

Competitive Neutrality Complaint Management Procedure

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| Policy Type | Governance Process | Version: | 2.0 |
| Responsible Officer | Manager Development and Governance | Date Approved: | 17/11/2021 |
| Review Officer: | Manager Development and Governance | Review Due: | 1/11/2025 |
| Author: | Senior Compliance Officer | Commencement: | 17/11/2021 |

1. PURPOSE

To provide a framework for investigation and resolve of competitive neutrality complaints received by Council in accordance with requirements under the *Local Government Act 2009* (Qld) (LGA) and *Local Government Regulation 2012* (Qld) (LGR).¹ This process should be read in conjunction with Council's *Competitive Neutrality Complaint Management Policy*.

2. SCOPE

This policy applies to competitive neutrality complaints regarding business activities undertaken by Council that are in direct competition or have the potential to be in competition, with the private sector.

The below complaint types will be managed separately from this policy:

- Corruption complaints that are required to be dealt with under the *Crime and Corruption Act 2001* (Qld)
- Administrative Action Complaints
- Public Interest Disclosures (PIDS) made under the *Public Interest Disclosure Act 2010* (Qld)
- Internal complaints relating to staff conduct (i.e. Code of Conduct matters) will be referred to the relevant policies
- Social media comments
- Customer Requests

3. PROCESS STATEMENT

3.1 PRINCIPLES

Council recognises that effective complaints management is integral to good customer service and therefore values all complaints. While Council encourages a proactive approach to complaints management, the competitive neutrality complaints process exists to ensure that Council is adhering to the competitive neutrality principles. Council is committed to a complaints management process that ensures the transparent, effective and timely resolution of complaints, and that contributes to continuous improvement of Council's services.

¹ See *Local Government Act 2009* (Qld) s 48. See also *Local Government Regulation* (Qld) ss 43-55A.

3.2 COMPLAINT HANDLING

A competitive neutrality complaint must be made in writing to Council or to the competition authority and must contain certain information to be valid.²

Council will assist people to make competitive neutrality complaints by providing them with information about how to contact the competition authority – the Queensland Competition Authority (QCA) and inform persons about the steps they must take to lodge a complaint with the QCA, including that they must provide the QCA with:

- (a) details of Council's business entity's alleged failure to comply with the competitive neutrality principle in conducting the business activity the subject of the competitive neutrality complaint; and
- (b) information that shows:
 - i. that the person is, or could be, in competition with Council's business entity; and
 - ii. how the person is, or may be, adversely affected by Council's business entity's alleged failure; and
 - iii. that the person has made a genuine attempt to resolve the complaint directly with Council.³

In addition to advising a person about how to make a competitive neutrality complaint to the QCA, Council will refer to the QCA as soon as practicable any details of the competitive neutrality complaint that the person has provided to Council.⁴

All complaints will be lodged in Council's Complaints Management System at the time of receipt and, for complaints received in writing or via email, an acknowledgement will be provided to the complainant within five (5) working days of Council receipt of the complaint.⁵

3.3 LANGUAGE ASSISTANCE

Where persons from non-English speaking backgrounds require language assistance, Council will assist by directing persons to available support via the National Translating and Interpreting Service (NTIS) on 13 14 50. Persons may then advise the NTIS of the preferred language and ask to speak with Mareeba Shire Council on 1300 308 461.

3.4 EARLY RESOLUTION PROCESS

The early resolution process is the preliminary procedure for affected persons to raise concerns about alleged failures of any business activity to comply with the relevant competitive neutrality principles in conducting the activity.⁶ Council will apply the early resolution process as follows:

- (a) Acknowledgement of the receipt of the concerns in writing and advising the complainant that the concerns are being investigated;
- (b) In undertaking the investigation, the review officer shall seek to establish the facts relating to the expressed concerns, including meeting with affected parties and data collection;

² See *Local Government Regulation 2012* (Qld) s 45. See also ss 47-48.

