenges involved in accounting for those advantages and disadvantages?

Ms Ogilvy: And I guess, maybe as a follow up question. Is it worse under the proposed policy than it is right now? Or, you know, do those challenges exist already and the proposed policy hasn't made them better, or hasn't made them enough better.

Mr Strate: Jenny, would you like to respond to that?

Ms Sikorski: Yeah, sorry. I don't mean to be hogging the discussion. But look, I think that the current policy it requires an assessment of the advantage and disadvantage of a couple of ownership, so there's no change in essence. But what is really helpful is further information and assistance on what those advantages and disadvantages could be.

In one of the Harper reviews. I think it might have been the Harper Review. It might have been another document they actually had, like a one page of which sort of listed all the advantages, and disadvantaged not all of them, but listed disadvantages and advantages; and it was a really good prompt just to enable you to consider whether that's applicable or not applicable to your particular situation. And so I think that type of information would actually be useful in enabling people to account for the advantages and disadvantages. So it's just that one page of list, one page, a list of possible advantages and disadvantages.

The calculation of things like shared infrastructure can be quite challenging. So you know, a case study on how to calculate the advantages of shared infrastructure would be, I guess, a really useful example, I think to include.

Mr Strate: Thanks, Jenny.

Ms Cope: I find it hard to imagine that the representatives of the local government are reticent to tell us where we haven't quite got it right. And I was wondering perhaps Local Government NSW whether you had sort of a sector view about these issues around the complexity of the policy, and whether what we've got is starting to hit the mark, and what else we need.

Mr McBride: I must say we haven't had a lot of feedback yet, but most of what I've got is perhaps been concerned about an initial increase in complexity and an increase in the regulatory burden. So they're probably mainly major areas of concern that I'm aware of.

I was just submitting another question just in relation to the last topic which is one advantage of government ownership will sometimes be trust or confidence in government you know, as a permanent solid entity compared to say an alternative private supplier. I mean, how do you put a price on that advantage?

Ms Cope: I wouldn't. I'm not sure that that's the sort of thing that I would consider to be necessarily an advantage or disadvantage of government ownership per se, because I think a broad range of businesses can establish trust with their customers through different ways. You know some businesses that have a very strong social ethic will establish the same trust. So I don't think, I don't see that as an advantage that I would be thinking you would be adjusting for.

Mr McBride: Okay, that's good. But other than that, I'll mean yeah questions that we've had extending from my first point about, you know, increased potentially increase regulatory burden, reporting burden. Councils already have a massive reporting burden. Yeah, has been you know, what commitment is there to providing assistance, training, resources to councils in transitioning to the new, well revised regime.

Ms Cope: Hmm. Yeah, and that is an issue that we've been thinking quite a lot about. So there could be an increase in burden for a couple of reasons. One is the previous policy wasn't implemented and because it wasn't clear what people were supposed to be doing and if we think competitive neutrality is a good idea which we do, then increasing burden to make sure it's done right is probably the sort of thing that we should be doing.

That said, I do recognise that change in itself does create some difficulties for people. And that's why we've designed the transition process the way that we have with the idea of developing up the tools, doing it, and consultation with businesses, so that helps people get familiar with them, as well as making sure that they are designed in a way that they are useful and used by people. And then allowing a transition to be able to work through that process.

Mr McBride: Another issue that has come up too is in relation to complaints or businesses making complaints. Now, I can see we can see complications there in that, for business in that different council areas will designate different activities differently. So you know, swimming pool in one area might be clearly not a business activity, but in another area you know it, it might be considered a business activity, and so a scale type of facilities, and so on.

Now I could see some potential confusion with businesses. They make a complaint against one council about that activity that you know, and get a positive outcome from their complaint and then complain about that same activity in another local government area and get and a different finding from their complaint, and one that conflicts with the first one. So I think there could be some confusion around that, particularly for potential complainants.

Ms Cope: Yeah, and there will to some extent there will be, things will, may or may not meet the significant tests in different local governments so legitimately, maybe applied in some areas and not in others.

I think sort of issue was really what the idea of publishing the public interest tests was designed to do, and also publishing where CN had been applied, and why it hadn't, so that those decisions are easy for people to find, so that they're not, cause what happens at the moment is we get those businesses have been talking very much about that, you know, why is it different here to there and one of the reasons is because they've got no transparency about the reason why it's different from here to there. So you are potentially helping that by providing a little bit of transparency.

The other thing that might be worth thinking about we're really happy to talk to you guys about this in more detail is whether, as part of this process going forward there's any benefits in providing more detailed guidance around some of those specific areas where you think that might be an issue, so that we could work up guidance notes that explain for things that do run across councils if the councils think that this would be useful about when it isn't applied in different areas, and why and how the tests are likely to fall out in different circumstances.

Mr McBride: That would be very useful. And if before carrying on too long. I must say the one area that does ring alarm bells can with a number of councils is the human services area where you know, many councils would see that as definitely their activities in those areas is definitely not being a business activity. But you know, fulfilling one of the community's needs. You know, meeting the community's demands to make such services available with various social objectives you know, we talked about aged care facilities, yeah nursing homes, and so on. Okay, there's not that many of those, but many of those are in areas where they're established largely because of what's called a market failure. You know they're providing a service that is not going to be commercial, is not commercially viable, and hasn't attracted a private interest in providing that services. And this happens you know to a large extent in rural and regional areas where, you know, councils are often the fallback position for the absence of you know, a lot of human services.

