

**Policy Title: COMPETITIVE NEUTRALITY COMPLAINTS POLICY**

Policy Subject: Finance  
Policy No: #1940214

Directorate: Organisational Services  
Department: Financial Services  
Section: Financial Services

Responsible Officer: Executive Manager Financial Services  
Authorised by: Director Organisational Services

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**OBJECTIVE:**

To provide guidance as to how competitive neutrality complaints will be handled by Council.

**POLICY:****PROVISIONS**

The following sets out the General Policy on competitive neutrality complaints as required by *Chapter 3* of the *Local Government Act 2009*.

1. Council aims to establish an appropriate complaint process for dealing with complaints about the carrying on 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.
  2. Competitive neutrality principles encompasses the application of full cost pricing, the 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.
  3. Competitive advantage means an advantage that, solely because of local government ownership is a financial advantage, a regulatory advantage, procedural advantage or another advantage.
  4. 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.
  5. A regulatory advantage occurs because such activities are completely or partly exempt from an approval procedure applying to a person making a complaint.
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6. 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.
7. Details of the competitive neutrality complaints procedure is appended.

**HEAD OF POWER:**

*Local Government Act 2009 (Section 48)*

## 1.0 BACKGROUND

Council has elected to apply the Code of Competitive Conduct (the "Code") to certain business activities it undertakes. *Part 2 of Chapter 6 of the Local Government (Beneficial Enterprises and Business Activities) Regulation 2010* (the "Regulations") requires 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 Regulations. This procedure must therefore be read in conjunction with the requirements of *Part 2 of the Regulations*. Should the complaints procedure fail to include or conflict in any manner with the requirements of *Part 2 of Chapter 6 of the Local Government (Beneficial Enterprises and Business Activities) Regulation 2010*, the requirements of the Regulations 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 the 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:

1. 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
2. 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;
- No requirement to pay dividends to Council's owners/ratepayers;
- 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 freedom of information requests and judicial reviews;
- Difficulty in obtaining the benefits of taxation relief such as investment allowances and deductions; and
- Remoteness, continuity of staff, resource scarcity, declining real resources and the demands imposed on Council by an aging population.

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.

## **2.0 PRELIMINARY PROCEDURE**

- 2.1 The Chief Executive Officer shall provide information to applicants on how to make a complaint about competitive neutrality of any business activity to which Council has resolved to apply the Code. Such information will include details of the Council resolution adopting the complaint process; a copy of the complaint procedure and advice as to who can complain; what grounds can be relied upon by the complainant and an explanation of what constitutes competitive advantage.
- 2.2 Before making a formal complaint concerning Council’s alleged breach of the principles of competitive neutrality, the complainant shall follow the preliminary procedure outlined below:
1. The complainant shall lodge a request for a preliminary review in writing addressed to the Chief Executive Officer. The request shall outline in brief terms:
    - a. The Council business activity to which the complaint relates;
    - b. How the complainant is adversely affected by the Council business activity (the complainant’s concerns);
    - c. The principles of the competitive neutrality allegedly compromised by the business activity; and
    - d. The impact to the complainant of the alleged breach.
  2. The Chief Executive Officer may refer the matter to a review officer of his/her choice or elect to personally undertake the function of the review officer;
  3. The review officer shall acknowledge receipt of the complaint in writing to the complainant within seven (7) working days of receipt by the review officer of the complaint;
  4. The review officer shall investigate the request for a preliminary review, seeking to establish the facts relating to the concerns expressed by the complainant. Such investigation may involve meetings with the complainant and collecting data;
  5. 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;

6. The review officer shall submit a written report to the Chief Executive Officer on the concerns, together with a proposed response and the views of the complainant on the proposed response; and
7. The Chief Executive Officer shall make a response to the complainant in writing, or direct the review officer to make a response in writing.

### **3.0 FORMAL COMPLAINTS**

#### **3.1 A formal complaint must:**

1. Be made in writing addressed to the Chief Executive Officer;
2. Contain the name, address and telephone number of the complainant;
3. Be accompanied by the prescribed fee;
4. Contain details of the alleged failure of any business activity established by Council or any other business activity to which Council has resolved to apply the Code to comply with the relevant competitive neutrality principles;
5. Show how the complainant is, or could be, in competition with any business activity to which Council has resolved to apply the Code;
6. Show how the complainant was adversely affected by the alleged non-compliance; and
7. Contain a statement that the applicant has made a genuine attempt to resolve their concerns with any business activity to which Council has resolved to apply the Code using the preliminary procedure above.

