

## POLICY



**Date adopted:** 30/05/2017  
**File no:** 661321-1  
**Minute number:** 148/2017

**Policy title:** **COMPETITIVE NEUTRALITY COMPLAINTS**

**Directorate:** ORGANISATIONAL SERVICES

**Branch:** CORPORATE GOVERNANCE

**Policy objective:** To provide a process for resolving competitive neutrality complaints in accordance with section 48 of the *Local Government Act 2009*.

**Policy scope:**

1. This policy only applies to business activities undertaken by Council, in relation to application of competitive neutrality principles. Council adopts annually (as part of its budget process) a list of activities to which competitive neutrality principles are applied.
2. Complaints about other Council related matters are dealt with under the Administrative Action Complaints policy.

**Definitions:**

TERM	DEFINITION
Affected person	(a) a person who: <ul style="list-style-type: none"> <li>(i) competes with the local government in relation to the business activity</li> <li>(ii) claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by the local government; or</li> </ul> (b) a person who: <ul style="list-style-type: none"> <li>(i) wants to compete with the local government in relation to the business activity</li> <li>(ii) claims to be hindered from doing so by a competitive advantage that the person alleges is enjoyed by the local government.</li> </ul>
Business activity	Business activity of a local government means trading in goods and services by the local government.
Business unit	A business unit of a local government is a part of the local government that conducts a business activity of the local government.
Competitive neutrality complaint	Is a complaint that: <ul style="list-style-type: none"> <li>(a) relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle</li> <li>(b) is made by an affected person.</li> </ul>
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 in the public sector e.g. a competitive advantage.

TERM	DEFINITION
Competitive advantage	<p>Is an advantage that a business entity conducting a significant business activity has over a private sector business because the local government owns the business activity. For example, a competitive advantage includes:</p> <ul style="list-style-type: none"> <li>(a) a financial advantage</li> <li>(b) a procedural advantage</li> <li>(c) a regulatory advantage.</li> </ul> <p>Examples of a financial advantage: A significant business has a financial advantage if the significant business:</p> <ul style="list-style-type: none"> <li>(a) is exempt from paying a local government tax that a private sector business must pay; or</li> <li>(b) is charged a different government tax from the government tax that a private sector business is charged; or</li> <li>(c) is charged a lower rate of interest on a bank loan because the State guarantees the loan.</li> </ul> <p>Examples of a procedural advantage: A significant business has a procedural advantage if the significant business:</p> <ul style="list-style-type: none"> <li>(a) does not have to supply the same amount of information under a government approval process as a private sector business; or</li> <li>(b) can access more information under a government approval process than a private sector business</li> </ul> <p>Example of a regulatory advantage: A significant business has a regulatory advantage if the significant business is exempt (completely or partly) from a government approval process that a private sector business must follow.</p>
Preliminary Reviewing Officer	Integrity and Information Program Leader.
Referee	Corporate Governance Manager.
Significant business activity	<p>Is a business activity of a local government that:</p> <ul style="list-style-type: none"> <li>(a) is conducted in competition, or potential competition, with the private sector (including off-street parking, quarries, sporting facilities for example); and</li> <li>(b) meets the threshold prescribed under a regulation.</li> </ul>

**Policy statement:**

## 1. Preliminary review process

The preliminary review process for affected persons to raise concerns about alleged failure of Logan City Council business activity(s) to comply with the relevant competitive neutrality principles, and for clarifying and, if possible, resolving those concerns is:

- (a) all preliminary complaints must be in writing and set out:
  - (i) how the complainant is an 'affected person'
  - (ii) how the complainant believes the competitive neutrality principles have been breached
  - (iii) copies of all evidence the complainant has to support their complaint

- (b) a complaint will not be considered until the above information is provided to the satisfaction of the preliminary reviewing officer. The preliminary reviewing officer will make initial contact with the complainant within 10 working days. This initial contact will include acknowledging receipt of the concerns in writing, advising of any further requirements from the complainant and/or information available to the complainant and the preliminary review officers contact details
- (c) the preliminary reviewing officer will seek to establish the facts relating to the concerns expressed by the complainant. Investigation of the matter may involve meeting with the complainant, collecting data, holding further meetings and/or recommending mediation
- (d) the preliminary review officer will develop a proposed response to the concerns and seek, within 140 days, the complainant's views on the proposed response
- (e) the preliminary reviewing officer will provide a report to the relevant director on the concerns, which shall include the proposed response to the complainant, and the complainant's views on the proposed response
- (f) the director shall make a response, or shall direct the manager of the business activities concerned, to make a response to the complainant. The response will include details on how to make a formal complaint, either to the Queensland Competition Authority (QCA) for an accredited business activity or to Council's referee, whichever process is required.