Ms Cope: Yeah, and we definitely we've heard that because we've been told that in a number of our workshops, and we think that is a really important role for councils to provide. So in some cases those services may not meet the significance test. They may not meet the commercial test. There's also the public interest test is about in those circumstances where you're providing what potentially looks like a commercial service, but there's a sound reason for subsidising it, competitive neutrality definitely allows you to do that, and that's what the public interest test is about.

The thing we've changed there, and I'll just sort of explain the reason why we've changed. It is looking at the costs first, so that you actually know what the service costs to deliver, and then thinking about whether the subsidy is worthwhile given the sorts of benefits you've got in the community. So the idea is to make sure it's not to stop some subsidies, but to make sure they're considered and deliberate. So that they can be explained to people that the ratepayers are getting good value for money out of those subsidies.

So it's to sort of reinforce that good decision-making framework and help, we think it will help, a lot of the local governments to be able to structure that decision making in a way that then makes it easy for them to communicate with councillors and easy for the councillors and the council to communicate to the community.

Mr McBride: Got it, well that's reassuring.

Mr Strate: Thanks, Shaun, and thanks Deb. Before we move on from this question of accounting for advantage we have a further question in the chat from Carina from Landcom. is there clarity about how to account for or quantify exercise of legislative rights, is there anything you'd like to add to that question? Do you have a particular example in mind?

Ms Carter: No, it is more just we feel there's been maybe a lack of clarity and uncertainty about when we are able to. we have it legislative right. But we're not sure how that impacts on competitive neutrality. We just really like some clarity around that examples are Crown DA's and division 5.1 of the EP&A Act, we're just uncertain how that would be accounted for all considered.

Ms Cope: Okay. We haven't as I said before, gone through the detail of everything in every individual circumstance. But what you're saying, and to me that it might be worth thinking about the ability to have an advice function sitting with someone in government, so that when you get to those sticky questions you can have somebody to come to help you work through them. Do you think that would be useful?

Ms Carter: Yeah, I think that would be useful. Just some clear guidance again in it. It's all you know the devil's often in the detail. The broad general guidelines but yeah that might be useful or just some clearer guidance about those other issues.

Ms Cope: Yeah, I'm just not sure it's going to be possible to write guidance that fits every possible situation that every possible business will come up against. But yeah, putting this sort of thing on the table will help us to be able to work out whether the right spot is in guidance or whether we actually need something else to provide support going forward when people hit the tricky questions.

Ms Carter: I think that would be that potentially could be helpful. Yeah, some clarity.

Ms Cope: Okay, Thank you very much.

Mr Strate: Thank you. Let's go to the next slide. Do you agree with publishing public interest tests. I'm interested in the 2 no responses. If either of those are brave enough for someone who didn't vote on, why you don't agree with publishing public interest tests subject to removal of confidential information.

And of course there's opportunity to provide a written submission on this question as well. I see thanks, Melissa. So Melissa's comment on the large burden that's involved in that and Melissa has a question about as well whether that would need to be completed annually.

Ms Cope: The intention is that they're not annual. They probably need to be completed from time to time, and I can't remember off the top of my head. Lovelle may be able to prompt my memory about whether we had a suggested timeframe for reviewing the public interest tests.

Ms D'Souza: Yes, in the draft report draft recommendation 15 is that government business activities reapply the public interest test where there are major changes in the market and at a minimum once every 5 years.

Ms Cope: So yes, the idea is not that it be done every year, but done frequently enough so that you pick up if the world's changed.

Mr Strate: Thanks, Melissa, and, thanks to the others for making comments on this in the chat as well. Are there any further comments on publishing public interest tests?

Ms Donnelly: Ben, there's a comment from Michael Cox on the public interest test as well.

Mr Strate: Yeah. So, Michael, you're asking, will the public interest test apply to NSW entity policies that limit competition and contestability.

Mr Cox: Just to give that context in the education and training space there is state government funding. However, it's not necessarily contestable under certain state government policies, for example, community service obligations which to my knowledge has never actually been assessed, nor of communities actually ever been asked about the State Government policies.

So it doesn't even get to competitive neutrality because we don't even have the opportunity to compete. So I was wondering where that might fit in this mix.

Ms Cope: We did think about whether we should expand the policy beyond just what the pricing for businesses that are competing. And one of the issues was things around policy or legislation that restricts competition. The recommendation that we've got in the review is that they are outside the scope of competitive neutrality. But we have suggested that the government should look to make sure that it's general procedures take into account restrictions on competition when it's assessing those sorts of things.

But we thought if we tried to pack it into competitive neutrality specifically, we'd end up basically with a camel that didn't quite work for anything, and that we were better focusing on getting competitive neutrality to do what it was originally designed to do well rather than trying to expand it to cover other things.

Mr Cox: Thank you.

Mr Strate: Okay, we do have one further question from Melissa on the reporting. And what is the perceived benefit of reporting this. I think that this is referring to publishing the public interest test.

Ms Cope: Yes as we've been through the consultation process on this review, one of the things that became really clear quite early, and it's been reinforced time and time again is that businesses that are competing with government businesses find it really difficult to work out what why a government business is pricing something the way it has, and why it's subsidising services that they're competing with.

And what then happens is that they assumed the worst They assume the government business is doing the wrong thing and that both affects the reputation of and confidence in government and the system generally and if we've got a complaints handling process, is likely to result in a lot of complaints coming through simply because people want to test whether there's a problem or not, because they don't have the information to be able to make the assessment.

So the idea behind publishing the public interest test was it would allow confidence that the issues had been considered and potentially increase confidence in local government businesses and the services that they were providing within their community and within competing businesses in the area, but also cut off complaints that would potentially come.

