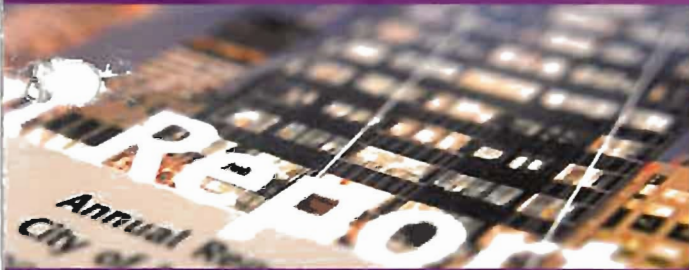


National Competition Policy and Local Government



A revised statement of Victorian Government policy

January 2002

National Competition Policy and Local Government

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Foreword

Local government has an important role in continuously improving the services it provides to ensure they remain relevant and accessible to the communities that rely upon them.

The National Competition Policy and Local Government statement sets out the Bracks Government's new approach to the implementation of competitive neutrality in local government within the Best Value Principles context.

Through a simple but robust public interest test, local government can balance competitive neutrality with key local priorities and public policy objectives and a public consultative process.

With our emphasis on local community consultation under the Best Value Principles and the public interest test in the National Competition Policy and Local Government statement, local government can efficiently and effectively deliver important public services to its communities.



Bob Cameron MP
Minister for Local Government



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Introduction

Best Value context

This document is a revision of the 1996 *National Competition Policy and Local Government – A Statement of Victorian Government Policy*. The revised statement reflects the changes that have occurred in Victorian policy in the five years since National Competition Policy (NCP) was first applied to local government. Compulsory competitive tendering (CCT) was abolished in December 1999, Best Value Principles introduced at the same time and Competitive Neutrality Policy Victoria 2000 launched in October 2000. These changes have recast the operating environment for local government. A policy revision is necessary to clarify the present status of all NCP requirements and, in particular, assist Victorian councils to apply competitive neutrality in a Best Value Victoria context.

National reform objectives

Nationally, NCP principles require reform of government monopolies, separation of a government's regulatory and business functions, removal of legislative restrictions on competition and the adoption of pricing reforms to recognise and offset the public ownership advantages enjoyed by government businesses.

Government business activities

At the outset, it is worthwhile restating the objectives of NCP and noting that it does not automatically demand greater exposure to competition, although it does require a reassessment of how government conducts business activities that compete, or potentially compete, with the market.

'Competition policy is not about the pursuit of competition for its own sake. Rather, it seeks to facilitate effective competition in the interests of economic efficiency while accommodating situations where competition does not achieve economic efficiency or conflicts with other social objectives.'

National Competition Policy Report of Independent Committee of Inquiry 1993, p.6.

'The Victorian Government is committed to the ongoing implementation of National Competition Policy in a considered and responsible manner. This means that public interest considerations should be taken into account explicitly in any government decisions on the implementation of National Competition Policy.'

Competitive Neutrality Policy Victoria 2000
Hon. John Brumby MP Treasurer.

These two statements, made seven years apart, affirm the balance required if NCP is to be applied in the public sector and achieve its potential for reducing the costs of regulation, infrastructure and government services. These costs ultimately affect the whole community.

Competitive neutrality and local government business activities

The competitive neutrality principle has been particularly relevant in local government. Competitive neutrality (CN) was explained in the Victorian Government's 1996 Competitive Neutrality Policy (CN Policy) and local government policy statement. The CN Policy provided three CN measures – corporatisation, commercialisation and full cost-reflective pricing – each of which involved a set of structural and accounting reform measures. Local government's initial response was mediated by the nature of its tendering obligations under CCT and by the scale of its business activities.

Corporatisation was relevant only to the few councils that owned and operated major trading businesses. These councils effected a structural separation between business and parent council by creating corporations that were distinct entities under Corporations Law. Some councils adopted a form of commercialisation that involved undertaking structural reform by administratively separating regulatory and business functions and creating internal business units. A few councils set up business unit 'boards', often with external members to provide commercial expertise.

Most councils applied full cost-reflective pricing to their business activities (assuming they were not already fully costed) as they were tendered in accordance with CCT schedules. In time, councils also applied competitively neutral pricing to significant businesses that they had not tendered, but which impacted directly or potentially on the market.

Competitive neutrality and tendering

It is useful to note that CN and competitive tendering are distinct mechanisms. CN does not necessarily lead on to tendering; tendering does not inevitably result in outsourcing. However, where councils use in-house tenders or tender externally to provide services, they will continue to apply CN to those tenders as a matter of good tendering practice. They will ensure that staff bids are fully costed, include overheads and a rate of return and are adjusted for taxes comparable with those incurred by private-sector tenderers. Cost adjustments, both positive and negative are made to ensure full cost-reflective pricing is applied to offset any net competitive advantages that a government business may enjoy as a result of its public-sector status. The adjustments are necessary to ensure that all tenderers are assessed on an equitable basis.

A key objective of NCP remains the fostering of better informed public resource allocation decisions by all levels of government.

NCP and Victorian local government

Application of NCP to local government

The 1996 *National Competition Policy and Local Government – A Statement of Victorian Government Policy* provided for NCP reform to be implemented by councils in four areas:

- Competition Code/trade practices
- CCT
- CN
- local laws.

