

National Competition Policy: Applying Competitive Neutrality Principles to public camping in Tasmania

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I. INTRODUCTION

I.1. Background

Competitive neutrality principles require public entities involved in significant business activities to compete on fair and equal terms with private sector businesses, when there is a net public benefit in doing so.

The Competitive Neutrality Policy and Principles are set out in clause 3 of the *Competition Principles Agreement*, adopted by the Commonwealth and all state and territory governments on 11 April 1995.

Clause 3(1) of the Agreement states –

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.

Under clause 7 of the Agreement, the states and territories agreed to apply National Competition Policy, including competitive neutrality principles, to local government.

States and territories are free to determine their own agenda for implementation of competitive neutrality principles. Application of the principles is published in policy statements, in accordance with the Agreement.

This document is Tasmania's policy statement for the application of competitive neutrality principles to the provision of public camping facilities by public entities.

If interpretation of this policy statement results in outcomes that are inconsistent with the principles of competitive neutrality, the Tasmanian Economic Regulator and the Treasurer (the Minister responsible for competition policy) have discretion to apply the tests in a manner that reflects the Competitive Neutrality Policy and Principles set out in clause 3 of the Competition Principles Agreement.

I.2. Definitions

Public camping includes the provision of temporary or permanent facilities or activities that attract, benefit or provide for overnight camping in a place owned or controlled by a public entity, irrespective of whether a fee is charged for the use of any facilities provided.

Public camping is considered to be facilitated by a public entity where a public place under the control or responsibility of that entity is used for public camping purposes, regardless of whether or not the entity intended for that place to be used for the purpose of public camping.

Public entity includes local governments and any Tasmanian Government agency, business or authority that provides or facilitates public camping.

Below cost public camping means public camping provided without the application of full cost attribution pricing principles, including free camping.

1.3. Tasmanian Economic Regulator

The *Economic Regulator Act 2009* establishes the Tasmanian Economic Regulator as the independent body responsible for investigating complaints alleging breaches of competitive neutrality principles.

The Economic Regulator may receive complaints from business operators who believe their business is detrimentally affected by a significant business activity of a public entity in contravention of the competitive neutrality principles. Information on how to lodge a complaint, including a guideline and form, is available on the Economic Regulator's website: <http://economicregulator.tas.gov.au/other-industries/competitive-neutrality>.

This policy statement is designed to assist all stakeholders to understand how the Economic Regulator will consider the application of competitive neutrality principles in relation to a complaint about public camping.

This document also provides information to guide public entities on the process for seeking a Ministerial Statement in relation to specific public camping facilities.

While this information is intended to provide the greatest clarity possible, applying the principles requires a degree of judgment and it is not possible to predict all of the circumstances and market conditions in which the principles are to be applied.

In situations not clearly defined within this policy statement, the Economic Regulator or the Treasurer will consider matters on a case-by-case basis with reference to the broader application statements and the *Competition Principles Agreement*.

1.4. Related policies and documents

This policy statement supports and is to be read alongside the following documents, available on the Economic Regulator website, which provide broad guidance on applying competition principles to public entities:

- *Application of the Competitive Neutrality Principles under National Competition Policy* (Government of Tasmania, June 1996).
- *National Competition Policy: Applying the Principles to Local Government in Tasmania* (Treasury, December 2013).
- *Identification and management of significant business activities by local government in Tasmania to comply with competitive neutrality principles* (Treasury, December 2013).
- *Corporatisation Principles for Local Government Business Activities* (Treasury, December 1998).
- *Full Cost Attribution Principles for Local Government* (Treasury, June 1997).
- *Guidelines for considering the public benefit under the National Competition Policy* (Treasury, March 1997).

This policy statement replaces and supersedes all other public documents concerning the application of Competitive Neutrality Policy to public camping, including the *Statewide Directions Paper – Review of Council Recreational Vehicle Overnight Camping Services, May 2012*.

1.5. Policy objective

The Tasmanian Government supports the growth of the visitor economy and recognises the importance of Recreational Vehicle tourism and the role of commercial caravan parks, particularly for smaller regional centres. The Government is committed to the National Competition Policy and the application of competitive neutrality principles where it is in the public benefit.

In recognition of the role of local government in pursuing regional and economic development in the interests of their communities, there must be balance in applying competitive neutrality principles to ensure that these objectives can be achieved without restricting or preventing private sector businesses from effectively competing in relevant markets.

