ICRC

independent competition and regulatory commission

Issues Paper

Competition inquiry into Capital Linen Service

Report 13 of 2005
November 2005

The Independent Competition and Regulatory Commission (the commission) was established by the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act) to determine prices for regulated industries, advise government about industry matters, advise on access to infrastructure and determine access disputes. The commission also has responsibilities under the Act for determining competitive neutrality complaints and providing advice about other government-regulated activities.

The commission has three commissioners:

Paul Baxter, Senior Commissioner
Robin Creyke, Commissioner
Peter McGhie, Commissioner.

Submissions, correspondence or other enquiries may be directed to the commission at the addresses below:

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The secretariat may be contacted at the above addresses, by telephone on 6205 0799, or by fax on 6207 5887. The commission's website is at www.icrc.act.gov.au and its email address is icrc@act.gov.au or ian.primrose@act.gov.au.

For further information on this investigation or any other matters of concern to the commission please contact Ian Primrose, Chief Executive Officer, on 6205 0779.

Foreword

On 21 September 2005 the Minister for Urban Services requested the Commission to conduct an inquiry under section 19B of the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act) into Capital Linen Service (CLS), an ACT Government-owned laundry.

The inquiry is investigating whether CLS, by reason of its government ownership, has a competitive advantage in respect of services it provides. In reaching its conclusion, the Commission will consider and report on:

- an assessment of the market(s) in which CLS operates and the extent to which it is in competition with private sector enterprises, including a consideration of any competitive advantages and/or disadvantages under which CLS operates
- the extent to which cross-subsidisation between market segments exists (for example, private versus public sector customers, health sector versus accommodation/restaurant linen customers)
- whether CLS undertakes any community service obligations (CSOs) and, if so, whether these CSOs are appropriately costed and transparently funded
- the extent to which CLS is complying with the full range of competitive neutrality principles as outlined in the Competition Principles Agreement relating to tax neutrality, borrowing neutrality and regulatory neutrality (see Appendix 2)
- where required, reform option recommendations about the above matters which best achieve the objectives of clause 3 of the Competition Principles Agreement.

The Commission welcomes submissions from all interested parties on the terms of reference mentioned above. Submissions should be in writing and should be received no later than Friday 18 November 2005.

All submissions received will be published on the Commission's website, except where there is a demonstrable public interest associated with the application of the confidentiality provisions of the ICRC Act. Persons submitting material to the Commission who believe their submission should be treated confidentially should make specific application to the Commission in the submission. A decision on confidentiality will be forwarded to all persons seeking confidentiality.

Paul Baxter
Senior Commissioner
11 November 2005

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1 Introduction

The ACT Government, like all governments in Australia, is subject to a number of constraints in operating its own businesses or undertaking business activities. Pre-eminent amongst those restraints is the set of obligations into which the ACT entered in 1995, namely the National Competition Policy. This policy makes the government's businesses subject to the same or equivalent regulations and financial obligation as their rivals in private ownership. In addition to the obligations that government businesses should face the same or equivalent regulations (for example, environmental, planning and industrial obligations) as their rivals, they should also not benefit from differential taxation or financing capability. Moreover, government businesses should not be in a position to benefit from tied contracts within government, particularly not when the revenues from those contracts are used in such a way that contract prices for services provided to private sector clients are cross subsidised.

Usually, failure by a government business to observe its obligations in the National Competition Policy Agreements, particularly competitive neutrality issues, is raised as a complaint by an aggrieved rival. In this inquiry, however, while the issues with which the investigation will be concerned are about competitive neutrality and related issues, the inquiry has not been initiated in response to a complaint. Rather, the Government has sought the Commission's views about some matters of a competitive neutrality nature, as a preventative measure to ensure that CLS does not become the subject of a complaint and is operating fairly not only as a competitor in the market for its services but also with the government clients using its services. Hence, while this is a competitive neutrality related inquiry, it is also about other issues relating to the operation of CLS.