Under this *National Competition Policy and Local Government* policy statement councils are to apply NCP reforms in three areas:

- Competition Code/trade practices
- local laws
- CN – in a Best Value Victoria context.

Further information on the NCP reform framework and the hierarchy of documentation through which its application to local government can be traced, is set out in Appendixes A and B.

Competition code/trade practices

Councils undertook initial trade practices audits in 1995–96 and subsequently developed compliance strategies. It is expected that councils are, by now, fully aware of their obligations under trade practices legislation and the severe corporate and individual penalties that can be imposed where breach is proven. However, they may still find it useful to manage their risk by conducting audits of the whole or parts of their organisation from time to time.

Areas where councils could be at risk of engaging in conduct that breaches the Competition Code or consumer protection provisions of the *Trade Practices Act 1974* include:

- arrangements with other councils to charge agreed fees for a particular service or use of a facility that operates in competition with the market
- use of profits from monopoly activities to subsidise activities with the purpose or intent of damaging a competitor (predatory pricing)
- misuse of regulatory power to damage a competitor in a market where the council is both a regulator and a supplier

- procedures for procurement, tendering and contracting in relation to the potential for collusion and misleading or deceptive conduct.

An awareness program is an accepted compliance strategy. The local government sector has developed trade practices compliance programs to raise awareness within council organisations of the conduct that is prohibited as anti-competitive under the *Competition Code* and to promote behaviour that complies with the Code. Councils could consider having compliance programs that encompass both councillors and staff.

Some councils may encounter specific trade practices issues from time to time as their service businesses develop. For example, where a council has concerns that a partnership proposal to develop a service business could be construed as an anti-competitive agreement, it may want to approach the Australian Competition and Consumer Commission (ACCC) for authorisation. The ACCC has power to authorise conduct, save for misuse of market power, which would otherwise offend Part IV provisions. Authorisation is subject to the public interest test provisions of the *Trade Practices Act 1974*.

In most cases, to demonstrate NCP compliance for trade practices, a council is required:

- to have an ongoing trade practices awareness program in place
- to have a process for dealing with any trade practices complaints
- to report on the outcome of any independent investigation of a complaint by the ACCC.

Local laws

Similarly, for local laws, councils have satisfied the primary NCP obligation to review existing legislation and remove or justify any restrictions on competition. The ongoing obligation for councils is to ensure that their local laws, and the policies and guidelines that inform their application (for example, in determining whether to issue a permit under a local law) do not restrict competition unless:

- a council can demonstrate that the benefits of the restriction to the community clearly outweigh the costs, and
- the objectives of the local law can only be achieved by restricting competition.

To demonstrate NCP compliance for local laws, a council is required:

- **to maintain an ongoing awareness of the need to ensure that existing local laws, and the policies and guidelines that inform their application, do not restrict competition**
- **to apply the competition test to any new or amended local laws.**

This 'competition test' is enshrined in Schedule 8 of the *Local Government Act 1989* and must be included in the process of making any new local law. However, because a non-restrictive local law can become restrictive through the manner in which it is applied, councils should continue to review their local laws, policies and guidelines from time to time.

Competitive neutrality

'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 net competitive advantage simply as a result of their public sector ownership.'

Competition Principles Agreement 1995,
clause 3(1).

Policy sources

In October 2000, the Treasurer of Victoria released the Government's revised CN Policy, *Competitive Neutrality Policy Victoria 2000* and the Department of Treasury and Finance (DTF) produced the *Competitive Neutrality Guide to Implementation*. From 1 January 2001, CN Policy for local government is as stated in *Competitive Neutrality Policy Victoria 2000* and *Competitive Neutrality Guide to Implementation Victoria 2000*. Both documents are available on DTF's competition policy web site (www.vic.gov.au/ncp/default.html). The two policy documents are primary sources for both State and local government policy and emphasise the importance of the public interest in the application of CN to significant government businesses.

Significant businesses

CN applies only to significant government businesses. However, there is no comprehensive and objective definition of 'significant business'. A council must make its own two-part assessment to determine whether, in each case, an activity is:

- a business, and, if so
- a significant business.

The first part of the assessment clarifies whether an activity is a business, rather than regulatory or governance activity. In making this distinction, councils may be assisted by an understanding of trading (business) activities gained in conducting trade practices audits. CN does not apply to non-business, non-profit activities.

A business activity is characterised by:

- sale or provision of goods, services or works by a council in competition, actual or potential, with other providers of the same goods or services. A council may not, for example, claim that there is no competition where it has set artificially low prices and so deterred potential competitors from entering the market, and/or
- activity undertaken primarily for commercial purposes or profit and involving a degree of financial risk; for example, a municipal enterprise, and/or
- application of commercial systems, accounting and marketing to production, and tendering to supply external contracts.

If the activity is a business, the second issue is whether it is a significant business. Significance is indicated by market impact:

- the size of the business in relation to the overall market
- its influence or competitive impact in the market
- the resources it commands and the effect of poor performance.

Significance is not determined by a council's expenditure or revenue on an activity relative to the council's total expenditure or revenue. Significance is relative to the market in which the service operates. Useful questions for 'significance' are:

- **Size of market share**
How many consumers are there for the council service compared with those for similar services? What is the size of the council service compared with the size of the whole market? Sales figures may indicate the relative size of a council's market share.

