

**COMPETITITVE NEUTRALITY COMPLAINT PROCESS**

# **Background Information/Overview**

The *Local Government Act 2009* (LGA) (s48) states that “*A local government must adopt a process for resolving competitive neutrality complaints”.*

Whilst only a process is required, there are several options for councils. The following can be converted into any of the options:

1. Develop a Competitive Neutrality Complaints Process Policy
   * This option can include the process in the policy itself or have a base Policy and have a separate process (procedure) document

OR

1. Include references to managing Competitive Neutrality Complaints in your councils Administrative Actions Complaints Policy/Process
   * Develop a Competitive Neutrality Complaints Process (procedure) as a sub-document.

It is recommended that on the Council’s website, reference is made to the Competitive Neutrality Complaints Process. Again, this can be as part of the Administrative Actions Complaints page or separate.

Related financial year and annual report requirements

A local government of Queensland must prepare an annual report. In addition to many other requirements, the annual report must provide information on all beneficial enterprises and business activities and if competitive neutrality principle was applied to any identified significant business activities. Refer to the LGA ss41 and 45(a-d). A list of annual report requirements can be located here - [Annual report checklist](https://www.localgovernment.qld.gov.au/__data/assets/pdf_file/0024/56553/annual-report-checklist.pdf) (<https://www.localgovernment.qld.gov.au/__data/assets/pdf_file/0024/56553/annual-report-checklist.pdf>)

In addition, each financial year a local government must decide, by resolution, whether or not to apply the code of competitive conduct (LGA s47). The Local Government Regulation 2012 (s39) provides further information on what is a prescribed business activity.

For more information refer to the [Queensland Competition Authority](https://www.qca.org.au/project/competitive-neutrality/)

(https://www.qca.org.au/project/competitive-neutrality/)

*This resource has been prepared in partnership between LGMA and the Department of Housing, Local Government, Planning and Public Works through the Governance Advisory Service.*

# **Competitive Neutrality Complaint Process Templates**

The following has been developed as a full suite of documents councils may consider of implementing. These tools can be streamlined as you deem appropriate for your council.

In the following pages, you will find these tools and templates:

* A Policy or Process (procedure) template (pages 3-7).
* Competitive Neutrality Complaint form template (pages 8-9)
  + Preliminary Review - Competitive Neutrality Complaint Form
* Proposed wording for your external webpage should you wish to create a specific Competitive Neutrality Complaint page (page 10).
  + This can be amended to simply refer to your policy/process or provide further detail and guidance; without having to review the entire process document.

*Minimum requirements*: Councils are reminded that, as per s44 of the *Local Government Regulations 2012*, they must ensure the process:

* allows the opportunity for someone to raise concerns of alleged failures of the business entity to comply with the competitive neutrality principle in conducting the business activity and clarifying the matter, before making a formal complaint; and
* record all complaints, decisions and recommendations.

The below template has proposed that as per legislation the informal/preliminary investigation be undertaken by council, but any formal complaints be directed to the Queensland Competition Authority (QCA). However, Council’s may choose to provide options for that formal process to be submitted to the CEO or QCA.

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| *Disclaimer*: these templates have specifically been developed referring to the *Local Government Act 2009* and supporting Regulation. Should Brisbane City Council use these templates considerations of any differences to the LGA would be required. |

# **References/acknowledgements:**

These templates have been developed referencing the *Local Government Act 2009* and [Queensland Competition Authority](file://LGMAQLD/LGMAQLD/AIMMQLD/Government/Governance%20Advisory/Library/A%20-%20Templates%20-%20working%20documents/Queensland%20Competition%20Authority) guidelines and documentation.