1.1 Accepting a regulatory reference

The Commission is established under the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act) to investigate a range of matters including prices, access to infrastructure, regulatory activities of Government and competitive neutrality matters.

The ICRC Act provides for the issuing of regulatory references to the Commission. However, to ensure the resources of the Commission are not used for frivolous or vexatious purposes, the Commission may only pursue such references if certain conditions are met. Those conditions are outlined in section 19 of the Act. The Commission may accept a reference, in the form of a written submission from a referring authority, only if the following conditions are satisfied:

- there are legitimate grounds for the complaint
- the proposed investigation would be in the public interest, and
- the referring authority has the capacity to bear the cost of the investigation.

The Commission's investigations are conducted independently under the terms of the Act and reports are made public and may be tabled in the Legislative Assembly. Although the Commission is able to investigate regulatory references in whatever manner it deems fit, the Act requires that certain issues be given attention. Section 20 of the Act outlines those matters that the Commission must consider, including references to the social, economic and environmental impacts of the matters being investigated.

The Commission has accepted that these conditions for accepting a reference for this inquiry have been met.

1.2 Actions required when the Commission accepts a regulatory reference

Section 19C of the ICRC Act sets out the actions the Commission is required to take to give adequate and public notice to all persons who may be interested in the substance of an inquiry into a regulatory reference. The provisions require that the Commission must:

- give the referring authority written notice of acceptance (including terms of reference for the investigation)
- publish a copy of the notice in the Gazette
- if the Commission considers it appropriate, publish information about the reference elsewhere.

The Commission has satisfied those requirements by writing to the interested parties immediately involved in the matter, including the Minister and the Chief Executive of the Department of Urban Services. A notice has also been published in the Gazette. The Commission has also published the reference in *The Canberra Times* and on the Commission's website at http://www.icrc.act.gov.au.

1.3 Subject matter of the reference

Following a Cabinet decision on 14 June 2005, the Minister for Urban Services wrote to the Commission on 21 September 2005 (see Appendix 1) requesting that an investigation into Capital Linen Service be conducted under section 19C of the ICRC Act. The Minister's letter also referred to a business review of CLS carried out in November 2004.

As terms of reference, the Minister proposed that the Commission investigate whether CLS, by reason of its government ownership, has a competitive advantage, in respect of services it provides, to the private sector. In reaching its conclusion, the Minister wrote, the Commission should consider and report on:

- an assessment of the market(s) in which CLS operates and the extent to which it is in competition with private sector enterprises, including a consideration of any competitive advantages and/or disadvantages under which CLS operates
- the extent to which cross-subsidisation between market segments exists (for example, private versus public sector customers, health sector versus accommodation/restaurant linen customers)
- whether CLS undertakes any community service obligations (CSOs) and, if so, whether these CSOs are appropriately costed and transparently funded
- the extent to which CLS is complying with the full range of competitive neutrality principles as outlined in the Competition Principles Agreement relating to tax neutrality, borrowing neutrality and regulatory neutrality

- where required, reform option recommendations about the above matters that best achieve the objectives of clause 3 of the Competition Principles Agreement.

These terms of reference have been accepted by the Commission and will be the focus of this current inquiry.

2 Capital Linen Service

CLS is a government owned business established to provide a linen service to ACT health and hospitality industries. Capital Linen is a business unit in the Department of Urban Services. It is not corporatised but is operated as a separate cost centre in the Department. CLS was formerly part of the Totalcare Industries portfolio. Historically, CLS was the service provider to the two major hospitals in Canberra, the Woden and Royal Canberra Hospitals. The provision of linen services to ACT Hospitals and health care facilities remains its core business, although it also has a substantial volume of linen provided to the hospitality industry, particularly to a number of hotels and restaurants in the ACT.

CLS is one of the largest suppliers of linen cleaning services in Australia, and the dominant linen service provider in the ACT. CLS operates on a 24 hour 7 days a week basis for service, delivery and back up. Its competitors in the ACT, such as Ensign and Alsco, primarily compete in the hospitality market. CLS is the major contract supplier of linen to hospitals, providing an end-to-end pick up, cleaning and delivery service to the public hospitals in the ACT. Notably, and unlike other service providers, CLS owns its stock of linen, towels and surgical drapes.