- **Influence in the market**

What is the competitive impact of the council service in the relevant market? Is the council service a market leader or a minor player? Is the council service growing? If the council's service performance were to decline, how readily could other providers take over its market share? If it improved, would it draw new customers? Consider also, particularly where the council business is the only local or regional provider of the service, would competitors emerge if the council were to call for tenders? Sometimes a government business will be a local monopoly. It is still the expectation that while there is no private competitor – CN pricing should be considered to ensure resource allocation decisions reflect a true estimate of the implicit subsidy to the activity by rate payers or the community.

The assessment of 'significance' inevitably requires a degree of subjectivity and this makes it critical for a council to document its reasoning so that its assessment of significance is defensible and can withstand scrutiny in the event of an investigation.

Competitive neutrality measures

CN requires councils to remove or offset any net competitive advantages arising from government ownership. Some potential competitive advantages include:

- immunity from various taxes and charges
- immunity from various regulatory regimes
- explicit or implicit government guarantees on debts
- concessional interest rates on loans
- not being required to achieve a commercial rate of return on assets
- effective immunity from bankruptcy.

The CN measures available to offset competitive advantage include corporatisation, commercialisation and full cost reflective pricing. Further information on corporatisation and commercialisation is given in *Competitive Neutrality Guide to Implementation Victoria 2000*, p. 2. Councils rarely employ these measures. Councils should be aware that section 193 of the *Local Government Act 1989* may be invoked by a corporatisation proposal and that they may require prior approval(s) before proceeding.

Full cost reflective pricing ('CN pricing') is the most commonly used competitively neutral measure. It is more accurately described as a process of determining the CN cost of an activity and over the medium to long term councils are expected to price to recover CN costs for the business. Appropriate, usually market-based, pricing policies are required to recover CN costs, abnormal high CN pricing (relative to market price) could be indicative of inefficient resource

use. Appendix C is a diagrammatic presentation of CN costing.

Where a council does not make CN adjustments, or does not price to fully recover costs, it is effectively subsidising an activity. A subsidy must be made transparent and the community resources it consumes justified in public policy terms.

CN Policy applies to all significant government-owned businesses which are required to calculate full cost reflective pricing. Should the use of the CN measure conflict with some other policy objective, then council may subsidise the difference between the full cost-reflective price and actual price paid by the consumer. The council provides a subsidy of the difference. The subsidy is based on the council priority, reflected through its public policy commitment, to provide a section of the community with a service or access to a facility that would otherwise not be serviced. However, some public policy objectives may be subsidised in terms of specific cost elements of the business.

The CN guidelines anticipate councils will use the fully distributed cost (FDC) method for CN pricing in nearly all cases. FDC takes into account all direct and indirect costs and competitively neutral adjustments. The avoidable cost (AC) method is appropriate only where a council can demonstrate that the majority of its activities are non-commercial and that its indirect costs (overheads) remain unaffected by the activity in question. Under AC a council need only consider the extra (direct) costs that it could avoid if it did not undertake the activity, plus competitively neutral adjustments.

Benefits greater than costs

NCP reforms apply subject to costs not outweighing benefits. CN does not apply where the benefits it might potentially return over the medium to longer term are outweighed by implementation costs over the same period. Councils need to assess costs and benefits on the same basis and document for each significant business.

Public interest

The *Competition Principles Agreement 1995*, recognises the existence of competing public policy objectives and allows for the consideration of a range of matters to determine how best to achieve particular policy objectives. These include:

- government legislation and policies relating to ecologically sustainable development
- social welfare and equity considerations, including community service obligations
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity
- economic and regional development, including employment and investment growth
- the interests of consumers generally or of a class of consumers
- the competitiveness of Australian businesses
- the efficient allocation of resources.

Competition Principles Agreement 1995, clause 1(3).

The list is not closed; nor does it imply any priority or weighting. Other matters may be relevant for local government, including:

- local or regional policies relating to economic or business development, employment, quality of goods and services, timeliness of supply
- impact on the local or regional community
- impact on the State and national economies, if any.

CN is not intended to override the public policy objectives of a council. Public policy objectives reflect the public interest of a council's community and may be social, environmental, economic or regional in nature. Each council decides its own public policy goals, bearing in mind State and Commonwealth policies. The Best Value context in which councils now operate provides an opportunity to reassess and restate public policy objectives through an open and transparent public consultation process.

Increasingly, the Best Value Principles will be reflected in councils' vision and mission statements, in corporate planning processes, in governance, in services to the community, in facilities, in capital works and in grants made to other bodies. Key public policy objectives in the Best Value principles are:

- performance in accordance with quality and cost standards
- responsiveness to community needs
- accessibility to members of the community for whom intended
- continuous improvement in the provision of services
- regular consultation on services provided to the community
- regular reporting on achievements in relation to the Best Value Principles.

Factors informing the application of the Principles, listed in section 208C of the Local Government Act (and restated in Appendix D), further expand the potential range of councils' public policy objectives.

A council needs to ensure that it has identified and documented its public policy objectives, which may be specific for each significant business. Where there is a potential conflict between the application of CN and other public policy objectives the CN Policy mandates a public interest test process. The public interest test involves appropriate public consultation in relation to a range of costed options that council may propose to the relevant stakeholders. The process is to be open and transparent to ensure that council is able to justify any anti-competitive arrangements by demonstrating that it delivers net benefits to the community.