Other research and reference material sourced from council websites), which the following list acknowledges:

* Bundaberg Regional Council
* Burdekin Regional Council
* Cairns Regional Council
* Goondiwindi Regional Council
* Isaac Regional Council
* Logan City Council

# **TEMPLATE**

It is acknowledged that Councils will format to their own inhouse style guide when converting this template into their Policy or Document Management Framework

# **COMPETITIVE NEUTRALITY COMPLAINTS <POLICY/PROCESS>**

|  |  |  |  |
| --- | --- | --- | --- |
| **Policy Number** |  | **Doc.ID** |  |
| **Policy Type:** |  | | |
| **Policy Owner** |  | | |
| **Approval Authority** | Council | | |
| **Approval Date** |  | **Resolution Number** |  |

# Purpose

This <policy/procedure> establishes a process for receiving, managing and resolving competitive neutrality complaints made, by affected persons, in accordance with section 48 of the *Local Government Act 2009* (LGA)*.*

# Scope

The <policy/procedure> applies to:

1. complaints regarding business activities undertaken by Council where someone has claimed to be adversely affected by a competitive advantage allegedly enjoyed by Council (affected person/s);
2. business activities undertaken by Council, in relation to the application of competitive neutrality principles.

# Definitions

| **TERM** | **DEFINITION** |
| --- | --- |
| Affected person/s | 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.  S48(3) of the LGA |
| Business activity | Trading in goods and services by the local government |
| Competitive advantage (or disadvantage) | Competitive advantage may include financial advantages, procedural advantages or regulatory advantages:   * financial advantages—e.g. where a government business has an exemption from paying a tax, does not have to earn profits that reflect those market competitors need to earn2, or has access to less expensive funds because of an implicit or explicit government guarantee * regulatory advantages—e.g. where a government business has an exemption from complying with certain regulations that apply to private sector businesses (such as environmental regulations) * procedural advantages—e.g. where a government business does not have to supply the same information for a government approval process as a private sector business (such as planning and approval processes). |
| Competitive neutrality principle | An entity that is conducting a business activity in competition with the private sector should not enjoy a net advantage over competitors only because the entity is the public sector  s43(3) of the LGA |
| Council | <insert Council name> |
| LGA | *Local Government Act 2009* |
| LGR | *Local Government Regulation 2012* |
| Reviewing Officer | <insert reviewing officer position title> |
| QCA | Queensland Competition Authority |
| Significant business activity | Is a business activity of a local government that:  a) is conducted in competition, or potential competition, with the private sector (including off-street parking, quarries, sporting facilities, for example); and  (b) meets the threshold prescribed under a regulation.  s43(4) of the LGA |

# Provisions

Council has elected to apply the Code of Competitive Conduct (the “Code”) to some of its business activities. Section 48 of the LGA and Division 7 Subdivision 2 of the LGR require Council to establish a complaint process to receive and manage complaints about competitive neutrality in respect of these business activities.

The <Policy/Process> details how Council will manage concerns that it is adhering to the competitive neutrality principles in the LGA. This <Policy/Process> must therefore be read in conjunction with the requirements of section 48 of the LGA. Should the complaints procedure fail to include or conflict in any manner with the requirements of section 48 of the Local Government Act 2009, the requirements of the Act shall prevail.

The *Local Government Act 2009* (LGA) (s48) states that a Competitive Neutrality Complaint is property made if it:

1. relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle; **and**
2. is made by the affected person.

For a compliant to be investigated it must meet the above two criteria. The complaint must also be in writing and demonstrate they are experiencing competitive disadvantage or Council experiencing competitive advantage.

# Policy/Process Statement

## Process for raising concerns and making complaints

The complaints procedure is a two-stage process.

1. Stage one: aims to clarify and if possible, resolve any competitive neutrality complaint in an informal manner.
2. Stage two: if the complaint is not resolved in this manner, the complainant may lodge a formal complaint.

### Stage one – Early resolution/preliminary review

Council is committed to early resolution of and/or clarifying Competitive Neutrality concerns in an informal manner by undertaking a preliminary review.

Anyone considering making a competitive neutrality complaint is encouraged to meet with Council representatives to allow the person to explain their concerns and enable Council to clarify and, if possible, resolve the matter before the complainant makes a formal complaint to the Queensland Competition Authority (QCA).

###### Information required:

The complainant shall lodge a request for a preliminary investigation in writing addressed to the Chief Executive Officer (CEO). The request shall outline in brief terms:

* the Council business activity to which the complaint relates and how the complainant is adversely affected by the Council business activity (the complainant’s concerns),
* the principles of competitive neutrality allegedly compromised by the business activity.