And it would allow us, as the complaints body to be able to look at those tests, and potentially, you know, if the test is already been done, it's clearly rigorous. Then we would have the capacity to go back and say, no, we look, we can see that the process has gone through. We don't think this one should go through the complaints process.

But if that information is not available then we could end up with a lot of process that doesn't need to happen. So that was kind of the thinking behind it. Happy if you've got an alternative view, but that's some of why we considered that it could be useful.

Mr Strate: Thanks Deb. Thanks for that question, Melissa. We'll move to the final Menti question slides. Do you agree with local government businesses to take a more qualitative approach? Is there anyone who'd like to comment on that proposal for more qualitative approach? And what more information you might need? If not, are there any other questions on the topic of the obligations and the public interest test? Any final questions from the Tribunal on this subject?

Ms Cope: I don't have any other questions.

Mr Strate: There is, I think, one follow up question for Melissa, perhaps respond to that. So upon a complaint could it then be required that this be reported, even if the public interest test has been applied, I think it's asking.

Ms Cope: So I think what Melissa might be saying is, could it then be required that we report this. I'm not sure if what Melissa is saying that rather than publishing the tests annually, you publish them if you get a complaint. That would be one way of doing it, and happy to hear views on whether people think that is the best way, what that does though it requires the process of initiating a complaint and us asking for all of the information necessary to activate and go through that process.

Mr Strate: Excuse me. We're getting a bit of feedback there. Can I just ask that anyone who's not speaking to mute their mic please?

Ms Cope: It may be that we're asking for a lot of information, and the local government's got to go through a lot of effort in order to respond to a complaint which may not have been necessary, because you could have cut it off by making the information public. So I think that's the trade-off that we're trying to work through at the moment to work out what works best.

Mr Strate: Thanks Deb. Melissa, does that answer your question?

Ms Cope: I think it then says, could the public interest application be challenged the same way. We've said in the report that we would not make judgments about what is, and isn't in the public interest. That's an issue for governments, local governments, and state governments. We would, however, look at whether the process of doing a public interest assessment has been followed, so our complaint process would say, you have or have not done a public interest test, but it wouldn't impose a different outcome on the public interest test.

Mr Strate: Thank you. Shaun would you like to make a comment?

Mr McBride: Yeah, just a quick question. Just will they be any sort of fee for making complaints. Given to help ensure that they're not vexatious or they're not wasting time.

Ms Cope: We hadn't proposed to fee at this stage. My recollection is that Victoria looked at whether doing a fee on theirs at some stage and came to the conclusion that there's a fair amount of effort to simply go through to put in a complaint because you will need to provide IPART with a certain amount of information, so it's not costless for the complainant to launch a complaint.

We also have the ability to look at the complaint and assess whether we think it should or shouldn't go through the complaint process. And also whether an alternative way of resolving the issues, perhaps mediation would be appropriate in some situations, or whether we could adopt just providing information to address the issue.

So we saw that process as probably being a more targeted way of helping to both address complaints that weren't suited to resolution through a full complaints process, but also to sift out things that may or may not be real complaints.

Mr McBride: Okay, that sounds fine. Thanks.

Mr Strate: Thank you. We are now scheduled to take a break. So I propose, if there are any further questions on this topic, we will have a few more minutes at the end for discussion. But in the meantime let's break now, and come back at 11:35am. The next sessions will be around more of the detail of our draft recommendations on the complaint process, and on governance and transparency. I'll see you at 11:35am.

[SHORT BREAK]

1.7 Session 3 – complaints process

Mr Strate: Hi everyone. Welcome back. I'll hand over now to Jessica Hanna, who will present our third session for today on behalf of IPART on the complaints process.

Ms Hanna: Thanks, Ben. So an independent, accessible, and simple complaints handling process is a really important accountability measure for government policies like competitive neutrality.

Our review of the complaints handling process has found that the current process can be confusing. It is difficult to access for the competing businesses, and that makes it an ineffective way to address concerns about the application of competitive neutrality as we've just been discussing. For example, there are currently different pathways for complaints about local government businesses, state government businesses, or procurement and this complexity is especially difficult for small businesses who may not have the resources to persist with navigating the complaints process.

So the suggested improvements aim to make the process easier and more accessible for competing businesses. We are proposing the following key changes. Firstly, a single process for all complaints, reducing the number of complaints handling bodies to one from 3 and that would be IPART.

Allowing complaints to be made directly to IPART without Ministerial referral or firstly, raising the complaint with government businesses, although complainants would be encouraged to approach the government business first.

And finally allowing anyone affected by competitive neutrality to launch a complaint rather than the current system which requires competitors or potential competitors.

So what does the complaints process look like? As shown on the flow chart on the slide the proposed complaints process starts with the complainant submitting a complaint to IPART. IPART will then assess the complaint and inform the complainant whether or not the complaint will be investigated.

If the complaint will be investigated IPART will also inform the relevant Minister and the investigation is to be completed and a report published within 10 weeks. The Minister would then publish a response within 8 weeks.

If the complaint will not be investigated there is the option of non-investigative action being taken by IPART such as mediation or possibly no further action.

IPART will report on all complaints subject to request of anonymity and commercial and in-confidence information received, whether or not they were to investigate the complaint.

We've proposed IPART's role as a complaints investigator would be modelled on the Victorian competitive neutrality complaints body, which would mean that IPART: cannot initiate an investigation, has no enforcement powers, has discretion over which complaints it does investigate, and investigates accepted complaints fairly, independently and rigorously, and comes to a finding on the basis of the best information available.

