



WUJAL WUJAL ABORIGINAL SHIRE COUNCIL

Competitive Neutrality Complaints Management Policy

Document Control

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1. Origin / Authority

Wujal Wujal Aboriginal Shire Council

2. Purpose and Scope

2.1 This Policy 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).

2.2 This Policy applies to:

- a) 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).
- b) Business activities undertaken by Council, in relation to the application of competitive neutrality principles.

This Policy details how Council will manage complaints that it is not adhering to the competitive neutrality principles in the LGA. As such, this Policy 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 LGA, the requirements of the LGA shall prevail

The types of complaints listed below will be managed separately from this policy:

- Corruption complaints that are required to be dealt with under the Crime and Corruption Act 2001.
- Administrative Action Complaints.
- Public Interest Disclosures (PIDs) made under the Public Interest Disclosure Act 2010.
- Internal complaints relating to staff conduct (i.e. Code of Conduct matters).
- Social media comments.
- Customer requests.

3. Policy Statements

3.1 Overview

Wujal Wujal Aboriginal Shire Council recognises that an effective complaints management system is integral to delivering good customer service and therefore values all complaints.

While Council encourages a proactive approach to complaints management, the objective of the competitive neutrality complaints process is to ensure that Council is adhering to the Competitive Neutrality Principles.

The Complaints Management System governed by this policy aims to:

- Be fair and objective. All complaints are considered on their merits and the principles of justice are observed;
- Support continuous improvement. Where applicable, the outcomes from a complaints management process are applied to improve business operations, policies and procedures;
- Be open and accountable. The decisions and outcomes regarding a complaint are made available to the affected person, subject to statutory provisions;
- Be accessible and simple to understand. The process facilitates feedback from the community in a form that encourages participation.

Wujal Wujal Aboriginal Shire Council will endeavour to ensure a commitment to a complaints management system that ensures the transparent, effective and timely resolution of complaints, and that contributes to continuous improvement of Council's services.

3.1 Definitions

The Code of Competitive Conduct is the code described in section 47 of the Local Government Act 2009 and Division 7, Part 2, Chapter 3 of the Local Government Regulation 2012.

A **competitive neutrality complaint** is a complaint that relates to the failure of Council to conduct a business activity in accordance with the competitive neutrality principle; and is made by an affected person.

An **affected person** is a person who:

- competes with the local government in relation to the business activity; and
- claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by the local government; or
- a person who wants to compete with the local government in relation to the business activity; and claims to be hindered from doing so by a competitive advantage that the person alleges is enjoyed 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 earn, or has access to less expensive funds due to 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).

The **Competitive Neutrality Principle** is used when Council applies the Code of Competitive Conduct to its business activities. Council must apply the Competitive Neutrality Principle to the business activity by:

- removing any competitive advantage or competitive disadvantage, wherever possible and appropriate; and
- promoting efficient use of resources to ensure markets are not unnecessarily distorted.

LGA refers to the Local Government Act 2009.

LGR refers to the Local Government Regulation 2012

QCA means the Queensland Competition Authority established under the Queensland Competition Authority Act 1997.

Significant business activity is a business activity of Council that:

- is conducted in competition, or potential competition, with the private sector; and
- meets the threshold prescribed under a regulation.

3.3 Complaints Process

3.3.1 Overview of complaints process:

The complaints procedure is a two-stage process.

Stage one (early resolution):	Aims to clarify and if possible, resolve any competitive neutrality complaint in an informal manner.
Stage two (formal complaint):	If the complaint is not resolved in this manner the complainant may lodge a formal complaint.

3.4 Stage one (early resolution):

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 before the complainant makes a formal complaint to the Queensland Competition Authority (QCA).

3.4.1 How to lodge a complaint

The complainant lodges 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); and,
- the principles of competitive neutrality allegedly compromised by the business activity.

To assist the process, the FORM- Competitive Neutrality Compliant – Preliminary Complaints Magic 37167.

This form has been developed to capture relevant initial information to assist preliminary investigations. Note complaints need to be in writing.

3.4.2 Preliminary Investigation

- 1) Complainant advises Council verbally or in writing of their concerns.
 - Preference is to be provided 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 of Council and all relevant details obtained.
- 2) The CEO will confirm if they are to facilitate the complaint or appoint another Review Officer in accordance with this Policy.
- 3) Council will acknowledge the receipt of the concerns in writing within 3 working days and advise the person expressing the concerns that the matter is being investigated.
- 4) The CEO, or their delegated Review Officer, will seek to establish the facts relating to the concerns expressed by the complainant.
- 5) Investigation of the matter may involve meeting with the person, collecting data, and holding further meetings.
- 6) A proposed response will be developed to the concerns and seek, within a reasonable time, the complainants' views on the proposed response.
- 7) The CEO shall make a response to the person in writing.
- 8) 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.

3.5 Stage two (formal complaint):

- 1) If the complaint is not resolved through Stage one, the person who wishes to make a complaint must make the complaint in writing to the QCA.
- 2) 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 Council's 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.
- 3) A competitive neutrality complaint [Form](#) is available on the [Queensland Competition Authority](#) webpage or contact them on (07) 3222 0555 or via their online contact [form](#).

3.6 Reports and Recommendations

The QCA will provide a report to Council with recommendations following the completion of its investigation. Council will consider any report provided by the QCA within 30 days of receiving it and will decide by

- 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, 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).

3.7 Recordkeeping

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

3.8 Register of Business Activities

Council maintains a register of its business activities (T0556). 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.

4. Associated Policies, Processes, Forms and Resources

- Competitive-Neutrality-Complaints-Form-local-gov-1: <https://www.qca.org.au/wp-content/uploads/2021/06/competitive-neutrality-complaints-form-local-gov-1.pdf>
- Contact the QCA: <https://www.qca.org.au/contact/>
- Making a Competitive Neutrality Complaint: <https://www.qca.org.au/project/make-a-competitive-neutrality-complaint/>
- Competitive Neutrality Investigations: <https://www.qca.org.au/project/competitive-neutrality/recent-competitive-neutrality-investigations/>
- Handbook: Making a competitive neutrality complaint to the Queensland Competition Authority

6. Relevant Legislation

- Local Government Act 2009
- Local Government Regulation 2012

7. Review

Council will formally review this policy every 2 years.



Kiley Hanslow
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