Under Competitive Neutrality Policy Victoria 2000, where a council believes that applying CN measures could jeopardise the achievement of its policy objectives it will need to conduct, and document, a 'public interest test'. As a result of the public interest process council will determine the best option for addressing all objectives, including CN Policy, and implement accordingly. If the outcome of the test supports the council's view, it need not apply the CN measure. **This constitutes application of CN Policy regardless of the extent to which CN pricing is applied.**

The first step in conducting a public interest test is for a council to confirm its policy objectives and ensure that they have official endorsement.

Councils should refer to the Best Value Principles and the *Competition Principles Agreement 1995* in reassessing the public interest and policy objectives for their activities.

A council will demonstrate that it is compliant with CN by:

- documenting its decisions identifying 'significant business activities'
- documenting whether the benefits of applying CN to a significant business outweigh the costs.

Where there is a net benefit, but the council believes other public policy objectives would be jeopardised by applying CN, conduct a public interest test to:

- identify public policy objectives for the business
- assess alternative approaches to achieve the policy objectives
- conduct public consultation exploring options to determine whether the application of CN is in the public interest. Consultation should include key stakeholders, competitors and/or public as part of a public interest test to explore options. There are different opportunity costs associated with the various options
- document the conduct and outcomes of the public interest test
- make the documentation publicly available.

Best Value competitive neutrality

Policy integration: serving the public interest

Best Value Victoria and *Competitive Neutrality Policy Victoria 2000* both redirect local government's focus to the community and serving the public interest. Economic efficiency remains vital to the proper discharge of a council's public accountability for community assets.

Both the CN Policy and Best Value Principles help shape the public policy objectives of local government and consequently provide the framework for the conduct of the public interest test. They direct a council to its relationship with the community – in setting service standards; responding to community needs; providing accessible and appropriately targeted services; consulting regularly with the community; reporting frequently to

the community. (A description of the Best Value Principles and a statement on the Government's objectives in introducing Best Value Victoria can be found in Appendix D.)

Community consultation and consideration of the public interest in allocating council resources are not merely compliance requirements under the Best Value Principles legislation. Best Value will, over time, redefine the relationship between local government and the community by creating a Best Value operating environment in which the entirety of local government activities, including governance and services, are subject to Best Value Principles. Some services, those provided by significant council businesses, will also be subject to CN principles.

Process integration

The integration of Best Value and CN means that, when addressing the public interest test requirements, there is no need for processes to be duplicated where CN is implemented in a Best Value Victoria context. For example, a council may engage in consultation with the community for Best Value review and CN public interest purposes at the same time.

Where a service is provided by a significant business, service quality and cost standards must reflect CN adjustments, unless the council has previously determined that the implementation of the CN measure would not provide a net benefit. If a council believes application of a CN measure conflicts with or jeopardises a stated public policy objective it must consult with the community (possibly in a joint Best Value/CN consultative process) in determining whether to implement a CN measure or to justify any council subsidy.

Best Value service standards for services that are not provided by significant businesses may be informed by the application of CN costing, at the discretion of a council. Councils should note that the application of CN costing to services could enhance the accuracy of their Best Value reviews. This applies both to the comparison of council services 'against the best on offer in both the public and private sectors' and in relation to the assessment of 'value for money in service delivery' (section 208C(a) and (b) *Local Government Act 1989*). A council has a variety of mechanisms available to it in making these assessments; for example, benchmarking, process mapping, innovative management methods and market testing. If its market testing involves public

Local Government Compliance Statement

For NCP compliance, a council will be expected to report on the application of CN to each of its significant businesses from 2000–01. A council will need to state that:

- it has applied *Competitive Neutrality Policy Victoria 2000* to the significant business, or
- it has justified non-application of CN on cost/benefit or public interest grounds, or
- it has applied 'Best Value Competitive Neutrality' to the significant business during the course of a Best Value review, and
- it has applied 'Best Value Competitive Neutrality' to all significant businesses by 31 December 2005.

tendering, it must apply CN pricing to an in-house tender and must make any council subsidy available equally to in-house and external tenderers.

Process integration is likely to involve the following steps:

- the starting point for a council is to ensure that it is compliant with Competitive Neutrality Policy Victoria 2000. That is, to ensure that it has identified all its significant businesses and either applied, or justified the non-application of, CN to them. This is the threshold requirement for CN compliance
- in developing its Best Value program for service reviews – and in updating the program annually – a council should identify those of its services which are, or are provided by, significant businesses. The public availability of the Best Value program then ensures that members of the community are alerted to the date when they might expect to be consulted on the quality and cost standards for services provided by the significant business and, possibly, whether CN measures or subsidies applied to the significant business are in the public interest
- then, as a council progresses through its Best Value program, services that are provided by significant businesses will come up for review. In such a review, a council will reconsider afresh its application of CN to the significant business. It will ask, 'Do the costs of implementing CN outweigh the benefits?' and reconsider the impact on public policy objectives. The review will need to consider the council's existing public policy objectives and priorities, and their relevance in a market which has changed since they were first specified, the level of council subsidy consumed and any impact on service fees and charges
- CN provides an avenue for councils to effect shifts in community priorities over time. Focusing or removal of subsidies may facilitate achievement of new services and programs
- where a council believes that the continuation of a CN measure may conflict with a public policy objective, it will conduct a public interest test and consult with the community. At the same time, the council will consult on Best Value quality and cost standards for the service provided by the significant business. That is, the council will apply CN in a Best Value context
- councils will apply 'Best Value Competitive Neutrality' to all significant businesses progressively through to 31 December 2005. In this way, by 31 December 2005, when Best Value is due to have been applied to all council services, councils will have reviewed and reconsidered the application of CN to all significant businesses.