IPART would consult with all parties involved before finalising its investigation and it would provide finalised investigation reports excluding any commercial in-confidence information to the parties, and also publish them on their website. IPART cannot recommend compensation or termination of a contract of contractual arrangements.

The combination of a simplified complaints process and improved compliance reporting which we'll discuss in the next session should help to identify problem areas that could inform future improvements to NSW competitive neutrality policies and processes in future reviews. So I'll now hand back to Ben to take us through the Menti questions for this session.

1.8 Menti questions - Complaints process

Mr Strate: Thank you for that summary, Jessica. Instructions are up on the screen once more so you may need a moment to log back in.

The first question in this set is do you agree with simplifying the process to one complaints handling body, and for that to be IPART.

Okay. So I'm seeing a lot of yes's in response to this and a couple of people who need more information to be sure.

Second question, do you agree with allowing complaints to be made directly to IPART that is removing the obligation to contact the government business first. There is a majority of people coming down in favour of this one, but we are getting a handful of no's as well, and it will be interesting to hear what the reasons for that are.

And do you support alternative approaches to resolving a complaint besides an investigation, for example, mediation. So, again broadly supportive, a few people who would need a bit more information to be sure.

And then, finally, this question: we're particularly interested in the views of competitors and interested parties. So this is not directed at our government stakeholders. Are you more likely to make a complaint under the proposed framework? I'm not expecting quite as many responses to this one, so that might be everyone.

Okay, thank you. Let's go back to the first question again. Do you agree with simplifying the process to one complaints handling body (IPART). So the overwhelming majority say yes. There are a couple of people who are unsure and a no. Is there anyone who'd like to comment on what further information they might need or is there the no, someone who has some reservations prepared to discuss those.

Okay if not, we can move on to the next question. And do you agree with allowing complaints to be made directly to IPART, removing the obligation to contact the government business first. So I have a handful of no's here, and a number of yes's as well and the no's are growing. Is there anyone who has I suppose, concerns or reservations about allowing complaints to be made directly to IPART. I've got a couple. I think Jenny's hand went up first. Would you like to respond. first, Jenny, then we'll come to you, Shaun. Oh, Jenny, you're on mute.

Ms Sikorski: Okay. First of all, it'd be great for IPART to be able to handle complaints. What we've seen in other jurisdictions has been there's been, I guess, a number of complaints made by large political donors directly to the Ministers, and that's been quite problematic. And how that's been handled. So, having a straightforward, clear pathway to complaints handling is really appropriate.

I guess, with this particular question. The reason why I expressed a concern is that it would be good for the government agency to have an opportunity to respond directly, and that might circumvent some lengthy investigations or inquiries of IPART.

So it's just a matter of weighing up I guess the number of complaints that you think might grow as a result of the streamlined process, and how what the resource capability of IPART actually will be to be able to handle those complaints. And if it's not going to be adequate, there should be an opportunity for the government agency to be able to respond directly because that could take some of the load off.

Mr Strate: Thanks, Jenny. I know there's some agreement in the chat with your comments about having opportunities to deal with the complaint first. Is there any response at this point from the Tribunal?

Ms Cope: Just to throw in. The reason why we had in there removing the obligation is because we had been told by some competing businesses, particularly small businesses that are located in a particular area that have an ongoing relationship with the government business that they're competing against, or an ongoing relationship that relies on the local government, and they're competing with the local government business that they feel uncomfortable that they may be seen as creating waves, problem maker, or it could affect their other relationships, so they reluctant to go to the business first, and therefore they've got nowhere to go.

So I'd be interested in people's views on how do you manage that problem of people feeling like their interest might be affected if they do complain in the first instance to the business and how you balance that against, because I do agree there are benefits in trying to resolve them on the ground with the business in the first instance.

Mr Strate: Thanks, Deb. Would anyone, does anyone have any response on that question of how you manage that issue.

Mr Fernando: Yeah, I'll make a few comments. Well, first in the first instance. I don't think going to IPART, you're not going to keep the complainant's identity anonymous. The council is going to know who that other party is anyway so I can't see the big difference between making a representation directly to council in the first instance, how that's really going to address that concern about not being comfortable about making waves.

The other one is, and this is some experience I had in when I was in Queensland is you have an administrative complaints process in council with a policy and a specified administrative complaints officer who handles those things. And if you put in a process like that there is some trigger to how those things are handled, and obviously how all those responses and the reasons given by councils in that first phase will go to IPART. If a satisfactory outcome is not reached, and therefore the council will have to defend how they handle it as well.

Ms Cope: Yeah some jurisdictions do allow anonymous complaints. I think you practice though people often know who it was, even if the name of the business is not released through the complaints process. I would be interested whether there are any of the business representatives here that have an alternative view about whether you should be required to go to the business first, or the council first before making a complaint to IPART.

Mr Strate: Ed, is your hand up in response to that.

Mr Couriel: Yeah, thanks. Ed Couriel here I'm director at Manly Hydraulics Laboratory and may be a bit different to some of the other groups. We operate on a competitive neutrality basis fee for service, for providing professional services. We generally manage our relationships with our competitors because often they're clients as well.

So for us it'd be really problematic if one of those competitors complained about an issue that might have been easily resolved, explained, clarified, put a lot of people through a lot of time and effort unnecessarily. So for me it would be a real problem if it didn't come through us first and by all means, you know, if they felt that it hadn't been resolved, you know, escalate it.

Mr Strate: Thanks, Deb. Shaun, you had your hand up a moment ago. Has your question been addressed?

