Competitive Neutrality Complaints Policy

Head of Power

Local Government Act 2009
Local Government Regulation 2012

Objective

To provide a process for resolving competitive neutrality complaints.

Definitions/Application

Definitions

“Affected Person is:
(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” is a business activity that involves performing building certifying functions as described in Section 10 of the Building Act 1975.

“Business Activity” means an activity of Council that involves the supply of goods and / or services to clients on a commercial basis and in direct competition, or potential competition, with the private sector.

However, the term does not include any operation where the overall amount spent or written off in carrying on the activity for the previous financial year on the following is less than $300,000 –

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

“Business Unit” is a part of Council that conducts a Business Activity of the local government.

“Competitive Neutrality Complaint” is 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” is the principle that an entity conducting a Business Activity should not enjoy a net competitive advantage over competitors solely because the entity is in the public sector.

“Competitive Advantage” is an advantage that a Business Unit has over a private sector business providing the same goods or services because the Business Unit enjoys the financial advantages inherent in being part of Council.
“Preliminary Reviewing Officer” is Council’s Co-ordinator Executive Services, or any person acting in that position.

“Preliminary Review Process” is Council’s process for attempting to resolve Competitive Neutrality Complaints prior to that complaint being referred to the Queensland Competition Authority.

“Roads Activity” is 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 tender in relation to constructing or maintaining a road that a local government had put out to competitive tender.

“Significant Business Activity” is a business activity that exceeds the relevant threshold for that particular activity 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. However, it specifically does not apply to Significant Business Activities that have current accreditation issued by the Queensland Competition Authority.

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 Competition Authority 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 concerns relating to perceived non-compliance with the Competitive Neutrality Principles with Council before those concerns can trigger an investigation by the Appointed Referee.

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, and
- upon receipt of the complainant’s views on the draft response, provide a report to Council’s Chief Executive Officer and Director responsible for the Business Unit identified in the complaint on the findings of that Officer’s initial investigation and the complainant’s views on the draft response.
- On receiving the Preliminary Review Officer’s findings and the complainant’s views on the draft response, the Chief Executive Officer of Council 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 Competition Authority 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 Competition Authority.

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 and report these in Council’s Annual Report for each financial year.

**Review Triggers**

This Policy is reviewed internally for applicability, continuing effect and consistency with related documents and other legislative provisions when any of the following occurs:

1. The related documents are amended.
2. The related documents are replaced by new documents.
3. Amendments which affect the allowable scope and effect of a Policy of this nature are made to the head of power.
4. Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this Policy is to be reviewed at least once every two years for relevance and to ensure that its effectiveness is maintained.
Responsibility

This Policy is to be:

1. implemented by the Chief Executive Officer, the Directors responsible for business units and the Co-ordinator Executive Services; and
2. reviewed and amended in accordance with the “Review Triggers” by the Co-ordinator Executive Services.

Version Control

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<th>Council Resolution number</th>
<th>Date</th>
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<td>28 June 2011</td>
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<tr>
<td>13/10-12</td>
<td>22 January 2013</td>
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Related Links:
Competitive Neutrality Complaints Information Guidelines - A2043790