To assist the process, the Preliminary Request – Competitive Neutrality Compliant Form can be completed to support the concerns, for investigation and recording purposes (i.e. claims/concerns needs to be in writing). This form has been developed to capture relevant initial information to assist preliminary investigations.

##### Steps of preliminary investigation/review

* Complainant advises Council verbally or in writing of their concerns.
  + preference is in writing using the Preliminary Request – Competitive Neutrality Compliant Form or another medium that responds to the information required noted above
  + If the complaint is made verbally, it should be referred to the CEO if available or another senior officer and all relevant details obtained.
* The CEO will confirm if they facilitate the complaint themselves or if they will appoint a review officer or officers as per this <Policy/Process> and/or under the power delegated to the Chief Executive Officer to appoint review officer/s.
* Council will acknowledge receipt of the concerns in writing within <seven (7)> working days and advise the person expressing the concerns that the matter is being investigated.
* The CEO, or their delegated Review Officer, will seek to establish the facts relating to the concerns expressed by the complainant.
* Investigation of the matter may involve meeting with the person, collecting data, and holding further meetings.
* A proposed response will be developed to the concerns and seek, within a reasonable time, the complainant’s views on the proposed response.
* The CEO shall make a response to the person in writing.

The review officer will document and record the complaint and the resulting decision and recommendation (recordkeeping).

Council will assist any person wanting to make a complaint by providing them with information about the steps that must be taken, as per the LGR.

### Stage two - Formal complaints

If the complaint is not resolved through Stage one, the person who wants to make a complaint must make the complaint in writing to the QCA.

The complaint process should be followed by Council in accordance with sections 45 to 55 of the LGR.

Complainants are advised that all complaints must be made in writing and provide the following:

* details of the business activity's alleged failure to comply with the competitive neutrality principle;
* information that shows the person is or may be in competition with Councils business entity;
* information that shows how the person is or may be adversely affected by the business entity's alleged failure; and
* information that shows that the person has made a genuine attempt to resolve the complaint directly with Council.

A competitive neutrality complaint [Form](https://www.qca.org.au/wp-content/uploads/2021/06/competitive-neutrality-complaints-form-local-gov-1.pdf) is available on the [Queensland Competition Authority](https://www.qca.org.au/project/competitive-neutrality/) webpage or contact them on (07) 3222 0555 or via their online [form](https://www.qca.org.au/contact/).

## Reports and Recommendations

The QCA will provide a report to Council with recommendations following the completion of their investigation.

Council will consider any report provided by the QCA within 30 days of receiving it and will decide by resolution at the following Council meeting whether to implement the authority's recommendation, stating the reasons for the decision.

Within 7 days of making the resolution, Council will give notice of its decision to the complainant and the QCA. A copy of Council’s resolution must be provided to all relevant stakeholders, i.e. the complainant or, corporatised business entity that is conducting the business activity.

If the QCA provides a report to Council about an investigation into a competitive neutrality complaint, a copy of the report will be made available for public inspection at Council’s administration centre as soon as practicable (s43 LGR).

## Recordkeeping

In accordance with section 44 (2) (b) of the LGR Council will maintain accurate records of all complaints, decisions and recommendations.

## Register of Business Activities

Council must maintain a register of its business activities. The register includes:

* the business activities to which the competitive neutrality principle has been applied and the date it was applied;
* the business activities to which the code of competitive conduct applies and the date the code was applied; and
* a list of current investigative notices for competitive neutrality complaints and the business activities to which they relate, and Council’s responses to the recommendations made by the QCA in relation to the complaints.

## Responsibility

The Chief Executive Officer, <any other officers> or delegate are responsible for coordinating any internal investigation arising from a complaint.

The <position> will maintain a register of complaints and report any relevant information/disclosures to the Queensland Competition Authority.

# Legislation/Literature

*Local Government Act 2009*

*Local Government Regulations 2012*

Queensland Competition Authority

Handbook: Making a competitive neutrality complaint to the Queensland Competition Authority

# References

|  |  |
| --- | --- |
| **Doc Reference** | **Document Name** |
|  | Refer to any other relevant policies/procedures/forms |
|  |  |
|  |  |

# **TEMPLATE**

# **PRELIMINARY REVIEW REQUEST - COMPETITIVE NEUTRALITY COMPLAINT**

<Insert Council’s privacy statement and/or collection notice>

The *Local Government Act 2009* (LGA) (s48) states that a Competitive Neutrality Complaint is property made if it:

1. relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle; **and**
2. is made by the affected person.