Products and services offered by CLS include:

- **Healthcare sector—**hospital linen, general ward linen (sheets, towels, blankets, garments), sterile theatre linen, surgical garments
- **Tourism and hospitality sector—**accommodation linen (sheets, pillow cases, towels, washers, bathmats, robes), restaurant linen (table cloths, napkins, kitchen linen)
- **Linen rental—**all the above products
- **Other services—**laundering and dry cleaning of uniforms, bedspreads and doona covers, blankets and curtains
- **Other products—**supply of incontinence products for aged care and health applications.

As at June 2005, CLS employed a total of 108 full- and part-time employees[1]. The Mitchell facility is fully automated and in the 2004-05 financial year processed more than 5,000 tonnes of laundry[2] (including approximately 2,900 tonnes for local hospitals[3]). CLS has AS/NZS ISO 9001:2000 Quality Assurance Certification and is AS/NZS 4146:2000 compliant.

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[1] Department of Urban Services. *Annual Report 2004-05, Volume 1*. ACT Government, Canberra, p.79.
[2] Department of Urban Services. *Annual Report 2004-05, Volume 2*. ACT Government, Canberra, p.102.
[3] Department of Urban Services. *Annual Report 2004-05, Volume 1*. ACT Government, Canberra, p.42.

3 Regulatory reference issues

Under the terms of reference issued for this inquiry, the Commission is required to address a number of issues relating the market in which Capital Linen Service operates, the nature of competition in that market, the existence of any form of cross subsidy in Capital Linen Service's pricing arrangements, whether Capital Linen Service is required to provide services which would be classified as a 'community service obligation' (CSO) and the extent to which Capital Linen Service is complying with the full range of competitive neutrality principles as set out in the Competition Principles Agreement.

This section addresses a number of these issues and invites comments and submissions from interested parties on matters that are raised by the terms of reference and to which the Commission should have regard in undertaking this inquiry.

3.1 Aspects of the Competition Principles Agreement

The Competition Principles Agreement does not require that a market should be equal in respect of all participants, or that there should be regulatory intervention to ensure that competitors are equal. On the contrary, markets are competitive because there are numerous competitors and each offers consumers advantages of one kind or another. Competitive neutrality is focussed on removing from government-owned businesses any net advantages that are due solely to the government's ownership and have nothing to do with the higher level of capacity, skills or acumen of the business's management and staff. Competition on a level playing field should be on the basis of competitive advantages, not on artificial advantages conveyed simply by government ownership.

> What benefits or disbenefits may arise from the government's ownership of CLS?
>
> How would such benefits and disbenefits impact upon CLS's capability to compete in the market for laundry services?

The Competition Principles Agreement identifies a number of areas where there could exist advantages from government ownership that would be regarded as unfair, or distortionary, in terms of the allocation of resources, namely:

- tax neutrality
- regulatory neutrality, and
- financial or borrowing neutrality.

3.1.1 Is CLS tax neutral?

The ACT Government agreed in 1995 to a tax equivalent regime by which it sought to establish an equivalent tax burden for it's wholly owned businesses to the tax regime imposed on privately owned businesses. At the same time the regime enabled the Territory government to retain its tax equivalent revenues rather than provide tax revenue to the Commonwealth. The outcome of these

changes in the taxing regime was to send appropriate pricing signals for the businesses concerned while at the same time maintaining budget neutrality.

The tax equivalent regime adopted by the Territory Government imposed Commonwealth equivalent taxes, such as the GST, and Territory taxes such as payroll tax and any remaining duties on transactions on the activities of ACT Government-owned businesses.

Is CLS subject to the same taxes and charges or their equivalents as private sector competitors?