Each council will determine how best to integrate its processes for implementing the two policies.

The following table provides one example of how processes might be streamlined using an integrated series of seven questions based on the key steps in each policy framework.

Implementing competitive neutrality in a Best Value Victoria context

1. What is the council service , as defined for Best Value review purposes?	
[key questions]	[other considerations]
2. Is the service, or any part of it, operated as a business , or is it an internal service supporting only regulatory or governance functions of the council?	Even if a service is not operating as a business, consider applying CN costing to ensure 'like with like' comparison when applying the Best Value review factors (s.208C).
3. What market does the business operate in?	The market may have changed since the council first started providing the service. A market previously lacking providers may now be well supplied and a council's priorities for resource allocation may need to be reconsidered.
4. Is it a significant business in that market?	Even if a service is not operating as a significant business, consider applying CN costing to ensure 'like with like' comparison when applying the Best Value review factors (s.208C).
5. What CN measure is appropriate to the significant business?	Full cost-reflective pricing is likely to be the appropriate measure to ensure that the business is fully recovering costs. This will be useful when considering service delivery options under Best Value (s.208c).
6. Will the benefits of the CN measure outweigh the costs ?	The assessment of benefits and costs should include the opportunity costs of addressing other priorities.
7. Could the CN measure compromise the achievement of other policy objectives? Is it in the public interest ?	Best Value service reviews require consultation with the community, as does the CN public interest test. The two consultation processes could be held together.

A diagram suggesting how a Best Value service review might be carried out, concurrent with the application of CN to the service, is given in Appendix E.

Best Value NCP compliance

NCP statement

Councils have been required to report on their implementation of NCP since it was first applied to local government in 1996–97. Councils are required to provide evidence of their compliance with NCP obligations in an annual NCP statement to the Minister, prepared in accordance with reporting guidelines issued by the Minister.

The annual NCP statement, certified by a council's Chief Executive Officer and submitted directly to the Minister, remains the mechanism for demonstrating NCP compliance under this revised policy statement. The Minister will continue to issue guidelines from time to time updating reporting requirements consistent with developments in councils' NCP obligations.

Competitive neutrality complaints

It is the responsibility of a council to:

- identify the activities to which CN applies
- take the necessary action to comply
- document the decisions it has made and make the material available to the public and the Competitive Neutrality Complaints Unit on request.

Under the Competition Principles Agreement, the Government is obliged to investigate complaints regarding councils' adherence to CN. To assist in undertaking this function, the Government created an independent Competitive Neutrality Complaints Unit (located in DTF).

The Complaints Unit operates on the assumption of compliance rather than non-compliance in determining the extent to which a council's actions comply or do not comply with CN Policy. There are a number of important procedural and administrative features of the complaints mechanism. The Complaints Unit:

- accepts complaints from a directly affected person or business, as well as from industry or community groups. Complaints will be assessed in accordance with Competitive Neutrality Policy Victoria 2000. When a complaint is received, the first response of the Complaints Unit is to encourage direct resolution between the council and the complainant, failing this, the Complaints Unit will seek verification from the council as to its compliance with the CN Policy

- cannot initiate an investigation. A complainant must lodge a formal complaint pro forma prior to the Complaints Unit instigating an investigation
- will abide by principles of procedural fairness and will investigate all complaints fairly, independently and rigorously and will come to a finding on the basis of the best available information. Where the Complaints Unit recommends a course of action which a council should take to comply with the CN Policy, it will request further information to follow-up on how compliance with the CN Policy has been achieved
- will consult with, and seek comments from, all parties involved before finalising its investigation. Final investigation reports – excluding any commercial in-confidence information – are provided directly to the parties and published on the Complaints Unit web site
- has no enforcement powers
- does not recommend any compensation or termination of contractual arrangements.

The Complaints Unit does not assess anti-competitive behaviour that is already covered by the *Trade Practices Act 1974* or the *Competition Policy Reform (Victoria) Act 1995*, nor does it deal with probity issues arising from tendering processes of councils.

The protocols for the conduct of a CN investigation are fully documented on the CN web site at www.vic.gov.au/ncp/cn_overview1.htm

The contact details for the Complaints Unit are as follows:

Director
Competitive Neutrality
Complaints Unit
Department of Treasury
and Finance
1 Treasury Place
Melbourne 3002

Tel. (03) 9651 2509
or (03) 9651 2048
Fax (03) 9651 5575
Email cncu@dtf.vic.gov.au

In line with the Treasurer's role as the Minister responsible for NCP, DTF has the broader responsibility for ensuring overall compliance with the NCP and CN in particular.

Appendix A.

National Competition Policy Reform Framework

NCP originated in 1995 in three inter-governmental agreements between members of the Council of Australian Governments (COAG):

- *Competition Principles Agreement*
- *Conduct Code Agreement*
- *Agreement to Implement National Competition Policy and Related Reforms.*

These agreements underpinned the subsequent development of States' and Territories' policies on NCP.

Appendix B shows the relationship between the COAG and Victorian local government NCP documents.

The *Competition Principles Agreement* set out five principles for NCP reform by the Commonwealth, States and Territories and required the States and Territories to publish policies on CN (clause 3) and the application of NCP to local government (clause 7). The 1996 *National Competition Policy and Local Government – A Statement of Victorian Government Policy* was Victoria's first clause 7 statement.