This policy statement is intended to achieve the right balance by clearly defining the application of competitive neutrality principles to public camping facilities and allowing public entities to provide below cost public camping in certain circumstances.

A Ministerial Statement of the application of competitive neutrality principles on a specific public camping facility will provide certainty to the public entity responsible for the activity and the relevant local community and businesses.

A Ministerial Statement has the effect of exempting the relevant public camping activity from competitive neutrality principles, subject to conditions. It does not provide any exemption from any other legal obligations or liabilities of the public entity in relation to the activity, including compliance with the *Competition and Consumer Act 2010 (Cth)*.

1.6. Reporting by local government

Local governments are required to include all significant business activities in annual reports, in accordance with section 72(1)(caa) of the *Local Government Act 1993*. The effect of this policy statement is that all local government public camping activities that comprise more than 10 per cent of the relevant market must be reported in the relevant council's annual report. This requirement applies regardless of whether full cost attribution principles are adopted in relation to that public camping activity or whether a Ministerial Statement has been issued. If a council has undertaken a public benefit assessment which concludes that it is not appropriate to apply full cost attribution principles to a specific significant business activity, a summary of that assessment should be included with the relevant reporting under section 72(1)(caa) of the *Local Government Act*.

While there is no statutory requirement, the Government requests local government to include reporting of all public camping activities together with the significant business activity reporting in their annual reports. This will assist the ongoing review of the application of competitive neutrality principles to public camping and ensuring the right policy balance is maintained as circumstances and market conditions change over time.

2. POLICY GUIDELINES

This section provides guidance on how public entities should undertake the various assessments when applying competitive neutrality principles to the provision of public camping facilities, the steps in the decision-making process and the evidentiary requirements to support the entity's decisions in the event a complaint is received by the Economic Regulator.

2.1. Test for applying competitive neutrality principles to public camping

For the purposes of applying competitive neutrality principles, the following tests apply to the provision of public camping facilities in Tasmania:

Step 1: Business activities of public camping

In this policy statement, public camping (as defined in Part 1.2) is a business activity.

Further guidance and examples of public camping business activities are set out in Part 2.2.

Step 2: Significant business activities

The test for determining whether the provision of a public camping facility is a significant business activity is based on the quantitative market share threshold explained below.

Market share threshold

For each public camping facility, the public entity must assess the total number of non-powered camping sites within a geographic market area of 60 km drive from the public camping facility (the geographic market). If the facilities are in separate locations within the geographic market, the public entity must aggregate the total non-powered public camping sites.

If the total number of non-powered public camping sites provided by the public entity is more than 10 per cent of the total number of non-powered camping sites within the geographic market, the public entity must apply full cost attribution principles unless otherwise permitted under the arrangements in this policy statement.

This policy statement has been designed to provide clarity about the application of competitive neutrality principles to the provision of non-powered overnight camping facilities. However, if a public entity provides powered camping sites, the number of powered camp sites are to be included in the total number of public camping sites in the geographic area.

The role of the Economic Regulator in applying the significant business activity test where there is no Ministerial Statement

If there is a competitive neutrality complaint by an affected party and there is no Ministerial Statement in effect, the Economic Regulator will apply the market share threshold to determine the significant business activity test using the same principles set out above. However, the Economic Regulator will determine the geographic market area by a 60 km drive from the location of the complainant's site.

Step 3: Below cost public camping above 10 per cent of the geographic market

This section applies when a public entity provides more than 10 per cent of the total number of non-powered camping sites in a geographic market and does not apply full cost attribution pricing principles.

If a public entity intends to provide below cost public camping at more than 10 per cent of the sites in the geographic market, the public entity must demonstrate, with appropriate evidence, that there are net public benefits in not applying full cost attribution pricing principles (a public benefit assessment).

Step 4: A public benefit assessment

This section applies where a public entity seeks to provide below cost public camping that represents more than 10 per cent of the total number of non-powered sites in the geographic market on the basis that there are net public benefits in doing so.

In these circumstances, the public entity must first consult with their communities, including private camping providers, and undertake a public benefit assessment.

The public benefit assessment requires public entities to consult with their communities to test whether there are net public benefits in providing public camping without applying full cost attribution pricing principles.

In the assessment, the public benefit is demonstrated if the harm caused to the market through unfair competition and, where relevant, any other costs of the policy are outweighed by the benefits to the community as a whole.