Mr McBride: Yeah, yes it has. I agree with each of those the 3 previous people. I do believe that the complaint should go to council first, give the opportunity to resolve something that might be a simple misunderstanding, and councils do have complaints procedures in place, so you know, sometimes it might be better to nip something in the bud before it gets elevated and involves more time and resources.

Mr Strate: Thanks, Shaun. Shannon, I see your comment in the chat about this potentially being a problem. Is there anything you'd like to add to that?

Ms Lakic: Thanks for that. No, well, I mean we're an Industry Association and we do get comments from our members that they are reluctant to bring complaints to the primarily local councils simply because of the regulatory function that the council also exercises. So there is a relationship issue there.

So, in terms of being able to make a complaint direct to IPART, I mean, we think that's a good idea. I acknowledge the issues around anonymity and you are probably going to know who it is anyway but there are processes in other areas like the motor dealers industry for example where an industry body can bring a complaint on a businesses' behalf that would assist so I thought I'd throw that out there.

Mr Strate: Thank you, Shannon. Are there any further comments on this topic of anonymity?

Mr Strate: Let's move on to the next slide. Do you support alternative approaches to resolving a complaint besides an investigation. For example, mediation. Are there any comments, any further issues to raise with this idea of alternative approaches to resolving your complaints. Seems there are not.

Mr Fernando: Sorry can I make a quick comment. Any means of keeping things simple and less costly would be beneficial and if both parties are open to things like mediation, which can be a lot more cost-effective and less time I think that's a good thing, and that should some accommodation of that would be good in a policy.

Mr Strate: Thanks, Stephen. Melissa asks for clarification. What does the alternative approach mean?

Ms Cope: I'd actually probably throw that back to the people in the room here at the moment, and that is what alternative approach do you think would be useful from your experience? You know it could be anything from perhaps we haven't got a strong view at this stage, and what it is that an IPART staff member sitting in a meeting with the council and the business, and talking through the helping them talk through the issues, or it could be formal mediation. There could be a range of other things that you could do. But I'd be interested if people have got views on what they think might be useful.

Mr Strate: So does anyone have views on that.

Mr Fernando: Yeah, so alternatives could be. I mean, first coming into having that option to put a request or a complaint into council and then something like mediation, whether it's using IPART, or it is using some sort of third party approved panel type of arrangement would be some options.

Mr Strate: Jenny's comment is that both the complainant and government agency should agree on the alternative approach, and Melissa says that she assumes formal mediation would require legal representation.

Mr Strate: Does the IPART team have a response to that, Carmel?

Ms Donnelly: I don't think we would assume that necessarily, hard to say to somebody "No, you can't have legal representation if you want to" but certainly what I've heard stakeholders say in previous consultation is going to Stephen's point actually about cost. There's cost on both sides for the parties. The business might feel that they're being held back in actually having a viable business. They might want something to happen quite soon. So I could envisage that perhaps at the point where council becomes aware of that, the complaints been escalated to us to IPART.

Council may come forward with some options of how to resolve that IPART could be just simply communicating to the complainant, and that might lead to quite informal discussion about a way to resolve it to everyone's satisfaction and save everybody some expense, and in a sooner period of time that you might have with an investigation. So there certainly was, to my mind, you know, happy to hear other views some frustration from people who felt that they had had difficulty making a complaint with how long the process took, and of course they often don't have a lot of resources as a small business, for instance, to be putting into this, and they just like a solution faster, so long way of saying, I think it might be quite flexible to what would help the parties, and it might not necessarily require legal representation.

Mr Strate: Thank you. Any other thoughts on what alternative approaches might be suitable.

Ms Cope: I think there's a question in the chat about whether compensation would be available through alternative approaches. No, we weren't envisaging that it would be. That would be a completely different process than the competitive neutrality process.

Mr Strate: Thank you. Thanks for that question. Let's move on to the next slide. Are you more likely to make a complaint on the proposed framework. It's quite a few yes's in response to that. But anyone could elaborate, no, and another yes.

Ms Cope: What are the barriers to making a complaint that are left that so you might not make a complaint if you think there was no problem to complain about. But if the unsure or no's, are about people not sure that what we're proposing has removed the barriers. I would be really interested to hear what the remaining barriers are.

Mr Couriel: Yeah, well I'll chime in. Ed Couriel, for me I said no, and primarily because if I were to make complaint I thought that the pre-existing competitive neutrality process had adequate provision to make a complaint. I guess for entities where this is more common maybe the new provisions are going to be of benefit. But for us I didn't see no that's a no.

Ms Cope: Thanks. That's useful.

Mr Strate: Thank you. And anyone who was unsure or a yes, are there any further comments on this topic and I guess in general, are there any more comments on the complaints process, what's being proposed, any further questions, anything from the Tribunal? Oh, there's one more question that popped up to the chat. So what is the outcome if it's unresolved?

Ms Cope: So, as I said before, at this stage we're not proposing that we would have the ability to enforce an outcome from the complaints mechanism. It would be a reporting, so we would report whether we think competitive neutrality has or has not been implemented appropriately and that report would go to the local government if it's a local government business, the Minister the state government business, and then they'd be required to respond to say what they're planning to do in response to that. But we would not have the ability to require them to take action, but we would report whether they have or have not taken action.

As I said earlier, we think that transparency will have a big impact. But if it doesn't deliver the outcomes expected, then that could be something that's considered next time when the policy is reviewed, so I think the complaints process as we consider it would end after the government has responded to.

So we make our, was it 10 weeks Jess? We've got 10 weeks to consider a complaint. We would then make our recommendation. The government would be required the Minister be required to respond to that, is there a timeframe on that at the moment?

Ms Hanna: 8 weeks.