3.1.2 Regulatory neutrality

In the past, government-owned businesses often were exempt from regulations to which their rivals were subject. For example, as government agents they were often not required to maintain the same environmental standards or meet some of the planning or licensing requirements imposed on their private sector rivals. Those exemptions gave government businesses potential pricing advantages, as they were not required to recover costs relating to these regulatory requirements from buyers of their goods or services.

Is CLS subject to the same regulations in the ACT as its rivals?

If CLS is exempted from regulations applicable to its rivals, which regulations are these and are the exemptions provided because CLS is government owned or because of some characteristic of the business itself independent of ownership?

3.1.3 Financial or borrowing neutrality

Private firms must rely upon their balance sheets and their own cash flows to attract finance for investment in capital works and improvements, or the funding of mergers and acquisitions. Whether they borrow for operational reasons or seek investment from the market for capital works or acquisition purposes, their financial attractiveness is based on their own resources. The financial strength of government businesses is often assessed not on the strength of a business' own ability to service debt but on the owner's capacity. The substitution of the owner for the business provides or could provide government businesses with an artificial competitive advantage, i.e. one that it would not have except for its ownership. That benefit of ownership could have a capacity to distort the market, to the disadvantage of rivals.

Is there evidence that CLS is able to raise finance at lower rates than its financial capabilities would otherwise attract?

How is CLS funded? From whom does CLS raise capital for investment in plant and equipment or expansion of its business?

Does CLS have access to assets that are financed wholly or partially by government?

3.2 Are Capital Linen Service customers tied?

In considering the advantages and disadvantages that might arise from government ownership of CLS, one of the issues that will be considered is whether or not CLS benefits from tied contracts. Tied contracts arise when the government directs that agencies will use only one designated supplier for their services. Usually the designated supplier is a government-owned body. Where the tied contract arrangements reflect an entirely internal arrangement between wholly owned agencies, their existence may not cause concern. For instance, financial or IT services being provided to government agencies and funded from the Budget are a matter for the government's own internal management. However, when such tied arrangements have an effect in a market, they are likely to be distortionary and contrary to the obligations undertaken in the National Competition Policy.

The effect of tied contracts in a competitive market is potentially to increase the likelihood of cross-subsidies occurring, with inefficient pricing of those services to government inflating costs and reducing the ability of government agencies to respond to those cost signals, reducing the number of competitors in the market, and increasing the barriers to market entry.

In principle there is no objection to tied contracts within the government's or a business's own structure, but when those arrangements have an impact on external markets they should either be removed or ringfenced so that the market can find its equilibrium without distortion. The test for the existence of tied contracts or arrangements is whether the services or products being acquired are to be supplied by only a designated supplier, or whether the buyers of the services or products are able to access other suppliers. The procurement policies and practices of government agencies that are customers of CLS will need to be examined to determine whether tied arrangements exist.

Tied arrangements arise by a direction from government under a procurement policy that requires government agencies to enter into exclusive internal arrangements with other elements of government. The National Competition Policy agreements sought to reduce the incidence of tied arrangements and to encourage governments to make such arrangements subject to competition from other suppliers. Such contestable arrangements would tend to produce efficient prices rather than monopolistic prices, potentially result in higher service quality outcomes, and allow purchasers to demand what they want rather than take whatever is offered by the tied supplier. To the extent that such arrangements exist in relation to CLS, they should be identified and consideration given to what action is required to address this potentially market distortionary practice.

Are government agencies tied to CLS as a supplier of laundry and linen services?

Are prices for tied services efficient?

What benchmarks are used to determine efficiency? Does CLS have effective rivals for the services it provides?

3.3 Community service obligations

Community service obligations (CSOs) are not a usual part of the commercial activity of a business entity. Rather, they are services provided by the entity at the direction of government that they would otherwise not provide or would provide but at a higher price. The cost of providing a

CSO is the difference between the cost of providing the service and the price that would have been charged except for the government's direction.

Because the services provided as CSOs would not be provided in the normal course of the entity's business, or at a higher cost, the responsibility for funding the CSOs theoretically falls on the government that directed that the services be provided. In the case of CLS, it is important to determine whether and to what extent products are provided, either wholly or partially, as CSOs and what are commercial services offered in a commercial market.