More information about the public benefit assessment is set out in Part 2.4 and Attachment B.

Step 5: Ministerial Statement

This section applies if a public entity has conducted a public benefit assessment and the assessment concludes that there is a net public benefit from providing public camping in a location without applying full cost attribution principles.

In these circumstances, the public entity may seek from the Treasurer a Ministerial Statement confirming the conclusion that full cost attribution principles should not apply, or not fully apply, to public camping in the specified location.

A Ministerial Statement will have the effect of exempting the public camping facility in the location specified in the Statement from the application of full cost attribution principles in the event of a complaint to the Economic Regulator.

The Treasurer will consider the public benefit assessment on the merits of the public entity's public policy objectives, the actual benefits and costs to the local community and any anti-competitive detriments. The Treasurer will issue a Ministerial Statement if satisfied that there is a net public benefit in not applying full cost attribution principles.

A Ministerial Statement may specify more than one location or a Ministerial Statement may be issued for each location requested by a public entity, at the Treasurer's discretion.

2.2. Public camping business activities

The first part of the competitive neutrality assessment clarifies whether an activity is a business, rather than a regulatory or governance function of the public entity. In the application of National Competition Policy to public camping, activities or facilities provided by a public entity will be considered business activities if a reasonable person would conclude that the provision of facilities or facilitation of activities is intended to benefit or attract overnight campers.

The National Competition Council considers that, in defining a business activity, the relevant considerations are the nature of the activity and the contestability of the market. In line with this, a business activity is one that involves the production of goods and/or services in a market that is, or has the potential to be, competitive.

The fact that there is no competition, actual or potential, with other providers of the same goods or services does not automatically imply that an activity is not a business, as the public entity may be setting artificially low prices and so preventing potential competitors from entering the market. For example, providing goods or services free of charge does not necessarily mean that the provision is not made in the course of a business activity. Some government services that are not business activities should nevertheless be subject to fees and charges if it is appropriate to recover the cost of providing the service from users, rather than the community as a whole.

The provision of a good or service that is considered to be necessary or essential, or involving an element of public service, does not prevent an activity from being considered a business activity. The ultimate decision as to whether an activity is a business activity may need to be resolved by the Economic Regulator in the event of a complaint. However, this guide should assist public entities and stakeholders to differentiate between activities that are purely public services or amenities, and activities that are intended for the benefit and attraction of RV tourists and other free campers.

The following general principles can be derived from previous Economic Regulator determinations of competitive neutrality complaints concerning public camping:

- The provision of basic public services and amenities for the benefit of the local community and visitors are not considered business activities. For example, the provision of a public toilet is not in itself a business activity.
- The availability of unrestricted free parking on a public road or in a public carpark in isolation is not a business activity.
- The provision of facilities and/or services clearly intended to attract RV/caravan tourists to stay overnight in an area or specific location are business activities.
- The promotion of a place or facility, whether by advertising, signage, RV Friendly Town/Destination accreditation or some other means, that is owned or controlled by a public entity establishes a clear intention for the place or facility to be used for public camping and is likely to be considered a business activity.
- Allowing overnight camping to occur in a public place that principally serves another purpose but also attracts RV/caravan tourists, in numbers and in frequency that are more than incidental, is considered to be the facilitation of public camping and is a business activity regardless of whether the public entity intended for the place to be used for public camping or promoted the place for that purpose.

2.2.1. Identifying public camping business activities

Public amenities

The provision and maintenance of a public toilet is not of itself a business activity. It is commonly expected that in an established town, however large or small, the local government will provide and maintain recreational areas such as parks and gardens, and there will also be public toilet facilities for the convenience of the local community and visitors. Similarly, other public amenities intended for the use of the local community and visitors, such as picnic areas, barbeque facilities, playgrounds, drinking water fountains and open-air cold water showers at entrances to beaches, are all government-provided services that are not of themselves business activities.

Car parking

Car parking is generally regulated by local government for a range of reasons such as public access, safety and traffic management. Regulatory approaches range from unrestricted on-road parking to time-limited or time-restricted parking, metered parking and dedicated free or fee-based car parking areas and facilities. The parking of a self-contained RV in a public place, where parking is legal and otherwise unrestricted, does not of itself constitute the undertaking of a business activity by the local government.