Ms Cope: 8 weeks, and that would be the end of the processes, as we would see it except they'd be ongoing reporting from us and we do expect that this process will help identify where the policy is, and isn't working well over time and allow it to be improved over time. Does that answer your question, Melissa? Great thanks.

Mr Strate: Are there any further questions on the complaints, or comments? Okay, in that case, I suggest we move on to the final session.

Ms Cope: Shaun had his hand up I think.

Mr Strate: Oh Shaun, I just missed that. Sorry Shaun.

Mr McBride: Sorry I was a bit slow on the update.

It just occurred to me that you know your average small business or something is not going to be, you know, aware, or expert in competitive neutrality policy, and so on. Yeah, the general public you know, it would be an alien concept to them, and they wouldn't understand. You know why a government had increased its swimming pool entry fee because of competitive neutrality policy, or something like that. I'm just saying, is there seems to be an education task up there much broader than just, you know, for councils and government business enterprises.

I think it's important that there's one there for businesses who might you know, consider making complaints. I mean if they don't understand the system or the processes, or the policy, they won't know if they've got a basis for complaint under competitive neutrality, or for example, or whether their complaint is really something else altogether. So yeah, just, it seems to be like an educational need there.

Ms Cope: I agree, and I don't think we're going to be able to have a broad education program that means the whole of Australia understands what competitive neutrality is.

But that is part of the reason why we were thinking of having a process where we could have discretion about whether we actually went into the complaints process or not. So in practice, what I suspect will happen is somebody will I hopefully ring the council first, and that will give you an opportunity as a council to explain to them why you have or haven't done that, if they're not happy with that they'll call IPART.

And then our people would then explain to them how the policy works. If they are still unhappy with it, we would probably look on the council's website, or their annual report, to see the sorts of information that we're talking about publishing, so we would be able to say, well, they've said they have applied it here, or they said they haven't. And this is the reason why so part of that engagement would be part of the education and is another benefit of actually having that information easily available because we'd be able to access it rather than having to go to the council to do that.

And then we would, if the person was still unhappy, and hadn't got an answer. They could then go through the formal process of saying, well, no, I want to make a complaint, and we would then be looking at that through the more formal lens. But I envisage, as happens with all of these things, there'll be some informal engagement that goes with people just ringing up and make an inquiry before they launch a complaint.

Mr Strate: Thanks, Shaun, and thanks, Deb, and Carmel.

Ms Donnelly: Oh, thank you, Ben, I just thought another thing I would be interested in is whether it would be useful if as well as creating tools and information, and being able to give that advice as Deb has described. IPART also developed some information kits, and perhaps in partnership with industry bodies so that small business that is getting support that's just relevant to their particular industry perhaps from an industry body. We could perhaps partner with that industry body to get good factual information out to its members. So that was another thing. I'd be very interested just if people think that's a useful approach to implementing the new policy and keeping people up to speed on it as well.

Mr Strate: Are there any thoughts in the room. I see, we do have one further question from Melissa as well about will it be reported which council has had complaints, and how many, oh thanks Shannon. So Melissa's question will it be reported which councils had complaints, and how many.

Ms Cope: Yes, we do envisage that IPART would report about the types of complaints that we receive, whether or not they're investigated and what sorts of issues are being raised.

Ms Donnelly: While protecting privacy.

Ms Cope: Yeah, but that's the privacy of the individuals that are complaining rather than yeah, the government business.

Ms Donnelly: Ben, Jenny had her hand up.

Mr Strate: Jenny, do you have a question or comment.

Ms Sikorski: No, I was supporting Carmel's comment actually in relation to engaging with industry groups to work through these education materials and getting back to what I said earlier in the discussion about developing the tools and the resources that are that address some of those really pertinent questions would be a great way to go, engaging directly with industry on that: Thanks.

Mr Strate: Thanks, everyone for your feedback and comments on that topic. We'll move on now to the final session so, and this will be our last session for the day. I'd like to invite Kira van Os from IPART to present.

1.9 Session 4 – governance and transparency

Ms van Os: Thanks, Ben. So our discussion just then segues really well into our final topic, which is governance and transparency. So our review of existing competitive neutrality reporting has identified that public reporting about competitive neutrality by government businesses is often difficult to locate or it has been discontinued. And competing businesses are interested in greater transparency concerning competitive neutrality. And we've also found, as the discussion has shown there's an appetite for greater training and support from government businesses and other stakeholders to help with understanding and applying the policy.

So if we move on, thank you. So transparency is a really important part of ensuring compliance with competitive neutrality policies. Without a sufficient level of transparency about the decisions of government businesses it's difficult for competing businesses to tell whether a government business is exempt from competitive neutrality policy, or whether it actually hasn't applied competitive neutrality principles, when it should have.

This can leave competing businesses and affected parties confused about whether they should pursue a complaint and the prospects of its success.

We propose to recommend requiring government businesses to provide the following information in their annual reports to improve transparency around the application of competitive neutrality.

Statements of compliance reporting for all government owned business activities, including those that indicate they don't meet significance or public interest test, a summary of the costs and benefits of applying competitive neutrality. Where a public interest test has been applied to exempt a significant government business activity that is operating in that year.

Steps taken to comply with competitive neutrality policy including the last date these application tests were assessed. The basis of pricing decisions, so whether it's based on fully distributed costs, avoidable costs, market pricing, or another form of pricing and the number of complaints received about competitive neutrality, the outcome, and any changes made by the businesses in response. Government businesses wouldn't be required to publish any confidential or commercially sensitive information.