By 2001, many of the NCP reforms – such as legislative review to remove unjustifiable restrictions on competition – have been completed or are nearly completed. The single most important principle, with ongoing application in local government, is CN.

Under the *Conduct Code Agreement* the States and Territories agreed to extend the application of Part IV of the Commonwealth *Trade Practices Act*

1974 dealing with restrictive trade practices to all persons – including municipal councils – within their jurisdictions. This ensures that competitive conduct rules apply equally to all market participants regardless of their ownership or legal form.

The timetable for NCP implementation is set out in the *Agreement to Implement NCP and Related Reforms*. This agreement also provides for the Commonwealth to make competition payments to the States and Territories where they effect reforms within the agreed timetable. Payments are made as 'tranches' of two years each for the first and second tranche, and thereafter third tranche payments continue until at least 2005–06.

Victoria, along with Queensland and Western Australia, shares its competition payments with local government.

NCP agencies

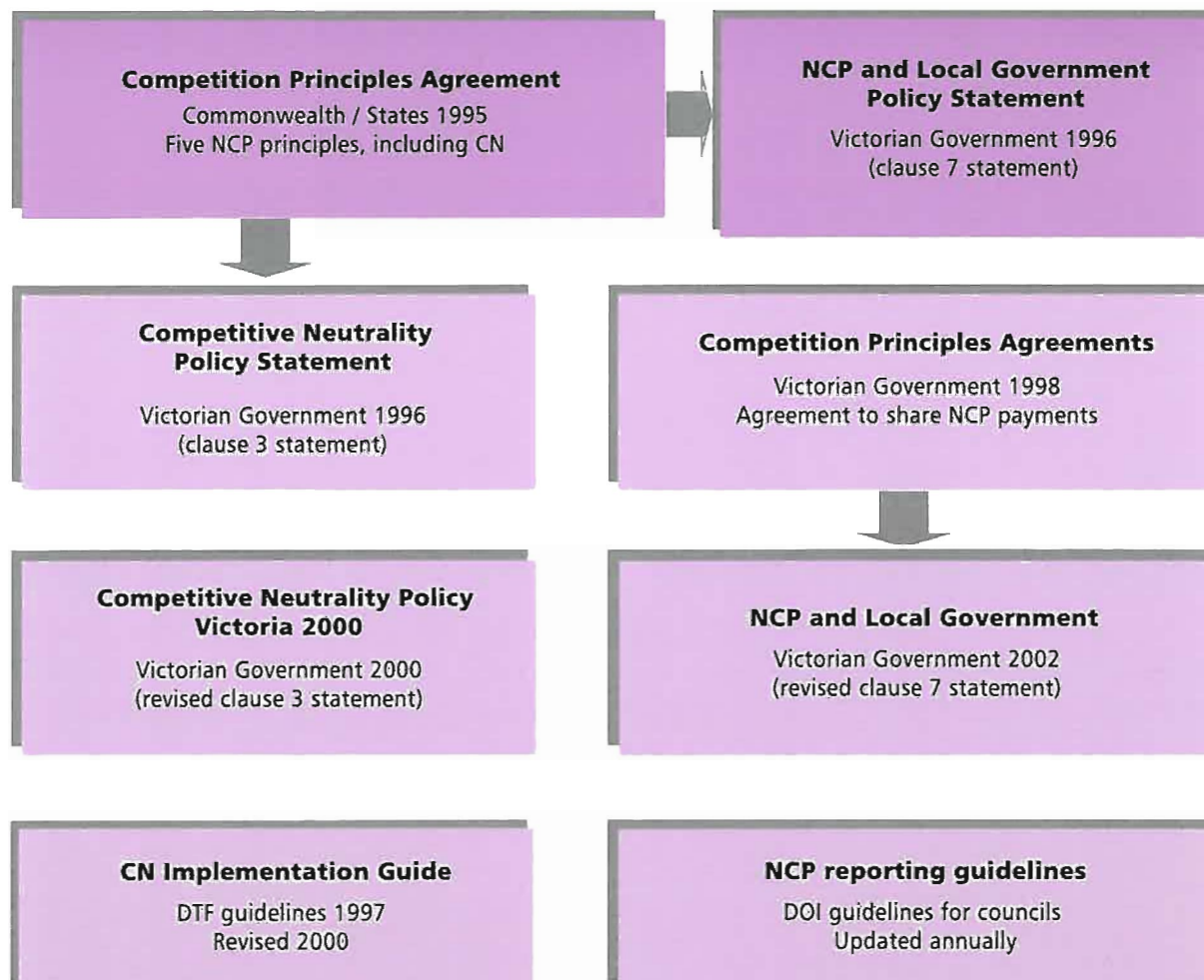
Two new national competition bodies were established for NCP:

- the Australian Competition and Consumer Commission (ACCC)
- the National Competition Council (NCC).