RV/caravan parking

Some local governments regulate the use of caravans, requiring a licence to occupy a caravan and/or imposing penalties for occupying a caravan in a public place. These types of restrictions, as well as the enforcement of parking restrictions, are authorised through the making of by-laws which, in accordance with the Competition Principles Agreement, are subject to competition policy requiring local governments to prepare a Regulatory Impact Statement where by-laws would restrict competition or have a negative impact on business. The absence of any explicit restriction or prohibition of RV parking or occupying a caravan in a public place does not constitute the undertaking of a business activity by the local government.

Waste disposal (dump points)

The consideration of whether the provision of a dump point is a business activity is less straightforward than other services or amenities because the users of a dump point are generally a self-contained RVs or caravans, tourist coaches or similar vehicles. While the principal purpose for providing a dump point may be environmental protection, the provision of it commonly relates solely to the activities of transiting vehicles, as local residents tend not to have a need for a sewage dump point. Therefore, in most cases the provision of a dump point will be considered a business activity in combination with other services or facilities used by RV/caravan tourists and the facilitation or allowance of nearby overnight parking by these vehicles.

The provision of a dump point in an area would not be considered the provision of public camping if there is no facility for overnight camping. In this scenario, it is expected that the principal purpose of the dump point is to prevent the illegal dumping of RV/caravan holding tanks in stormwater drains, on public land or in waterways. However, if a private business in the geographic market area also offers to the general public the use of a dump point facility for a fee, the public dump point may be considered to be a business activity in the market for sewage disposal (not camping) and would therefore need to be assessed under the general Competitive Neutrality Policy. A potential competitive neutrality complaint can only relate to the business activity being undertaken by the public entity, which in this case would be the activity of a dump point only, because there is no provision or facilitation of public camping.

Alternatively, the provision of a dump point at a location that incidentally attracts a number of RV/caravan tourists to park overnight on a regular basis may be considered to be the facilitation of public camping even if the relevant public entity had not intended it to be so (see the incidental overnight parking section below).

Rest stops

Highway rest stops are designed to provide motorists with a safe place to pull over, rest and revive on their journeys. These are principally road safety facilities intended for use by all motorists and usually for all types of vehicles, including cars, buses and trucks. Unless the relevant public entity has prohibited overnight parking or camping at a particular rest stop, these facilities may be legally used by self-contained RVs and caravans as a safer alternative to parking on the side of a highway. Under this policy statement, the allowance of overnight parking or camping at a rest stop will be considered a public camping business activity for the purpose of Competitive Neutrality Policy. The use of a rest stop by RV/caravan tourists must be assessed by the relevant public entity for significance in the market, together with any other public camping facilities within the geographic market area. That is, if the combined number of public camping sites available within the relevant geographic market area exceeds 10 per cent of the total public and commercial non-powered sites available in the area, competitive neutrality principles will apply unless determined to be inappropriate under a public benefit assessment.

Where a particular rest stop becomes popular with RV/caravan tourists as a public camping facility, the public entity responsible for managing the rest stop should consider whether facilitating public camping at that site prevents the site from being used for its principal purpose as a rest stop for motorists. In a public benefit assessment for public camping at the site, any limitation or prevention of the use of the site as a rest stop for road safety must be included as a cost of the public camping facility when determining whether to apply full cost attribution principles. Alternatively, the public entity may consider limiting or preventing use of the site for public camping to maintain its principal use as a rest stop.

Public parks and recreation grounds

The utilisation of public spaces, parks and recreation grounds are policy matters for the relevant public entities responsible for the facilities. Policies necessarily take into consideration the interests of the local community and broader public. In some cases, public camping provides an opportunity to further utilise these public resources when they are otherwise not in use.

In any space that is not a public road and is not private land controlled or managed by a public entity, overnight parking and camping by RVs, caravans and other vehicles, including camping in a tent, is public camping. The public entity that is responsible for the day-to-day care, maintenance and/or management of the public space, whether directly or through engagement of a private contractor or volunteers, is responsible for complying with Competitive Neutrality Policy.

All public camping provided or facilitated in public spaces, parks and recreation grounds as defined above is to be assessed in accordance with this policy statement. Where the public camping is assessed as a significant business activity in accordance with the 10 per cent market share threshold, competitive neutrality principles are to be applied, subject to a public benefit assessment.