CSOs are usually related to perceptions about levels or quality of government services, or other policy issues that have no direct connection to the commercial objectives of an affected business entity. CSOs should be considered separately to commercially priced products. The funding of CSOs should desirably be transparent.

What CSOs are required of CLS? How are they costed? How are they funded?

Are there alternative ways in which the CSOs could be either funded or supplied?

3.4 Cross-subsidies

Community service obligations may be confused with cross-subsidies. CSOs are legitimate tools for use by government to ensure that services are delivered to the community in accordance with the government's overall social and economic agenda. However, while the government may require that certain services that are not normally considered as commercial services are provided, it is normally desirable that governments are responsible for providing adequate funding to meet the designated CSO objective.

Within commercial, market oriented business, cross-subsidies can occur as part of the entity's pricing practices without necessarily involving a CSO. Cross subsidies can be legitimate forms of the market charging what the buyer is prepared to pay. The pricing practice known, as 'Ramsay pricing' is a recognised use of pricing discrimination between different markets where one part of the market may cross subsidise another. However, abuse of market power to use Ramsay pricing practices can occur where a supplier uses its artificially created monopoly position in a particular section of the market to cross subsidise another part of the market where there is greater competitive pressure. For example, an entity may apply a higher price to some products where the government has directed the buyer to buy only from that entity (a tied supplier) and therefore where the customer has no option but to pay the higher price. If this excess revenue generated from these transactions is used to enable the charging of an artificially low price for those products supplied to discretionary customers for whom the entity is competing in an open and competitive market, then this form of cross subsidy would raise concerns on distortionary market behaviour and anti-competitiveness grounds. Such an unfair advantage arising from government ownership and policy direction should be removed, if it exists.

It has been suggested that prices charged by CLS to ACT Health and possibly other government owned institutions are higher than that which would be set by a competitive market and that as a result prices charged to commercial customers of CLS in competitive markets may be lower than the market would otherwise expect. The Commission will seek to identify evidence of tied supplier arrangements and differential pricing, and to determine whether the effect of that cross subsidy pricing is to give CLS an advantage in the competitive market that would not otherwise exist.

Does CLS charge differential prices to its customers? On what basis are these differential prices determined?

Do any such differential prices give rise to cross-subsidies that might give CLS an artificial competitive advantage?

Is there evidence that CLS cross-subsidises commercial services in competitive markets from its access to government-controlled markets?

3.5 Recovery of efficient costs

The Commission is required to consider whether and to what extent CLS receives an advantage (or disadvantage) from its government ownership in terms of tax neutrality, regulatory neutrality and financial or borrowing neutrality.

The Commission's determination of whether the business receives an advantage from its particular status will, in large part, involve determining whether the prices levied by the business (and thus its revenues) provide an appropriate return to the business given the investment in equipment and other capital equipment required to run the business. CLS may not seek to generate a return on investment because of a government decision not to require a return on its investment. Alternatively, CLS may be able to generate profits in excess of 'normal' profits as a result of government action to protect certain markets for CLS's use, or to allow the avoidance of certain costs that would apply to a private sector operation.

Profits are one form of 'costs' that the Commission will consider. A recovery of efficient 'profits' will be a central part of the investigation by the Commission.

The Commission will also need to determine whether CLS is required to meet all of the appropriate efficient costs that would apply to a private sector operator. Costs in this particular context are non-capital costs comprising operating and maintenance costs. Other non-capital costs, in the form of royalty fees, taxes and other Government charges will also be considered.

The Commission will be considering whether CLS received an advantage from its government ownership in terms of the costs that it is required to fund from its activities. The extent to which CLS is required to meet costs at rates or levels above those set in the market will also be of interest to the Commission.

