

COMPETITIVE NEUTRALITY COMPLAINTS

- Intent** To provide guidance as to how competitive neutrality complaints will be handled by Council.
- Scope** This General Policy applies to all commercialised business units of Council such as Cairns Water, Cairns Resource Recovery and Cairns Works. It also includes all those activities to which the code of competitive conduct applies.

PROVISIONS

The following sets out the General Policy on competitive neutrality complaints as required by s48 of the *Local Government Act 2009*.

Philosophy

Council aims to establish an appropriate complaint process for handling complaints about the carrying out of activities by commercialised business units and those which the code of competitive conduct applies in a way that does not comply with the competitive neutrality principles applying to those activities.

Competitive neutrality principles mean to which full cost pricing applies, requirements for treatment of community service obligations, and the requirements for removal, or taking account, of advantages and disadvantages accruing to a commercialised business unit or activities to which the code of competitive conduct applies because it is a part of a local government.

Competitive advantage means an advantage that, solely because of local government ownership is a financial advantage, a regulatory advantage, procedural advantage or another advantage.

A financial advantage occurs because such activities are exempt from a local government charge applying to a person making a complaint or is charged a different local government charge from the charge applying to a person making a complaint.

A regulatory advantage occurs because such activities are completely or partly exempt from an approval procedure applying to a person making a complaint.

A procedural advantage occurs because such activities do not have to supply the same level of information under local government approval procedures as a person making a complaint or such activities are given or have access to, more information under local government approval procedures than a person making a complaint.

Details of the competitive neutrality complaints procedure is appended.

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This General Policy is to remain in force until otherwise determined by Council.

General Manager Responsible for Review: Human Resources & Organisational Change

ORIGINALLY ADOPTED: 29/01/2004
CURRENT ADOPTION: 15/11/2017
DUE FOR REVISION: 15/11/2021
REVOKED/SUPERSEDED:



John Andrejic
Chief Executive Officer

CAIRNS REGIONAL COUNCIL COMPETITIVE NEUTRALITY COMPLAINTS PROCEDURE

BACKGROUND

Council has elected to apply the Code of Competitive Conduct (the “Code”) to certain of its business activities. Section 48 of the *Local Government Act 2009* and Division 7 Subdivision 2 of the *Local Government Regulation 2012* require Council to establish a complaint process to receive and manage complaints about competitive neutrality in respect of these business activities.

The objective of this procedure is to elaborate on how Council will handle such complaints in a manner that complies with the Act. This procedure must therefore be read in conjunction with the requirements of s48 of the Act. Should the complaints procedure fail to include or conflict in any manner with the requirements of s48 of the *Local Government Act 2009*, the requirements of the Act shall prevail.

For a complaint to be investigated under this procedure, it must be made by a person or business that is competing with, or seeking to compete with, one of Council’s business activities. Furthermore, the grounds for complaint must be the failure of Council to carry out an activity to which the Code applies, in a manner that complies with the competitive neutrality principles outlined in the Code.

This means that a complaint may be made only if:

- The complainant (person or business) competes or seeks to compete with a business activity of Council to which Council has resolved to apply the Code of Competitive Conduct; and
- The complainant is hindered from effectively competing with the business activity because the business activity enjoys certain competitive advantages by virtue of it being owned and/or operated by Council.

Competitive advantages enjoyed by Council’s business activities include:

- Exemption from certain taxes and charges;
- Access to cheaper sources of loan funds; and
- Exemption from compliance with some business regulations.

However, Council also faces certain competitive disadvantages. These include:

- Local government employment terms and conditions;
- The costs of greater accountability imposed by reporting and regulatory arrangements;
- The cost of community service obligations;
- Costs of compliance with Right to Information requests and judicial reviews;

For the business activities to which Council has resolved to apply the Code of Competitive Conduct, competitive neutrality essentially means removing from the conduct of the business activities any financial advantages and disadvantages attributable to that business activity being operated by local government.

The complaints procedure is a two stage process. The first stage - the preliminary procedure - aims to clarify and if possible resolve any competitive neutrality complaint in an informal manner. If the complaint is not resolved in this manner, the complainant may lodge a formal complaint.

PRELIMINARY PROCEDURE

Before making a formal complaint concerning Council's alleged breach of the principles of competitive neutrality, the complainant shall follow the preliminary procedure:

- The complainant shall lodge a request for a preliminary investigation in writing addressed to the Chief Executive Officer. The request shall outline in brief terms:
 - the Council business activity to which the complaint relates, 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.

- The Chief Executive Officer may refer the matter to an appropriate officer of his/her choice or elect to personally undertake the function of the investigating officer;

- The investigating officer shall acknowledge receipt of the complaint in writing to the complainant within five (5) business days of receipt by the investigating officer of the complaint;

- The investigating officer shall conduct an investigation into the concerns raised by the complainant, seeking to establish the facts.

- 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;

- The review officer shall submit a written report to the Chief Executive Officer on the concerns, together with a proposed response; and

- The Chief Executive Officer shall provide a written response to the complainant, or direct the investigating officer to make a response in writing.

FORMAL COMPLAINTS

If the complaint is not resolved through the preliminary procedure, the person who wants to make a complaint must make the complaint in writing to the Queensland Productivity Commission (QPC).

The complaint process under Division 7 Subdivision 2 sections 45 to 55 of the Local Government Regulation 2012 should be followed by Council.

RECORDKEEPING

In accordance with Section 44 (2) (b) of the *Local Government Regulation 2012* Council will maintain accurate records of all complaints, decisions and recommendations.