Council is committed to early resolution of and/or clarifying Competitive Neutrality concerns in an informal manner by undertaking a preliminary review. Before making a formal complaint concerning Council’s alleged breach of the principles of competitive neutrality, this form has been developed to capture relevant initial information to assist preliminary investigations.

Officers may be in contact to request further information when conducting their investigation and preparing their report for the Chief Executive Officer, or their delegates, consideration for a written response.

## Contact details

|  |  |
| --- | --- |
| Name: |  |
| Email: |  |
| Address |  |
|  |
| Phone: |  |
| Name of Business |  |
| Address of Business |  |

## Describe the business activity that relates to your complaint

|  |
| --- |
|  |

## Please detail how you and/or your business is adversely affected by this business activity (i.e. what are your concerns)

|  |
| --- |
|  |

## Please detail the principles of competitive neutrality that are allegedly compromised by this business activity (e.g. financial, procedural, regulatory)

|  |
| --- |
|  |

# **AUTHORISATION:**

I am the duly authorised person to complete and sign this complaint form. I confirm that all the information provided in, or attached to, this form is correct.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Name** | **Position** | **Signature** |
| **Business Name:** |  | |

# **WEBSITE PAGE – SUGGESTED WORDING**

This wording can form the basis of your competitive neutrality complaint process to meet legislation

### **Competitive Neutrality Complaints**

Council may undertake a business activity involving the supply of goods and/or services in competition, or potential competition, with the private sector.

A competitive neutrality complaint is made by an affected person that Council has failed to conduct a business activity in accordance with the competitive neutrality principle, e.g. by utilising its position to compete unfairly with a business competitor.

Competitive neutrality is the principle that a public sector business or agency undertaking a significant business activity should not have a competitive advantage (or disadvantage) over the private sector solely due to its government ownership. Public sector businesses should compete with private sector businesses on an equal (competitively neutral) basis. Some examples of competitive advantage may include financial advantages, procedural advantages or regulatory advantages.

Each financial year a local government must decide, by resolution, whether or not to apply the code of competitive conduct (LGA s47). The Local Government Regulation 2012 (s39) provides further information on what is a prescribed business activity

#### **Who can make a complaint**

An affected person who has been adversely affected by a competitive advantage allegedly enjoyed by Council may make a complaint.

Complainants are encouraged to meet with Council representatives to explain their concerns and enable Council to clarify and, if possible, resolve the matter before a formal complaint is made.

Refer to Councils competitive neutrality complaint <policy/process> on how the complaint will be managed.

For more information you may wish to visit the [Queensland Competition Authority](https://www.qca.org.au/project/competitive-neutrality/) website or review the provisions of the *Local Government Act 2009* (ss43-48)

#### **Early resolution – preliminary review**

Council is committed to early resolution of alleged breach of the competitive neutrality principles. If you have an enquiry or concern that a competitive neutrality complaint may exist, please contact <contact name and number> to discuss further.

You may be required to complete a Preliminary Request – Competitive Neutrality Compliant Form to support your concerns, for recording purposes (i.e. claims/concerns needs to be in writing).

This is an informal process aimed at investigating and resolving your concerns and where necessary, prepare further recommendations/actions.

#### How to make a formal complaint

If you are not satisfied with Council’s response, you can submit a formal complaint to the Queensland Competition Authority.

All complaints musty be made in writing and provide evidence that the complainant has made a genuine attempt to resolve the complaint/concern through Councils processes.

A competitive neutrality complaint [Form](https://www.qca.org.au/wp-content/uploads/2021/06/competitive-neutrality-complaints-form-local-gov-1.pdf) is available on the [Queensland Competition Authority](https://www.qca.org.au/project/competitive-neutrality/) webpage or contact them on (07) 3222 0555 or via their online [form](https://www.qca.org.au/contact/).