Incidental overnight parking

Where parking and occupying a caravan or RV on the side of a public road or in a public parking space is not illegal or subject to local by-law restrictions or prohibitions, this is not considered to be the provision or facilitation of public camping by a public entity. However, if the occurrence of town-based parking by RV/caravan tourists becomes significant, either with reference to the market share threshold or in proportion to the size of the town, the local government should take steps to assess the impact of these activities on the local community, including residents, businesses and nearby caravan parks.

Generally, legal public parking by a small number of RV/caravan tourists will not be considered a public camping activity unless a complainant can demonstrate the practice is having a significant impact on the market. Potential complainants are required to approach the local council in the first instance to discuss their concerns. Councils are encouraged to investigate all concerns raised,

consider the broader community impacts of various policy options and attempt, in good faith, to negotiate an acceptable solution.

Promoting public camping

Any promotion by the public entity of a place, location, town or area as being available for public camping is considered to be the provision or facilitation of public camping. Where the market impact of public camping exceeds the 10 per cent market share threshold within the geographic market area, competitive neutrality principles must apply, subject to a public benefit assessment.

Promotion includes advertising, signage, RV Friendly Town/Destination accreditation and any other means of communicating or designating that a location is available for public camping.

Any combination of factors

While many of the factors mentioned above do not singularly constitute public camping business activities, when there are multiple services, facilities or activities combined, there is a much greater probability that public camping is being provided or facilitated. The greater the number of these factors that exist together in a location, the greater the attractiveness to RV/caravan tourists and consequently the greater impact on the market if public camping is substitutable for the services provided by nearby commercial caravan parks.

It is not appropriate to set a minimum number of factors that would constitute a public camping service or facility because the attractiveness of a site depends on the extent of alternatives within the geographic market area. Therefore, judgement of the intended use of the facilities is necessary. Wherever the facilities provide more benefit or convenience to overnight campers than to the local population, it is clear the facilities are intended to attract RV/caravan tourists.

2.3. Significant public camping business activities

For the purpose of applying competitive neutrality principles to public camping services and facilities, a public entity will be considered to be undertaking a significant business activity if the activity includes the provision, accommodation or facilitation of camping spaces greater than 10 per cent of the total number of non-powered camping sites available within the 60 km geographic market area.

If there is more than one public camping location within 60 kilometres drive of each other, they will be considered to be in the same market area. Public camping locations that are more than 60 kilometres apart by public road are considered to be in separate markets for the purpose of this policy statement. Public camping sites within the same market area are to be aggregated for the purpose of determining the market impact of the public camping activities.

2.4. Public benefit assessments

The Competition Principles Agreement requires competitive neutrality principles to be adopted only where appropriate and only to the extent that the benefits to be realised from implementation outweigh the costs.

Therefore, where a public entity has identified a need for public camping greater than the 10 per cent market share threshold, competitive neutrality principles should be adopted only where it is appropriate and where the benefits outweigh the costs, taking into account the matters set out in clause 1(3) of the Competition Principles Agreement, as set out below, or any other matters the public entity can reasonably justify in a public benefit analysis.

For example, when considering the appropriateness of the application of full cost attribution pricing to public camping, public entities may consider the extent to which economic and regional development goals, consumer interests (including the interests of RV tourists) and the efficient allocation of resources (including greater utilisation of public land, carparks and recreational

areas) could be detrimentally affected by the imposition of full cost attribution pricing. Entities also need to consider any detriments to the competitiveness of businesses and the related effects on consumer choice, employment and investment growth that would arise from not applying full cost attribution pricing. The costs of implementing and operating a pricing system may also be taken into account.

The purpose of the public benefit assessment is to determine whether there is a net public benefit from applying full cost attribution principles to a significant public camping business activity. Full cost attribution principles are used to neutralise the net competitive advantage enjoyed by a public entity arising from its public ownership.

The onus is on public entities to conduct an objective public benefit assessment to substantiate that the public benefit will not be served by applying competitive neutrality principles. While a public benefit assessment may only be formally required where the provision of public camping exceeds 10 per cent of the geographic market, public entities are encouraged to undertake a public benefit assessment when evaluating whether to allocate public resources towards the establishment and maintenance of any public camping services or facilities. Public benefit assessments support good decision making when public entities are faced with problems concerning public amenity, health, safety and environmental issues requiring a policy response.

Clause 1(3) of the Agreement provides that, without limiting the matters that may be taken into account:

- (a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or
- (b) for the merits or appropriateness of a particular policy or course of action to be determined; or
- (c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

- (d) government legislation and policies relating to 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; and
- (j) the efficient allocation of resources.

