

## Applications for Government Guarantees – Ministerial advice to include analysis of public interest issues

**Agencies should specifically address public interest matters in any advice to Ministers on applications for Government guarantees relating to all State laws that confer a power to issue a Government guarantee.**

### Summary:

This Circular requires that advice submitted to a Minister regarding an application for a Government guarantee should address the wider public interest, including any adverse impacts on competition that may arise from the granting of such a guarantee. It updates references to legislation and guidance but does not represent a change to the previous policy. It withdraws and supersedes the previous Circular NSWTC 05/09.

In particular, it is possible that the *Government Guarantees Act 1934* (GG Act) could be applied in such a way as to potentially confer anti-competitive outcomes. The main means by which competition can be restricted is when a guarantee is provided on behalf of a business that is operating in a competitive or contestable market. The guarantee, which would effectively lower borrowing costs, could confer an advantage to that particular business over its competitors, contrary to the Government's policy on competitive neutrality (see NSW Treasury Policy and Guidelines Paper *Policy Statement on the Application of Competitive Neutrality*, TPP 02-1).

While the GG Act has been used to confer guarantees to non-commercial entities in the majority of cases, there is broad scope in this Act to execute guarantees in favour of private businesses for industrial development or tourism purposes. A number of provisions in the GG Act also provide scope for the Treasurer to execute guarantees upon the recommendation of a Minister referenced in the Act (eg, the Minister for Health).

Powers to issue Government guarantees also reside in the *Public Authorities (Financial Arrangements) Act 1987* (PAFA Act) and statutes administered by other portfolios. Examples include the *Sporting Bodies' Loans Guarantee Act 1977*, the *Tourism New South Wales Act 1984*, the *Visy Mill Facilitation Act 1997* and the *Waste Avoidance and Resource Recovery Act 2001*.

In the case of the Government's commercial agencies, competitive neutrality concerns do not arise where these agencies are subject to the *Government Guarantee Fee Policy for Government Businesses* (NSW Treasury Policy and Guidelines Paper TPP 10-4 issued in September 2010).

Any guarantees issued under the PAFA Act or statutes administered by other portfolios (such as those examples referenced above) are also required to be subject to a public interest test to ensure consistency in approach.

The requirements in this Circular will not compromise the Treasurer's or other Ministers' ability to issue guarantees to entities operating in competitive or contestable markets. The requirements will simply make it transparent that the wider public interest impacts of issuing such guarantees have been fully considered.

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Secretary

Further Information:  
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