The Commission will review the current financial records of CLS, its requirements in relation to the payment of tax and/or dividends, access to loans or other financial benefits deriving from its government ownership, the treatment in the accounts of capital expenditure and depreciation (particularly in terms of the recovery of these costs) and any other requirement or obligation falling on CLS, or advantage obtained by CLS, from its government ownership.

The Commission will review all financial and accounting records to confirm financial data provided as part of this inquiry.

3.6 Cost allocation and pricing policy

The Commission's focus on the recovery of efficient costs discussed above is consistent with the principle of productive efficiency – that the products or services of a given standard are produced at lowest cost. Productive efficiency can be promoted through competition. The Commission is also concerned that the financial arrangements of CLS should also reflect the principle of allocative efficiency, which requires that prices should reflect underlying economic costs so that resources are allocated to their highest value use. Under the allocative efficiency principle, the price paid for a particular service should be based on the costs of providing that service. In considering the means by which costs (capital and non-capital) are allocated to individual services, the Commission will consider whether costs that are directly attributable to particular services have been directly assigned to those services as part of the price setting arrangements adopted by CLS. In terms of the costs that are not directly attributable, the Commission will consider whether the allocation criteria used by CLS reflect a causal relationship between the provision of the service and the incidence of the cost or, where no causal relationship exists, that the criteria are otherwise relevant to the incidence of the cost.

In addition to the principles of productive and allocative efficiency, the Commission is mindful of the need to consider the arrangements from the principle of dynamic efficiency (that is, the arrangements for providing for innovation and improvement in products and services offered as improved technologies become available). The Commission will consider the investment policies and programs adopted by CLS and how these programs are funded and the costs allocated to the services provided by the business for pricing purposes.

The cost allocation practices applied by CLS need to be reviewed and considered in the context of recognised and accepted accounting practices and principles.

How are prices for individual services determined? What are the pricing practices of CLS?

What discounts or other concessions are provided for certain customers, directly or indirectly, by CLS?

4 Submissions and timetable

The terms of reference for this inquiry prescribe a completion date of 24 February 2006. The Commission is conscious that to achieve that timetable the process will need to be completed expeditiously.

A summary of the timetable for the inquiry is as follows:

Submissions on issues paper due	2 December 2005
Draft decision due for release	23 December 2005
Submissions on draft decision due	3 February 2006
Final decision due for release	24 February 2006

In the course of its inquiry, the Commission will seek public input and comment relating to the issues raised in this paper and subsequent reports. At this stage the Commission would welcome information about the issues raised by the reference. The Commission will accept submissions in a range of media (eg in writing or electronically). The Commission is open also to meeting with interested parties to discuss issues.

Those intending to make a submission to this investigation should be aware that the Commission publishes all submissions made to its inquiries on its website, unless there is a specific claim for information to be treated as confidential. Submissions are also available for scrutiny at the Commission's offices, by arrangement through the secretariat.

Appendix 1 Terms of reference

Australian Capital Territory

Independent Competition and Regulatory Commission (Notice of Acceptance) 2005 (No 1)

Notifiable instrument NI2005

made under the Independent Competition and Regulatory Commission Act 1997, s. 19C (Acceptance of regulatory references – government-regulated activities), s. 19E (Terms of regulatory references) and s. 19H (Procedure for regulatory reference investigations)

Terms of reference

for an investigation into Capital Linen Service

Specified requirements in relation to investigation under section 19C:

Following a request from the Minister for Urban Services and pursuant to subsection 19C(1) of the Act, I specify the following requirements in relation to the conduct of the investigation:

The Independent Competition and Regulatory Commission (the Commission) will investigate whether Capital Linen Service (CLS), by reason of its government ownership, has a competitive advantage, in respect of services it provides, to the private sector. In reaching its conclusion, the Commission will consider and report on:

1. An assessment of the market(s) in which CLS operates and the extent to which it is in competition with private sector enterprises, including a consideration of any competitive advantages and/or disadvantages under which CLS operates.
2. The extent to which cross-subsidisation between market segments exists (for example, private versus public sector customers, health sector versus accommodation/restaurant linen customers).
3. Whether CLS undertakes any community service obligations (CSOs) and, if so, whether these CSOs are appropriately costed and transparently funded.
4. The extent to which CLS is complying with the full range of competitive neutrality principles as outlined in the Competition Principles Agreement relating to tax neutrality, borrowing neutrality and regulatory neutrality.
5. Reform option recommendations about the above matters which best achieve the objectives of clause 3 of the Competition Principles Agreement.