#### **3.2 A formal complaint shall be processed as follows:**

1. On receipt of a formal complaint, the Chief Executive Officer shall acknowledge receipt thereof in writing within seven (7) working days, appoint a referee and advise the referee of his/her appointment and forward a copy of the complaint to the referee. The Chief Executive Officer shall also advise the complainant and the Council of the appointment of a referee to investigate the complaint;
2. In conducting and investigating the complaint, the referee shall have regard to the provisions of *Part 2 of Chapter 6 of the Local Government (Beneficial Enterprises and Business Activities) Regulation 2010* and the following matters:
  - a. The referee may make a written request of the complainant seeking further information about the complaint so that the referee can determine whether or not to investigate the complaint. Such further information shall be provided within a reasonable time,
  - b. The referee may obtain additional information from other sources operating within the same industry as the Council business activity against which the complaint is made, or by inviting public input;

3. Upon receipt of the referee's report Council shall:
  - a. Ensure a copy of the report is open to inspection as soon as practicable following receipt;
  - b. Decide by resolution within 1 month or at the first Council meeting after that month whichever comes first whether to implement the recommendations of the report, and within seven (7) days of the date of that decision give written notice to the complainant;
  - c. The resolution must include the reasons for the decision.
4. The maximum time period for the conduct of an investigation shall be forty (40) working days or such longer period as the Chief Executive Officer may determine as reasonable; and
5. Where a referee cannot complete an investigation and produces a report indicating an incomplete investigation without a recommendation for Council to act upon, the Chief Executive Officer may appoint a new referee to undertake a new investigation of the complaint. The Chief Executive Officer shall notify the complainant and any other affected parties of the new appointment.

3.3 A complainant may provide any additional information to the referee.

3.4 The fee for making a complaint shall be \$127.00.

#### **4.0 SELECTING AND APPOINTING REFEREES**

- 4.1 The process for selecting and appointing a referee to investigate complaints of any business activity to which Council has resolved to apply the Code shall be in accordance with the following:
  1. The Chief Executive Officer is authorised to select and appoint a referee to handle complaints about the activities of any business activity to which Council has resolved to apply the Code on receipt of a complaint;
  2. This authority includes the power to determine:
    - a. The amount of remuneration of the referee,
    - b. The provision of appropriate insurance cover for the referee,
    - c. The method of notification of appointment of the referee;
  3. Once the Chief Executive Officer has selected a referee, advice of such selection and appointment shall be communicated to the referee who shall advise acceptance of the appointment within seven (7) working days; and
  4. In selecting a referee the Chief Executive Officer shall have regard to the capacity of the referee to investigate the complaint, and to the requirements of *Part 2 of Chapter 6 of the Local Government (Beneficial Enterprises and Business Activities) Regulation 2010* in respect of the need for the referee to:
    - a. Act fairly and impartially,
    - b. Not be involved with the carrying on of the business activity which is the subject of the complaint.

**5.0 HANDLING OF DOCUMENTS**

- 5.1 If a document is produced to the referee for an investigation, the referee may –
1. (a) inspect the document; and  
(b) make copies of the document if it is relevant to the investigation;
  2. Also the referee may take possession of the document, and keep it while it is necessary for the investigation.
  3. While keeping a document, the referee must allow a person otherwise entitled to possession of it to inspect or copy the document at a reasonable time and place the referee decides.

**6.0 CONFIDENTIAL INFORMATION**

- 6.1 This section applies if a person believes:-
1. (a) stated information made available, or to be made available, in an investigation is confidential; and  
(b) The disclosure of the information is likely to damage the person's commercial activities.
  2. The person may –
    - (a) Inform the referee of the person's belief; and
    - (b) Ask the referee not to disclose the information to another person.
  3. The referee must take all reasonable steps to ensure the information is not, without the person's consent, disclosed to another person other than a person assisting the referee in carrying out the referee's duties who receives the information in the course of carrying out the duties.
  4. As soon as practicable after giving a report under division 4 on the investigation, the referee must return any document containing confidential information to the person who produced it to the referee.
  5. In this section – "**commercial activities**" means activities conducted on a commercial basis.

**7.0 CONTENTS OF REPORT**

7.1 The referee must, in a report –

- a) State whether the referee considers the complaint has been substantiated; and
- b) If the referee considers the complaint has been substantiated –
  - (i) For all complaints – include recommendations on how the local government business entity’s failure to carry on an activity in a way that complies with the competitive neutrality principles applying to the activity could be overcome; and
  - (ii) For a complaint about a building certification business activity, include –
    - (A) Comments on how the carrying out of statutory building functions has resulted in a competitive advantage to the local government business entity; and
    - (B) Recommendations on how the advantage provided to the entity could be overcome; and
- c) If the referee considers the local government business entity suffers a competitive disadvantage because of the local government ownership of the entity –
  - (i) Include comments about the competitive disadvantage (including comments about the effect of the disadvantage on the local government business entity); and
  - (ii) Include recommendations on how the disadvantage suffered by the local government business entity could be overcome; and
- d) State reasons for its recommendations.

**8.0 REPORTS OPEN TO INSPECTION**

- (1) As soon as practicable after the local government receives the report, the local government must ensure a copy of it is open to inspection.
- (2) The report is a document of the local government.