## 2. Council referee complaints process

The Council referee complaints process for affected persons to raise formal complaints about alleged failure of business activities to comply with the relevant competitive neutrality principles is as follows. This complaints process has been developed in accordance with the *Local Government Act 2009* (here in referred to as the LGA).

- (a) All complaints must be in writing as per the 'Competitive Neutrality Complaints Information Kit' (Id: 6640049).
- (b) All complaints must have been reviewed under the 'preliminary review process' of this policy before consideration of the complaint will commence.
- (c) All the complaints must be accompanied with payment of a \$100 application fee, before consideration of the complaint will commence.
- (d) All complaints will be processed through Council's document management system in the first instance, as per section 3. The written complaint is then forwarded to the Corporate Governance Manager, who will be Council's referee. The Corporate Governance Manager is only Council's referee for business activities, so directed by Council resolution. It is acknowledged that the skills and knowledge required to be a referee will not reside with only one officer of Council. Therefore, the Corporate Governance Manager will call upon various officers of Council and/or external experts to assist in the completion of the complaint process. The final decision of the referee still resides with the Corporate Governance Manager, here in referred to as the referee.
- (e) The referee will acknowledge receipt of the complaint in writing within 10 working days.
- (f) Within 60 days advise the complainant that a review of the complaint has determined one of the following:
  - (i) *Additional Information Notice* advising the complainant is required to provide further information before the referee can make a determination about investigating or refusing to investigate the complaint within 60 days;
  - (ii) Issuing of a written notice advising that an investigation will be undertaken i.e. an *Investigation Notice*; or
  - (iii) Advise that no investigation will be undertaken i.e. a *Refusal Notice*.

- (g) If no investigation is to occur the referee must, within 14 days after making the decision, give a written notice stating the decision and the reasons for the decision i.e. a *Refusal Notice*. The referee must refuse to investigate a complaint if a business activity is accredited or the QCA is the referee for the business activity. The *Refusal Notice* will be sent to the complainant and a report to the Chief Executive Officer to present to the local government meeting.
- (h) Where the QCA undertakes the investigation or appeal this will be managed in accordance with section 4.
- (i) If an *Investigation Notice* has been issued, the referee must conduct the investigation within 140 days of issuing the investigation notice. Upon issuing the investigation notice, a copy is to be directed to the Integrity and Information Program Leader (to allow updating of the Competitive Neutrality Complaints (CNC) register - Id: 6442921), to the complainant, and to the Chief Executive Officer to present to the local government.
- (j) The investigation of the matter will involve consideration of all submissions made in writing. Where the information in the submission is confidential, the referee will respect this confidentiality.
- (k) The referee and persons assisting referee in conducting the investigation will take into consideration all of the matters set out in the LGA regarding competitive neutrality complaints process.
- (l) At the end of the 140 days, a report (including recommendations) on the results of the referee's investigation of a complaint will be given to the Chief Executive Officer to present to local government and also to the complainant and other parties who received a notice of investigation.
- (m) The referee will ensure that the Integrity and Information Program Leader is given a copy of the report (including recommendations). The Integrity and Information Program Leader is to ensure that this report is open to inspection at Council's Administration Centre. This is to occur as soon as practicable after the investigation report is presented to the local government.
- (n) The Chief Executive Officer must refer the referee report to local government, within 30 days of receiving the report and/or to the next local government meeting. The local government must decide, by resolution within 30 days of receiving the referee's report, whether to implement the recommendations in the referee's report.
- (o) After local government makes its decision the referee must, within 7 days, give written notice of the resolution and reasons for the decision to the complainant and other relevant parties. The notice to the complainant will detail if the complainant has appeal rights to the QCA or not based of the LGA provisions. The Integrity and Information Program Leader is to also receive a copy of this local government resolution, to allow updating of the CNC register.