Specified requirements in relation to investigation under section 19E:

Pursuant to subsection 19E(1)(a) of the Act, I specify the following requirement in relation to the conduct of the investigation:

- In undertaking the investigation, the Commission is to report on the matter no later than 24 February 2006.

Specified requirements in relation to investigation under section 19H:

Pursuant to subsection 19H(2)(a) of the Act, I specify the following requirement in relation to the conduct of the investigation:

- In undertaking the investigation, the Commission is to request submissions from key interested parties and the wider public.

Paul Baxter
Senior Commissioner

for the Independent Competition and Regulatory Commission

21 October 2005

Appendix 2 Competition Principles Agreement extracts

Competition policy considerations

Interpretation

[competition principles agreement cl 1 (3) (d)-(j)]

1 (3)

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

(f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

(g) economic and regional development, including employment and investment growth;

(h) the interests of consumers generally or of a class of consumers;

(i) the competitiveness of Australian businesses;

(j) the efficient allocation of resources.

Competitive neutrality principles

Competitive neutrality policy and principles

[competition principles agreement cl 3 (1) & (4)-(7)]

3 (1) The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.

(4) Subject to subclause (6), for significant Government business enterprises which are classified as "Public Trading Enterprises" and "Public Financial Enterprises" under the Government Financial Statistics Classification:

(a) the Parties† will, where appropriate, adopt a corporatisation model for these Government business enterprises (noting that a possible approach to corporatisation is the model developed by the intergovernmental committee responsible for GTE National Performance Monitoring); and

(b) the Parties† will impose on the Government business enterprise:

(i) full Commonwealth, State and Territory taxes or tax equivalent systems;

(ii) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and

(iii) those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.

(5) Subject to subclause (6), where an agency (other than an agency covered by subclause (4)) undertakes significant business activities as part of a broader range of functions, the Parties† will, in respect of the business activities:

(a) where appropriate, implement the principles outlined in subclause (4); or

(b) ensure that the prices charged for goods and services will take account, where appropriate, of the items listed in subclause (4)(b), and reflect full cost attribution for these activities.

(6) Subclauses (4) and (5) only require the Parties† to implement the principles specified in those subclauses to the extent that the benefits to be realised from implementation outweigh the costs.

(7) Subclause (4) (b) (iii) shall not be interpreted to require the removal of regulation which applies to a Government business enterprise or agency (but which does not apply to the private sector) where the Party† responsible for the regulation considers the regulation to be appropriate.

Note [not included in the agreement]:

† Party is defined in the agreement (cl 1 (1)) to mean the Commonwealth, a State, the Australian Capital Territory or the Northern Territory of Australia, if the jurisdiction concerned has signed the agreement and has not withdrawn. The Australian Capital Territory has signed the agreement and has not withdrawn from it; thus it is a party.

Legislation review principles

Legislation review

[competition principles agreement cl 5 (1) & (9)]

5 (1) The guiding principle is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and

(b) the objectives of the legislation can only be achieved by restricting competition.

(9) Without limiting the terms of reference of a review, a review should:

(a) clarify the objectives of the legislation;

(b) identify the nature of the restriction on competition;

(c) analyse the likely effect of the restriction on competition and on the economy generally;

(d assess and balance the costs and benefits of the restriction; and

(e) consider alternative means for achieving the same result including non-legislative approaches.

Glossary and abbreviations

CLS	Capital Linen Service
COAG	Council of Australian Governments
Commission	Independent Competition and Regulatory Commission
CSOs	community service obligations
ICRC Act	*Independent Competition and Regulatory Commission Act 1997*