When considering the appropriateness of the application of full cost attribution pricing to public camping, public entities can consider the extent to which economic and regional development goals, consumer interests (including the interests of RV tourists) and the efficient allocation of resources (including public land, carparks and recreational areas) could be detrimentally affected by the imposition of full cost attribution pricing. Public entities also need to consider any detriments to the competitiveness of businesses and the related effects on consumer choice, employment and investment growth that would arise from not applying full cost attribution pricing.

Clause 3(6) of the Competition Principles Agreement provides that competitive neutrality principles, such as full cost attribution pricing, are only required to the extent that the benefits to be realised from implementation outweigh the costs. Factors to be taken into account when considering the costs and benefits of implementing full cost attribution include:

- the benefit of increased market contestability from implementation;
- the benefit of improved performance through incentives to operate more efficiently;
- the benefit of better clarification of commercial and non-commercial objectives;
- the cost of any legislative or regulatory amendment to facilitate the implementation of full cost attribution pricing;

- the cost of obtaining information and undertaking research and analysis of appropriate levels for tax equivalents, debt guarantee fees or pricing principles, necessary to implement full cost attribution pricing; and
- administration costs, including the administration of tax equivalent and debt guarantee frameworks, as well as the costs of any additional reporting requirements and collecting fees and charges from users.

2.5. Full cost attribution principles

Full cost attribution pricing does not mean public entities must charge for public camping at rates that are at least as high as commercial businesses for the same service, it simply means that when setting prices, the public entity is to include provision for any net advantage it enjoys as a result of its public ownership. Examples of advantages may include:

- tax exemptions;
- no requirements to operate on commercial terms;
- lower cost of financial capital;
- exemption from certain Commonwealth and State legislation;
- the ability to cross-subsidise commercial activities from other government operations; and
- immunity from bankruptcy and the threat of take-overs.

Disadvantages from public ownership may include:

- higher accountability costs through additional reporting requirements;
- public sector award conditions and superannuation costs;
- requirements to undertake non-commercial activities and provide public services;
- a lack of operational and managerial autonomy due to Ministerial or council directives; and
- a lack of access to taxation benefits such as depreciation of assets and other deductions.

As listed above, full cost attribution would include costs that a public entity does not actually incur, but which private businesses do incur in the provision of the same service.

For example, when determining the 'cost' of insurance in the provision of a public camping facility, rather than apportioning a percentage of the overall insurance costs that are actually attributable to that service from the operating budget, full cost attribution would generally require that a public entity seek advice as to the cost of taking out separate insurance as if it were a private operator.

Public entities that can offer lower prices on a commercial basis through innovation and operational efficiencies are encouraged to do so, as this is legitimate pro-competitive behaviour. Provided the public entity can demonstrate the application of full cost attribution pricing that effectively eliminates any net competitive advantage from public ownership, competitive pricing in the market will be supported by the Economic Regulator. Full cost attribution principles are not intended to protect existing commercial operators from competitive pricing in the market.

A Full Cost Attribution Checklist, addressing the types of costing considerations to be taken into account when applying full cost attribution, is included in this paper (see Attachment A). It is intended that the template can be adapted by public entities to suit the nature of the services they deliver.

2.6. Contact

Copies of this document can be obtained from the National Competition Policy section of the Treasury website: <http://www.treasury.tas.gov.au>, or by contacting Treasury as set out below:

The Economic Reform Unit of the Department of Treasury and Finance can provide assistance and feedback on the preparation of public benefit assessments where a Ministerial Statement is sought on request.

Assistant Director
Economic Policy Branch
Department of Treasury and Finance
GPO Box 147
HOBART TAS 7001

Ph: (03) 6166 4162

Fax: (03) 6233 5690

Email: economic.reform@treasury.tas.gov.au

Attachment A. Full Cost Attribution Checklist

NOTE: The Full Cost Attribution Checklist is not exhaustive, but rather an indicative listing of the types of costs that a public entity may need to consider. Depending on the nature of the services being provided, some public entities may identify additional costs to be taken into account whilst for other public entities some of the listed costs will not apply.