And to reduce the reporting burden for government businesses we are recommending that templates and other materials are developed that clearly set out the minimum reporting requirements.

And for training and support we've heard from government and non-government stakeholders alike that there's an appetite for greater provision of resources, training, and advice on competitive neutrality issues.

We propose the IPART should develop resources to support government stakeholders to understand and implement competitive neutrality principles and non-government stakeholders to understand the policy and its obligations.

These resources could be developed through a co-design process with government businesses, if that's of interest and examples of such resources could include a checklist of criteria to assess the significance of a government business activity, a decision tree of factors which could trigger the need to reassess significance of a government business activity. And templates, for in your reporting of compliance with the policy.

As the owner of the revised competitive neutrality policy, NSW Treasury would have the role of providing advice to both state and local government industries. This could include chairing practice groups for local and state government businesses to share knowledge about competitive neutrality practices. We're also proposing that the government considers a transition strategy for the revised policy that will allow government businesses to adapt to changes over time.

We propose that the transition to the revised policy only occurs when the resources have been developed to actually assist government businesses, particularly local government to adapt to the changes.

We'd really like to hear your thoughts on what training and support would support you to apply the policies. We'll develop a survey which will be sent to you shortly after the hearing, or you can also discuss this in a submission. So I'll hand back over to Ben to take us through the Menti questions.

1.10 Menti questions - Governance and transparency

Mr Strate: Thanks Kira. So our final set of Menti questions for today. Just a reminder if you are not speaking, please make sure your microphone is muted.

So these questions are on the topic of governance and transparency. We've got 3 questions this time, so we'll move on to those in a moment once I see a few more thumbs up and people ready to go, got it.

So first question is do you agree with our proposed annual reporting on competitive neutrality? Good. There is a good amount of support, but also quite a number of people who would need more information to be able to answer.

Are you confident that your business will be able to update policies and processes relatively easily. Okay, the no's are growing but there's certainly a substantial number of people in answering yes, no, and unsure for that question.

And we've got a series of options for this one. So what form of resources would be most useful to you to apply the revised policy. You can also, if there are other things that you can think of that don't appear in those ideas that we have, then please check other and suggest those as well.

So that maybe everyone. I suggest before we go back, there's one more, before we go back to the first slide, Jenny's asked so only the basis of the pricing is required and that the actual cost may be commercial in-confidence. Is there anyone who'd like to confirm that?

Ms Cope: Yes, that was the intention. That it would be the basis of the pricing rather than the actual costs.

Mr Strate: Let's go back to the first of these questions. Okay so the question whether you agree with our proposed annual reporting on competitive neutrality. Again, we've got quite a number of unsure and a few no's. Is there anyone who'd like to comment further on the reasons for disagreeing with the proposed annual reporting or anyone who'd like to.

Mr Couriel: Yeah thanks Ben, I'm happy to make a comment. The cost of annual reporting is probably the biggest concern here. You know it's putting more pressure on limited overhead resources which we need to look at very carefully.

Operating a small, very specialist business on a full cost recovery basis and doing that efficiently, is already challenging in government. I mean a lot of costs that competitors don't have we have and some of those we can't change in our financial systems, IT systems are very complex and inefficient. If we had more. We already have reporting, you know, department level reporting and to add another layer of reporting, it's just another cost. It just makes our cost go up and makes us less competitive in the market.

Mr Strate: Thanks Ed. Unless there's any response to that, we've got Shaun's hand up and a couple of other questions appearing in the chat. I might just go to Shaun first.

Mr McBride: Look I was just going to say that I agree with what Ed was saying. It really depends what's involved in the reporting process. But councils already have a very large reporting process. It's very onerous, and you know, adding to it will make the burden that much greater. So, yes, fully agree with that from potentially a council point of view. But it would depend somewhat on what is the extent of the reporting, what is required, and so on? Or is it just ticking a couple of boxes?

Mr Strate: Thanks, Shaun. Judith says it's a bit confusing under obligations of publication session it was stated as once every 5 years. Under this session its annually.

Ms Cope: It might be useful just to talk a bit about how we see it working. So the idea is that there would be a template that would go through and identify the businesses, has competitive neutrality being applied yes or no. What's the basis of pricing, have you done a public interest test and that would sit in an annual report for all of the businesses. So if you've only got one business, you've only got one line in your annual report.

And then, as those documents are updated over time. So if you review your public interest test you would update that bit of your reporting template so that it's not something that happens, you don't have to sort of recreate this material every year, but we do agree there is a process for drawing it all together initially, which was why we were talking about the transition to give people time to draw it together. But then after that, it's an updating process rather than recreating the wheel every year. Kira, was there anything else that you wanted to add about sort of how we envisage it working?

Ms van Os: Yeah. So just to clarify that. So in the annual report we would be expecting the results of those public interest tests to be put forward like Deb just said, but actually undertaking the public interest test is where we're looking for it to occur once every 5 years. So it's not that every year you have to undertake those tests again. It's just the publishing would likely stay the same year to year unless it's reviewed.

Ms Donnelly: And there's a question from Emma Turner from Hunter Water.

Mr Strate: Emma in the chat asks, we assume the annual reporting would be similar to section 18(4) of the IPART Act.

Ms Donnelly: And look, I might just make a few comments on that, then Deb can certainly add. We haven't assumed that we've really thinking of it as Deb said it might be, if you've only got one government business out of a government agency. It might just only focus on that, and that IPART would develop templates for that annual reporting.

For people the section 18 part 4, or clause 4 that Emma is referring to requires people to report, probably in a bit more detail, about what they've done about IPART determinations, and it wouldn't be an IPART determination, so it would be less formal than that.

