

# Competitive Neutrality Complaints Policy

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## 1 OUTCOMES

- 1.1 To provide an avenue for persons or businesses to lodge a complaint against Council operations regarding competitive neutrality as a result of the National Competition Policy.

## 2 POLICY

- 2.1 To establish an effective system to deal with complaints relating to competitive neutrality in respect of their businesses.

## 3 SCOPE OF THE POLICY

- 3.1 This policy forms part of QPRC's Complaints Management Framework  
3.2 To ensure that Council's commercial activities comply with the competitive neutrality principles as set out in the National Competition Policy which applies to all levels of government throughout Australia.

## 4 DEFINITIONS

- 4.1 Competitive neutrality is the policy that a public sector business, or agency, should not have a competitive advantage (or disadvantage) over the private sector solely due to their government ownership.

## 5 LEGISLATIVE OBLIGATIONS AND/OR RELEVANT STANDARDS

- 5.1 The Commonwealth Government's 1996 *Competitive Neutrality Policy Statement* (CN Policy)  
5.2 The NSW Government has published three key guidance documents on competitive neutrality which are relevant to local councils:
- The *Policy Statement on the Application of Competitive Neutrality: Policy and Guidelines Paper* January 2002 (**the Policy Statement**)
  - *Competitive Tendering Guidelines* January 1997 (**the Guidelines**); and  
*Pricing & Costing for Council Businesses: A Guide to Competitive Neutrality* July 1997 (**the Neutrality Guide**).

## 6 CONTENT

- 6.1 Competitive neutrality is one of the principles of National Competition Policy, which is applied throughout Australia at all levels of Government. The framework for the application of National Competition Policy to Councils was developed in cooperation with the Local Government. It is found in the NSW Government's Policy Statement on the Application of National Competition Policy to Local Government.
- 6.2 These Guidelines fulfil the Government's commitment in the Policy Statement to provide guidance to councils on the development of a complaints handling mechanism for competitive neutrality issues. The implementation of competitive neutrality itself is explained in "*Pricing and Costing for Council Businesses – A Guide to Competitive Neutrality*", released by the Department of Local Government in July 1997.
- 6.3 Under the principles of National Competition Policy, Commonwealth, State and Local Governments must each establish an effective system to deal with complaints relating to competitive neutrality in respect of their businesses.

- 6.4 Complaints regarding competitive neutrality can be made either to Council directly or to the NSW State Government. The Independent Pricing and Regulatory Tribunal (IPART) has been nominated as the State agency responsible for handling these complaints.
- 6.5 Once a complaint is referred to IPART, the Government has agreed that all such complaints will be forwarded to Council for resolution in the first instance.
- 6.6 IPART will pursue any complaints which has not been adequately resolved by Council. Further consideration/investigation of complaints will be handled under existing legislation (ie, *Local Government Act 1993*).
- 6.7 Competitive neutrality is based on the concept of the 'level playing field' for all competitors in a market, be they public or private sector competitors. As it is expressed in the Policy Statement, "government businesses, whether Commonwealth, State or Local, (should) operate without net competitive advantages over other businesses as a result of their public ownership."
- 6.8 Under the Policy Statement, Council is required to apply a number of different elements of competitive neutrality to its business activities. Application will depend on the size of the business. Even where Council is not required to adopt a particular element, it is expected to abide by the principle of competitive neutrality in the conduct of the business. That is – "where councils compete in the market place they should do so on a basis that does not utilise their public position to gain an unfair advantage over a private sector competitor."
- 6.9 A complaint regarding competitive neutrality is:
  - 6.9.1 A complaint that Council has not met its requirements under the Policy Statement or "Pricing and Costing for Council Businesses- A Guide to Competitive Neutrality." This includes a concern that Council has not established an effective complaints handling mechanism;
  - 6.9.2 A complaint that Council has not abided by the spirit of competitive neutrality in the conduct of a business activity.
- 6.10 A competitive neutrality complaint is **not**:
  - 6.10.1 A complaint regarding the level of service provided by a business activity (eg, water quality inadequate, garbage bin not collected);
  - 6.10.2 A complaint regarding the cost of the service, unless it is that Council has not costed its service to take competitive neutrality into account;
  - 6.10.3 A complaint regarding the trade practices laws and their application to Councils. Complaints which centre on the *Trade Practices Act 1974* and related issues can be dealt with by the Council but are not competitive neutrality complaints. They may also be referred to the Australian Competition and Consumer Commission.
- 6.11 Complaints that do not concern competitive neutrality should be dealt with through Council's usual complaints system.

## 7 MAKING A COMPLAINT REGARDING COMPETITIVE NEUTRALITY

- 7.1 Complaints against Queanbeyan-Palerang Regional Council can be made to either the Independent Pricing and Regulatory Tribunal (IPART) or to Council's GM.
- 7.2 All complaints are to be in writing and will be acknowledged by the Council. With respect to complaints made under this Policy, Council will treat the complaint in the same manner in which it deals with a complaint made under the 'Public Interest Disclosures Act 2002 and Council's internal reporting system.
- 7.3 Council will deal with all complaints promptly and aims to respond to the complainant within 4 weeks of receipt of the letter.

- 7.4 After proper investigation all complaints will be reported to Council and state the outcomes and validity of the complaint.
- 7.5 Council will advise the complainant of the remedy available and these would include:
  - 7.5.1 To provide more information to the complainant for a more accurate understanding of the competition policy
  - 7.5.2 To investigate/review Council's business activities if a legitimate complaint is made
  - 7.5.3 To change Council's business practice where a complaint is justified.
- 7.6 If the complainant is not satisfied with the above, they will be directed to the Independent Pricing and Regulatory Tribunal, the NSW Ombudsman or the Independent Commission Against Corruption to pursue the matter further, depending on the nature of the complaint.
- 7.7 If the matter relates to the application of the *Trade Practices Act 1974* involving local government, they will be directed to the Australian Competition and Consumer Commission (ACCC) located in the ACT.

## **8 REVIEW**

- 8.1 This policy will be reviewed every two years or earlier as necessary if:
  - a) legislation requires it, or
  - b) Council's functions, structure or activities change