FULL COST ATTRIBUTION CHECKLIST FOR PROVISION OF PUBLIC CAMPING FACILITIES

Cost item	Total annual cost associated with the site (\$)	Proportion attributable to camping activities if the site is used for other activities (%)	Annual cost attributable to camping at the site (\$)
<u>Operating costs</u>			
Salaries direct (including on-costs such as payroll tax, workers compensation and superannuation)			
Salaries indirect (i.e. proportion of salaries and on-costs of corporate services staff including HR, Finance and Administration staff)			
Repairs and maintenance			
Insurance (include general property and public liability)			
Power			
Rubbish collection			
Water and sewerage			
Rent			
Gardening			
Consumables			
Advertising/Marketing			
Corporate supplies			
Signage			
Administration			
Other (detail)			
<u>Capital costs</u>			
Financing costs ¹ (i.e. interest on borrowings to finance the construction of assets such as amenity blocks)			
Depreciation			
Opportunity Cost of Capital			
<u>Competitive neutrality costs</u>			
Taxation e.g. land tax, rates			
Guarantee fees			
Tax equivalents ²			

NOTES:

1. Financing costs

The market rate of interest should be based on the Reserve Bank of Australia's 90-day Bank Accepted Bill Rate / Small Business Loan Rate

2. Tax equivalents

Tax equivalents are competitive neutrality costs as public entities are not liable for Commonwealth income tax; i.e. to ensure that public entities are operating on a 'level playing field' with private operators, a tax equivalent amount should be calculated and accounted for when identifying the costs of providing public camping facilities. Tax equivalents are calculated by multiplying the net profit from providing the public camping facilities by the Commonwealth corporate tax rate (currently 30%) as follows:

Revenue
Less: operating costs
Less: capital costs
Less: competitive neutrality costs.

= Net profit before tax equivalent expense

Less: Tax equivalent expense (30% of net profit before tax equivalent expense)

= Net profit after tax equivalent expense

The net profit after tax equivalent expense should be equal to or greater than 0; if less than 0 it means that the price being charged is less than cost and, the price, therefore, breaches the competitive neutrality principles.

It is likely that public entities do not have site usage data because they have either not monitored usage of the site or, for a new site, there is no history of usage.

Public entities will need to estimate revenue to arrive at the net profit and calculate the tax equivalent expense as, in the absence of site usage data, revenue can only be estimated on the basis of the expected number of site visits in a financial year.

Attachment B. Public Benefit Assessment Guide

The following list of considerations, whilst not exhaustive, can be used to assist in determining whether there is a net public benefit from not applying full cost attribution principles to a public camping facility:

- promotion of competition in an industry, such as tourism;
- economic development;
- innovation and business efficiency;
- industry rationalisation;
- employment growth or the prevention of unemployment in efficient industries or particular regions;
- assisting efficiency for small businesses (for example, by providing guidance on costing and pricing or marketing initiatives which promote competitiveness);
- improving the quality and safety of goods and services and expand consumer choice;
- supply better information to consumers and business, thereby permitting more informed choices in their dealings at a lower cost;
- address any externalities that affect community welfare, such as noise levels or risks of motor accidents;
- promote equitable dealings in the market;
- promote industry cost savings, resulting in contained or lower prices at all levels of the supply chain;
- implement desirable community standards with the minimum impact on competition in the marketplace; or
- improve the protection of the environment.

Structuring Public Benefit Assessments

The following guidance is not intended to constrain or limit the information a public entity may wish to provide in support of its public benefit argument. This is simply a suggestion for the minimum details that should be provided to demonstrate that the appropriate policy and stakeholder considerations have formed part of the assessment of net public benefit.

Where a public entity considers that the implementation of full cost attribution principles would compromise other public policy objectives, it will need to conduct a public benefit assessment in order to demonstrate its case for not implementing full cost attribution principles for the public camping activity. If implementation of full cost attribution pricing is shown to be not in the public benefit, then the public camping activity is exempt from Competitive Neutrality Policy.

The public benefit assessment should, at a minimum:

I. Describe the nature of the significant business activities

As a preliminary step, a public entity may wish to identify any public camping facilities that fall within the market share threshold and have special or unique circumstances that may result in the site not being a substitute, or being a very weak substitute, for facilities provided by commercial caravan park operators. If the public entity can demonstrate that a particular site is not a substitute, or is a very weak substitute, for the commercial provider's service, the anti-competitive harm on the commercial operator of not applying full cost attribution pricing is likely to be lower. This is a factor that can be included in a

public benefit assessment on whether to apply full cost attribution pricing at that particular site.