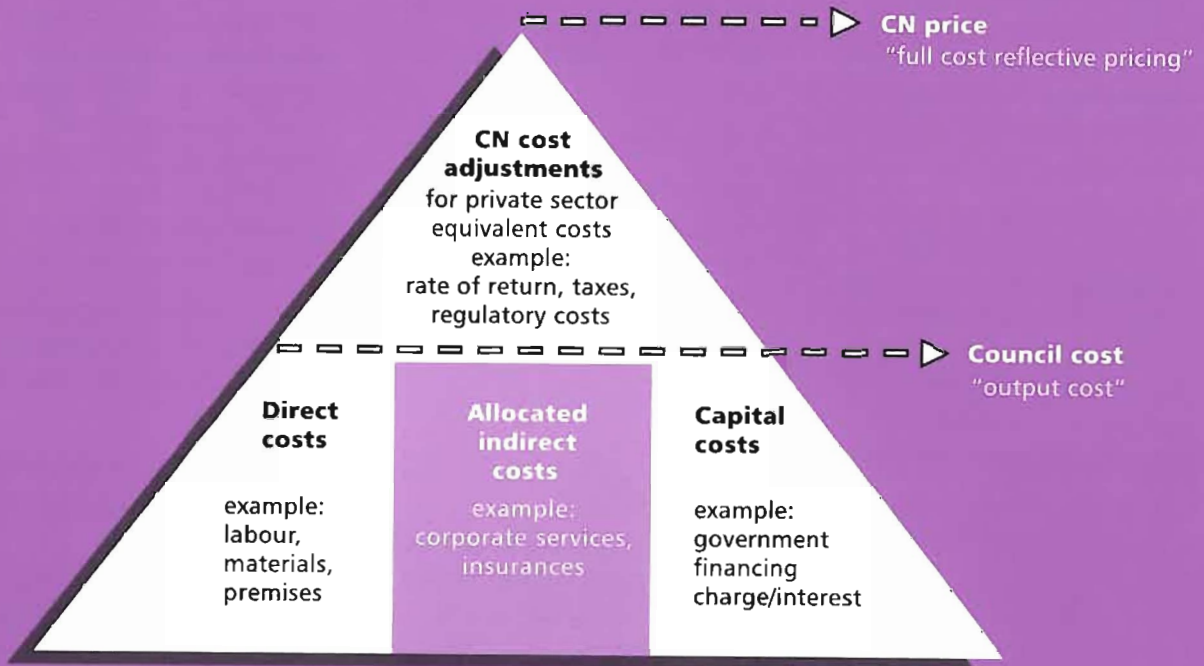
The ACCC enforces the *Competition Code* (the restrictive trade practices provisions of Part IV enacted by the States and Territories) and the *Trade Practices Act* (Part IVA provisions on unconscionable conduct and Part V provisions for consumer protection). The ACCC also has powers to safeguard consumers against price exploitation under the GST and new tax system.

The NCC is a national advisory body whose roles include monitoring compliance with the COAG agreements and advising whether the States and Territories have satisfied the conditions for receipt of competition payments.

Appendix B. NCP documentation



Appendix C. CN pricing model



Appendix D.

Best Value Victoria – a new context

Best Value Victoria objectives

Unlike the system of Compulsory Competitive Tendering (CCT) that it is replacing, Best Value Victoria is focused on meeting the needs of the community. Best Value Victoria will apply to all council services, whether provided by council staff, volunteers or contractors.

Councils will implement Best Value Victoria by reviewing their services and applying the Best Value Principles to them by 31 December 2005. It is this timing which makes Best Value Victoria the operating context for the application of CN to council services operating as significant businesses.

In detail, the Government's objectives in introducing the Best Value Principles were:

Local accountability

making councils accountable to their own communities for the provision of services and the performance of the organisation

Whole-of-organisation response

ensuring a Council's implementation of Best Value includes all its services and functions

Consultation on performance

a council's objectives and targets will be set after consultation with its community and the Council will demonstrate its accountability by measuring and reporting on its performance to its community

Best Value outcomes

Best Value is a framework to deliver enhanced services and organisational performance across local government and to enable the sector to demonstrate to the State Government that it has achieved these objectives

Benefits not costs

The benefits of applying the Best Value framework should outweigh the costs, particularly in small, rural councils

Encouraging innovation

Best Value is intended to encourage councils to adopt innovative and creative responses to service delivery, including a range of partnering relationships.

Best Value Principles legislation

Best Value Victoria is based on six principles: quality and cost standards for all services; responsiveness to community needs; accessible and appropriately targeted services; continuous improvement; regular community consultation; and frequent reporting to the community. The principles were introduced in a December 1999 amendment to the *Local Government Act 1989*:

- all services must meet the quality and cost standards developed by the council (sections 208B(a) and 208(D)(1))
- all services must be responsive to the needs of its community (section 208B (b))
- each service must be accessible to those members of the community for whom it is intended (section 208B (c))
- a council must achieve continuous improvement in the provision of services for its community (section 208B(d))
- a council must develop a program of regular consultation with its community in relation to the services it provides (section 208 B (e))
- a council must report regularly to its community on its achievements in relation to the principles (section 208 B (f)).

In developing quality and cost standards for services to the community, councils must take account of five factors set out in section 208C:

- the need to review services against the best on offer in both the public and private sectors
- an assessment of value for money
- community expectations and values
- the balance of affordability and accessibility of services to the community
- opportunities for local employment growth or retention.