### 3. Records system for Council operated complaints process

The records system to record formal complaints expressed about whether Logan City Council business activities are carried out in compliance with the competitive neutrality principles applying to the activity, all complaints to a referee, and the referee's decisions and recommendations shall be:

- (a) The Records Management program will receive and register all complaints on individual files within Council's electronic document/records management system. The security level for this class of files is to be set to the same level as Crime and Misconduct Commission files.

- (b) Where persons express concerns about the operations of the Building Services program or Plant Fleet Services branch, the file from the preliminary complaint process will be reused to register and track the following documentation.
  - (c) The Records Management program will action the letter to the Corporate Governance Manager, in their role as 'referee' in this policy.
  - (d) If the referee has determined not to investigate the complaint, the outwards *refusal notice* addressed to the complainant will be recorded in Council's electronic document/records management system. The outwards letter will use specific wording in the 'document name' field of the profile form, to highlight that no investigation is required.
  - (e) If an *Investigation Notice* is issued by the referee the notice will use specific wording in the 'document name' field to highlight the continuation of the investigation.
  - (f) The referee records are to be considered confidential and no additional requests for the file are to be considered without first reference to the referee.
  - (g) When the referee has issued a report on the complaint to the Chief Executive Officer, the covering memorandum will highlight that the attached document is the report on the specific complaint. A copy referee report will be referred onto the Integrity and Information Program Leader for public inspection.
  - (h) When Council has made a decision on a report by the referee, the Council report will be recorded and referred onto the Integrity and Information Program Leader for updating of the CNC register.
  - (i) The referee will advise the relevant persons, within 7 days of Councils decision. The electronic document/records management system will record the outwards letters and complete the recording requirements.
4. Records system where QCA is the referee

Detailed below is the procedure to record concerns expressed about whether the Logan Waste Services business activity is carried on in compliance with the competitive neutrality principles applying to these activities, all complaints to the QCA, and the QCA's decisions and recommendations shall be:

- (a) Where persons express concerns about the operations of the Logan Waste Services business activities, the preliminary review procedure will be followed. The QCA will direct any complainant who has not followed the preliminary review procedure to Logan City Council.
- (b) Where a person has made a complaint to the QCA and the QCA has determined not to investigate the complaint, the Records Management program will forward the notification issued by the QCA to the Integrity and Information Program Leader to update the CNC register.
- (c) Where a person has made a complaint to the QCA, and the QCA has determined to investigate the complaint, the Records Management program will forward the notification issued by the QCA to the Integrity and Information Program Leader to update the CNC register.
- (d) Where the QCA has issued a report on the complaint, the Records Management program will record the receipt of the report and the date it was received. The report will be referred to the Corporate Governance Manager. The Corporate Governance Manager will ensure a copy is given to the Integrity and Information Program Leader to update the CNC register, with any recommendations contained in the report and have the report open for public inspection.

- (e) Where Council has made a decision on a report by the QCA, the Secretariat and Legislation program will record and forward the report to the Integrity and Information Program Leader to update the CNC register with the resolution incorporating the decision, the date of the resolution and any directions to implement the decision that are given to a business unit.
- (f) Where the Corporate Governance Manager has advised relevant persons of its decision, these will be recorded into the electronic document/records management system.

5. Annual reporting

Under section 190 of the Local Government Regulation 2012 Council must include the following information in its annual report:-

- (a) a summary of investigations notices given in the financial year under section 49 of the *Local Government Act 2009* for competitive neutrality complaints
- (b) the local government's responses in the financial year on the QCA's recommendations on any competitive neutrality complaints under section 52(3) of the Local Government Regulation 2012.

Section 315 of the Local Government Regulation 2012 applies for complaints made prior to the repeal of the Business Activities Regulation.

**Related policies/legislation/other documents:**

DOC ID	DOCUMENT TYPE	DOCUMENT NAME
<a href="#">6640049</a>	Internal	Competitive Neutrality Complaint Information Kit