³ See *Local Government Regulation 2012* (Qld) s 45(2)(b).

⁴ *Ibid* s 45(3).

⁵ All competitive neutrality complaints will be raised in Council's Complaint Management System as a Tier 2 level type complaint file to ensure confidentiality is maintained.

⁶ See *Local Government Regulation 2012* (Qld) s 44(2)(a).

- i. The review officer shall prepare a proposed response to the concerns and, within a reasonable period of time, obtain the complainant's views on the proposed response;
- ii. The review officer shall submit a report to Council's Chief Executive Officer on the concerns, together with a proposed response and the views of the complainant on the proposed response; and
- iii. The Chief Executive Officer shall make a response to the affected person, or direct the review officer to make a response.

3.5 QCA AND COUNCIL

The Council will assist the QCA to investigate and resolve each competitive neutrality complaint.

If the QCA provides a report to the Council about an investigation into a competitive neutrality complaint, Council will make a copy of that report available as soon as practicable for inspection at the Council's public Office and Customer Service Centres.⁷

The Council will consider any report provided by the QCA within (1) one month of receiving the report. The Council will decide by resolution whether to implement the recommendations contained in that report, stating the reasons for its decision.⁸

Council will within (7) seven working days of making the resolution, give notice about it to:

- The person who made the competitive neutrality complaint; and
- The QCA.⁹

4. REPORTING

No additional reporting is required.¹⁰

5. DEFINITIONS

The **code of competitive conduct** is the code declared in the *Local Government Act 2009* (Qld) and described in detail within the *Local Government Regulation 2012* (Qld).¹¹

Competition Authority means the Queensland Competition Authority established under section 7 of the *Queensland Competition Authority Act 1997* (Qld).

A **competitive neutrality complaint** is a complaint that:

- relates to the failure of Council to conduct a business activity in accordance with the competitive neutrality principle; and
- is made by an affected person.¹²

⁷ See *Local Government Regulation 2012* (Qld) s 53.

⁸ Ibid ss 55(1)-(3).

⁹ Ibid s 55(4).

¹⁰ See Council's *Competitive Neutrality Complaint Management Policy* s 4.

¹¹ See *Local Government Act 2009* (Qld) s 47. See also *Local Government Regulation 2012* (Qld) ss 31-39.

¹² See *Local Government Act 2009* (Qld) s 48(2).

An **affected person** is:-

- (a) a person who
 - i. competes with the local government in relation to the business activity; and
 - ii. claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by the local government; or
- (b) a person who
 - i. wants to compete with the local government 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 the local government.¹³

The **competitive neutrality principle** is used when Council applies the code of competitive conduct to its business activities. Council must apply the competitive neutrality principle to the business activity including by:

- removing any competitive advantage or competitive disadvantage, wherever possible and appropriate; and
- promoting the efficient use of resources to ensure markets are not unnecessarily distorted.¹⁴

Significant business activity is a business activity of Council that—

- (a) is conducted in competition, or potential competition, with the private sector; and
- (b) meets the threshold prescribed under a regulation.

However, a significant business activity does not include a business activity that is—

- (a) a building certifying activity; or
- (b) a roads activity; or
- (c) related to the provision of library services.¹⁵

6. RELATED DOCUMENTS AND REFERENCES

- *Competitive Neutrality Complaint Management Process* (MSC)
- *Local Government Act 2009* (Qld)
- *Local Government Regulations 2012* (Qld)

7. REVIEW

It is the responsibility of the Manager Development and Governance to monitor the adequacy of this policy and recommend appropriate changes. This policy will be formally reviewed every four (4) years or as required by Council.

¹³ See *Local Government Act 2009* (Qld) s 48(3).

¹⁴ See *Local Government Regulation 2012* (Qld) s 33(1).

¹⁵ See *Local Government Act 2009* (Qld) ss 43(4)-(5).