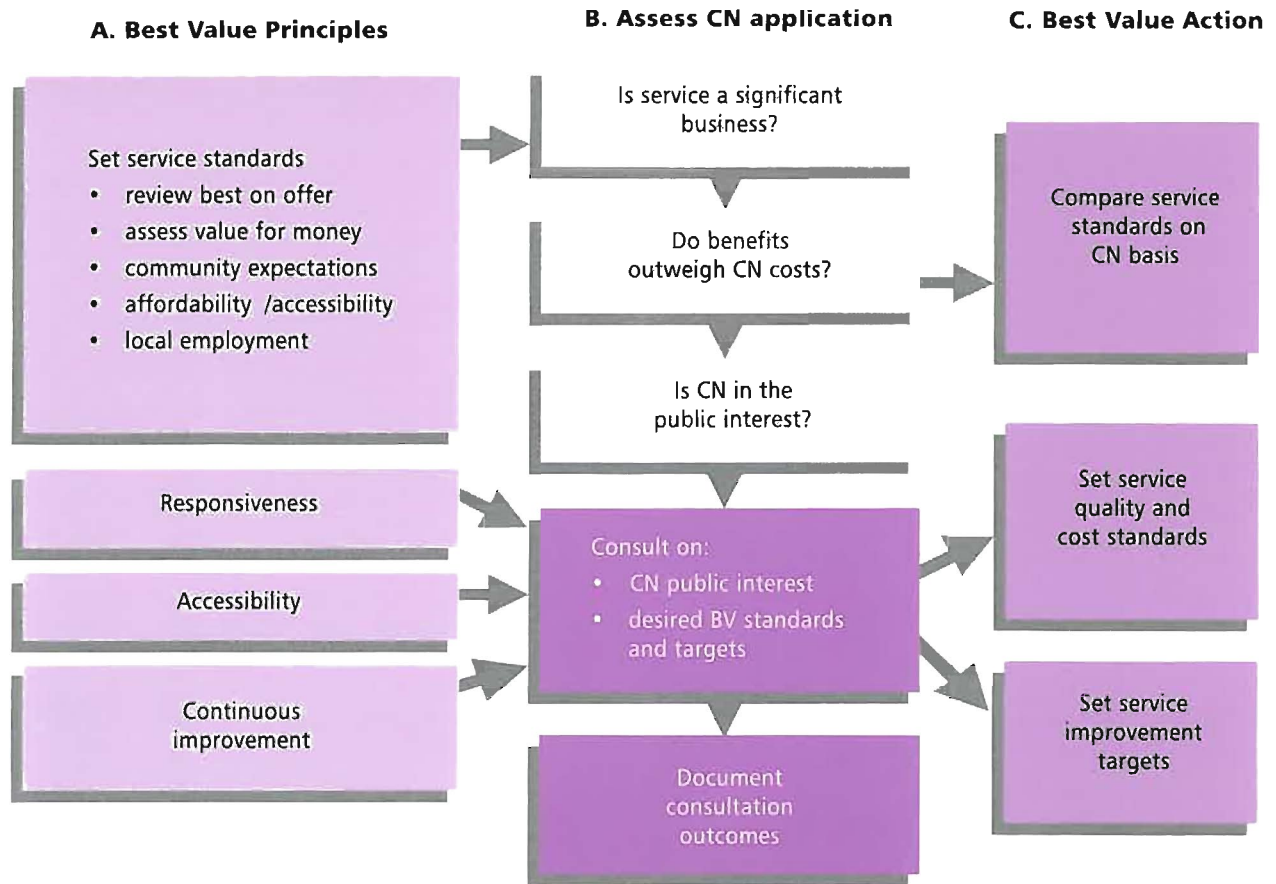
In their application of the Best Value Principles, councils may take into account other factors, two more of which are listed in section 208C:

- the value of potential partnerships with other councils and State and Commonwealth Governments
- potential environmental advantages.

A Best Value Program Code, published by the Minister for Local Government under section 208H of the Act in November 2000, sets out minimum requirements for councils' Best Value programs. A second Code establishes minimum requirements for councils' annual reporting on the application of the Best Value Principles.

In December 2000, the Minister published a framework to further assist councils in implementing Best Value Victoria. The framework addresses how the legislated Best Value Principles should be interpreted and applied to achieve the Government's objectives for Best Value Victoria. The framework makes it clear that Best Value Victoria is an operating environment which is part of the culture of local government, building upon and contributing to good governance. The framework confirms the breadth of application for the Best Value Principles – to all services a council delivers, irrespective of how they are delivered and who funds the service. It also establishes the areas of discretion available to a council in making detailed decisions about the appropriate application of Best Value Victoria for its own community.

Appendix E. Best Value CN service review



Appendix F.

List of useful references

Best Value Victoria – a Guide

Department of Infrastructure, December 2000.

Competitive Neutrality Policy Victoria 2000

Department of Treasury and Finance, October 2000.

Competitive Neutrality Guide to Implementation Victoria 2000

Department of Treasury and Finance, October 2000.

***National Competition Policy and Local Government –
A Statement of Victorian Government Policy***

Department of Premier and Cabinet, June 1996

Appendix B of this document sets out the full text of the COAG
Competition Principles Agreement 1995

Competition Policy – a Guide

Department of Premier and Cabinet, 1996

This document sets out the full text of all three 1995 COAG
agreements on which NCP was founded.

National Competition Council web site

<http://www.ncc.gov.au>

This site is a useful general reference on competition policy
documentation, including the NCP agreements. It also contains
the NCC's reports on its assessment of State and local government
NCP compliance.

Victorian National Competition Policy web site

<Http://www.vic.gov.au/ncp/default.html>

National Competition Policy and Local Government