Mr Strate: Thanks for that question. Thanks, Camel. I've got 2 hands up. I believe Shaun's was up first. Do you have a question or comment Shaun. No, it's down. Ed.

Mr Couriel: Yeah, thanks Ben. I guess my comment was is there an opportunity instead of like the training workshops and things that in that sort of transition period for IPART to provide resources into those government businesses, particularly where they don't have access to all the expertise that might be required to weave through and satisfy the requirements to get it done the first time.

And then I think there'd be some training that would flow from that. That would certainly make it less of an impost, and probably significantly reduce the cost of getting on board with this.

Ms Cope: So you're thinking about something which just helps you work through it in the first time it's done, is that what you envisage?

Mr Couriel: Yeah, I mean someone who knows what all the terms mean to satisfy those terms, how much rigour and detail is required and to work through that with the individual businesses that might need that help because otherwise, we're going to have to take people off billable work to spend a lot of time, getting to know what's required. And then interacting and asking questions, and maybe getting experts in to assist. So there's costs in that.

Whereas, if IPART probably could lend us a person or at least to get through the first year of compliance reporting so then we've got people in the business that understand what needs to be done and how to go about it.

Ms Cope: And yeah, this seems to come back to the original discussion we were having earlier about how best to set up some advice type function to help with the implementation.

Mr Couriel: Yeah, yeah.

Mr Strate: Thanks Ed. Unless there's any further comments on the agreement with the proposed annual reporting, I'll move us on to the next slide.

Are you confident your business will be able to update policies and process processes relatively easily? Is there anyone who'd like to talk further to the challenges involved in that, or what further information might be needed.

We do have a comment from Melissa in the chat that they'll potentially be significant changes required in the systems to implement this.

Ms Cope: One of the issues that we have been talking about internally, that I don't think we've landed on an answer for yet, is how we develop up these templates so that they draw on as much as possible the existing reporting and collection processes within different businesses and within local government.

So it's probably not something that you can respond to right now, but would be really interested to hear going forward how you think we can piggy back any of this on what's already done, so that we're picking numbers something you already prepared earlier, and being able to slot it into this rather than having to unnecessarily recreate any wheels.

Mr Strate: Thanks, Deb unless anyone that does have anything about to say on that. Now I'll again move us on to the next slide.

What format of resources would be most useful to you to apply the revised policy. So quite a few people in support of checklists and working down to a short training courses, online training modules at the end.

So would anyone like to add anything to their response on this question. I note Melissa's made further comments in the chat. I think it might be helpful for us to follow up with Melissa perhaps after the public hearing in a situation where she has a microphone and can expand.

So there anything else on this topic of governance and transparency, more generally, I might just open up the discussion.

Ms Cope: Is there anything people wanted to discuss that we haven't covered. So we have one question from Judith around time frames around the transition. Did you want to take that one Kira. Was there anything that we've sort of got proposals. We're still pretty flexible about what will work.

Ms van Os: Yeah. So we are putting these proposals forward to the relevant government body, and then they are to take it on. And so the only proposal that we have made relevant to timeframes is the proposal surrounding only putting the policy in place once the resources have been developed, but that is beyond IPART to really put into place.

Ms Cope: There's potentially a conversation, I think after if the Government decides to progress with the recommendations, and I think the next conversation that we'll be having with people is, how long do you think this will take to pull together?

Ms Donnelly: And I would just add if you've got a view on that already. It's certainly open to you in your submissions to tell us what kinds of things might need to be factored in. If you've got a sort of sense of how long it might need, then you might also be able to tell us a little about how you've reached that landing. About how long you think it will take. That would help, I think, to inform as our government considers, and as we finalise our Final Report.

Mr Strate: Last call for questions or comments. In that case I'll hand over to Carmel to close the public hearing.

1.11 Closing remarks

Ms Donnelly: Thank you Ben, and thank you everyone and I might just make a few closing comments. But I will say we're running a little ahead of time. So if you do have anything else that you think of in the next, you know a few minutes. Raise your hand, or we'll see if we can squeeze in any further questions.

Let me first of all say thank you on behalf of IPART. Thanks for making the time we certainly appreciate it. I have found that very helpful, and I'm sure everyone from IPART has. We will consider everything that's been said today in developing our final report and recommendations and you will see in coming days we will put up a transcript on our website from today's hearing, and also a link to YouTube video so that it's a resource for you as well.

We are still consulting and I might sort of move us on to the next slide. We are still consulting. This is one of those you are here slides, where we are asking for submissions by the 24th of February. I will also just let you know we have posted 7 additional information papers on our website. They're just short summaries of particular aspects of what we're proposing in our draft report, you might find them helpful as you pull your submission together. Have a look through those, just if this anything that you would like to comment on we're hoping that that will make it easier just to get through the content that we're proposing.

And then, when we get submissions from the 24th of February, we will consider everything that is said in all of those submissions, and prepare our final report, which is due to the Minister in May.

We also welcome if you have any questions. I think, on the next slide we've got some contact details, Ineke Ogilvy, who you have met today there are her details. They're also inside the cover of the draft report, and on the landing page for this review on our website and do feel like that you can get in touch with us if you've got any questions or additional sort of information that you'd like to follow up with.

So I'll just do a last check. I don't think we've got any hands up or anything else, so I will close the public hearing with our thanks. It has been very useful. I hope it's been useful for you as well. I hope you have a good rest of the day. So thank you very much.

Ms Cope: Thanks everybody really useful, and thank you for all of your input.

Ms Gamble: And thank you from me it's been fabulous, really good.