2. Clearly identify the policy objective for undertaking a public camping business activity

Policy objectives refer to those which are endorsed by the Government, a Minister or a local government body. Supporting documentation could be in the form of a Ministerial policy statement or a formal resolution of a local government.

For example:

- Setting up a dump station to prevent tourists from dumping sewage on land, in stormwater drains or in waterways.
- Providing an off-road safe location for RV and caravan parking to prevent tourists parking on the roadside in dangerous places, in front of residences or where they cause traffic congestion.

This section is the public policy justification for why a public entity considers it is appropriate to provide public camping facilities.

3. Identify all affected stakeholders and their interests/concerns

In the context of public camping, affected stakeholders are likely to include (but are not limited to):

- The public (ratepayers, local residents and visitors);
- Commercial caravan park operators;
- Local businesses, including tourism/hospitality businesses, grocers and other retailers, service providers, etc; and
- Tourists.

When identifying stakeholder interests and concerns, it is important to link stakeholder interests with the policy objectives that are addressed by undertaking the public camping activity (public safety, environmental protection, etc), the benefits created (tourism attraction, increased competition and consumer choice, economic development and local employment, tourism spending, etc) and any adverse or negative impacts, such as the anti-competitive detriment to commercial caravan parks. Where negative impacts are identified, the analysis should include any steps taken or proposed to be taken to minimise or eliminate these impacts.

4. Details of public consultation and market research undertaken

Public consultation, both general and targeted towards affected stakeholders, is a mandatory component of any public benefit assessment intended to be submitted for consideration by the Treasurer. As the public benefit assessment will be made publicly available, the preparing public entity must consider that it will be publicly accountable for the appropriateness of the public consultation. This component of the public benefit assessment should detail the method of consultation undertaken, including how it was advertised, how submissions and feedback were received, whether a public meeting or hearing was held, and a summary of the feedback/submissions received and how this was considered in the development of the final decision regarding the public camping activity.

5. Demonstrate that achievement of the stated policy objective would be jeopardised if full cost attribution pricing was implemented.

For example:

- Charging a fee for the use of a dump station may disincentivise the use of the facility and thereby do nothing to prevent pollution.
- Charging a fee for public camping may disincentivise the use of the public camping facilities, thereby failing to achieve the objective of preventing overnight parking in undesired locations.

6. Determine the best available means of achieving the overall policy objectives, including an assessment of alternative approaches.

In this assessment, the public entity should identify other means of achieving the overall policy objectives, including the proposed option of providing or facilitating public camping, and assess the relative merits of the alternative approaches. The determination of the best available means may involve a qualitative assessment of the priorities assigned to – and by implication, the trade-offs arising from – the competing policy objectives.

For example:

- Alternative approaches to stop pollution may be to issue environmental notices, infringement notices or introduce by-laws to prevent tourists from dumping sewage on land, in stormwater drains or in waterways. Assessments of each option might reveal that one or another is cheaper or more expensive to implement, or more or less effective to monitor and enforce.
- Introducing parking restrictions in certain locations to prevent problem parking or by-laws to restrict the occupation of RVs and caravans in public places could be alternative options to providing public camping. Both options may be cheaper than establishing and maintaining camping facilities and would alleviate the need to apply competitive neutrality principles. Alternatively, the cost of implementing full cost attribution and employing staff to monitor the grounds and collect fees could outweigh the benefits of neutralising the competitive advantage of providing free camping, whereas prohibiting parking and not providing an alternative may deter visitors from the area altogether.

The public benefit assessment should be undertaken in consultation with the affected community, including businesses that would be adversely affected by unfair competition, through an open and transparent process. The public entity is best placed to determine, on a case-by-case basis, the level, nature or scope of the consultation having regard to the complexity of the issues and the impact on the community. At the conclusion of the consultation, the processes and outcomes of the public benefit assessment should be documented and made publicly available. Information that is commercial-in-confidence may be excluded, provided a statement specifying reasons to support the claim is noted in the public documentation.

The public benefit assessment would demonstrate whether the anti-competitive detriment of the decision to not apply full cost attribution pricing is outweighed by the sum of the public benefits, such as regional development, public health and safety or the efficient allocation of resources. The public consultation process will provide the public entity with valuable information to ensure the best overall policy option is identified to achieve the objective.

The Economic Reform Unit of the Department of Treasury and Finance can provide assistance and feedback on the preparation of public benefit assessments where a Ministerial Statement is sought, on request.