Competitive Neutrality Complaints

Head of Power

Local Government Act 2009

Related Legislation
Local Government Regulation 2012

Objective

To outline the process for resolving competitive neutrality complaints.

Definitions

**Affected Person** means:
(a) a person who –
  (i) competes with the Council in relation to the Business Activity; and
  (ii) claims to be adversely affected by a Competitive Advantage that the person alleges is enjoyed by Council; or
(b) a person who –
  (i) wants to compete with Council in relation to the Business Activity; and
  (ii) claims to be hindered from doing so by a Competitive Advantage that the person alleges is enjoyed by Council.

**Building Certifying Activity** means a Business Activity that involves performing building certifying functions within the meaning of section 10 of the **Building Act 1975**.

**Business Activity** means trading in goods and services by Council. However, the term does not include carrying on any activity where the current expenditure for the previous financial year is less than $340,000.

Current expenditure is the total of the following amounts:

(a) operational costs;
(b) administrative and overhead costs;
(c) cost of resources; and
(d) depreciation.

A Business Activity also includes a Significant Business Activity as defined under this Policy.

**Business Unit** means a part of Council that conducts a Business Activity of Council.

**CEO** means Council’s Chief Executive Officer.

**Competitive Advantage** means an advantage that a Business Unit has over a private sector business providing the same goods or services because the Business Unit enjoys financial, procedural or regulatory advantages inherent in being part of Council.

**Competitive Neutrality Complaint** means a complaint that:

(a) relates to the failure of Council to conduct a Business Activity in accordance with the Competitive Neutrality Principle; and
(b) is made by an Affected Person.
**Competitive Neutrality Principle** means the principle that an entity conducting a Business Activity in competition with the private sector should not enjoy a net advantage over competitors solely because the entity is in the public sector.

**Preliminary Reviewing Officer** means Council’s Director Finance and Corporate Services or any person acting in that position.

**Preliminary Review Process** means Council’s process for attempting to resolve Competitive Neutrality Complaints prior to that complaint being referred to the Queensland Productivity Commission.

**Roads Activity** means a Business Activity that involves:

(a) constructing or maintaining a State-controlled road that the State put out to competitive tender; or

(b) submitting a competitive tender in relation to constructing or maintaining a road:

   (i) in the local government area, that Council had put out to competitive tender; and

   (ii) in another local government area, that the other local government put out to competitive tender.

**Significant Business Activity** means a Business Activity of a local government that is conducted in competition, or potential competition, with the private sector and exceeds the relevant threshold for that particular activity as prescribed in the Local Government Regulation 2012. However, the term does not include a Building Certifying Activity, a Roads Activity or any Business Activity related to the provision of library services.

**Application**

This Policy applies to Competitive Neutrality Complaints regarding Business Activities undertaken by Council.

**Policy Statement**

Under section 48 of the *Local Government Act 2009*, Council is required to adopt a process for resolving Competitive Neutrality Complaints.

The process must deal with resolving Competitive Neutrality Complaints prior to a formal complaint being made (the ‘Preliminary Review Process’).

Competitive Neutrality Complaints that cannot be resolved after the Preliminary Review Process will be referred to the Queensland Productivity Commission for investigating and reporting on Competitive Neutrality Complaints about the Council’s Business Activities.

Prospective complainants should note that the Local Government Regulation 2012 requires every complainant to make a genuine attempt to resolve with Council any concerns relating to perceived non-compliance with the Competitive Neutrality Principles before those concerns can trigger an investigation by the Queensland Productivity Commission.

To this end, Council has established the Preliminary Review Process (outlined below) which is aimed at resolving Competitive Neutrality Complaints through a process of consultation. Participation in the Preliminary Review Process is seen by Council as the preferred means of establishing that a complainant has made the genuine attempts to resolve a Competitive Neutrality Complaint, as required by the Local Government Regulation 2012.

**Preliminary Review Process**

The Preliminary Review Process commences with the submission of a written complaint to the Preliminary Review Officer specifying:
• How the complainant is an Affected Person; and
• How the complainant believes the Competitive Neutrality Principles have been breached together with any supporting evidence that the complainant has.

The Preliminary Review Officer must within 10 business days of receiving the written complaint, acknowledge its receipt in writing and request any further information required to properly consider the complainant’s concerns. When undertaking the Preliminary Review Process, the Preliminary Review Officer must:

• seek to establish the facts relating to the concerns expressed by the complainant. This may involve meeting with the complainant, collecting data, holding further meetings and recommending mediation;
• within 45 days of receiving the complainant’s written complaint, develop a draft response to be forwarded to the complainant and requesting his/her views on that draft response;
• upon receipt of the complainant’s views on the draft response, provide a report to the CEO and relevant Director on the findings of the Officer’s initial investigation, and the complainant’s views on the draft response; and
• on receiving the Preliminary Review Officer’s findings and the complainant’s views on the draft response, the CEO or nominee must prepare and send an adopted response to the complainant. That response must include details of how to make a formal complaint to the Queensland Productivity Commission should the complainant be dissatisfied with the adopted response.

Further Complaints Process
Any person who is dissatisfied with Council’s response given pursuant to the Preliminary Review Process may pursue the matter further by seeking a formal investigation by the Queensland Productivity Commission.

The process to be used to seek a formal investigation and the information required to be provided are set out in the Local Government Regulation 2012.

Council’s Competitive Neutrality Complaints Register and Reporting Requirements
The Local Government Regulation 2012 requires that Council prepare and maintain a record of all Competitive Neutrality Complaints, associated decisions and recommendations.

Council will establish and maintain a register of all Competitive Neutrality Complaints, associated decisions and recommendations. This information will be reported in Council’s Annual Report for each financial year.

Related Documents
Nil.

Review Triggers
This Policy will be reviewed for applicability, effectiveness, and consistency with relevant legislation, Council resolutions, and other Council documents. Reviews of this Policy will occur as required, or at least once every two years.
Responsibility

This Policy is to be:

(1) implemented by the CEO, the Directors responsible for business units and the Manager Executive Services; and

(2) reviewed and amended in accordance with the "Review Triggers" by the Director Finance and Corporate Services.

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