

## Purpose

This policy is established in keeping with the requirements of Section 44 of the Local Government Act and with objective of prescribing the principles for investigating complaints about the application of the Competitive Neutrality Principle regarding Business Activities conducted by Council which is expected to enhance of the community's confidence in the manner in which Council conducts such Business Activities.

It is designed to ensure that, where appropriate, council sets prices on the same basis as the private sector by making adjustments for the advantages and disadvantages of public ownership. This policy is applicable to those activities to which competitive neutrality applies.

## Scope

This policy applies to Affected Persons, Councillors, and Employees either making a Competitive Neutrality Complaint or engaged in administering and/or resolving a Competitive Neutrality Complaint. This policy does not apply to a complaint:

- a) which is not about a Competitive Neutrality Complaint relating to a Business Activity of Council;
- b) made by a person not deemed to be an Affected Person;

## Policy Statement

1. Internal dispute resolution
  - 1.1 The first step of the competitive neutrality complaints process involves attempting to resolve a matter before a formal complaint is made. For example, a person may contact council directly about an issue that they are dissatisfied with. Council has a process for resolving issues before it escalates to a formal competitive neutrality complaint - 'internal dispute resolution'.
2. Formal competitive neutrality complaint
  - 2.1 If a person is unhappy with the council's response through internal dispute resolution, then they may wish to escalate the matter by making a formal competitive neutrality complaint that is made in accordance with section 48 of the Local Government Act:
  - 2.2 A person may make a formal competitive neutrality complaint directly to council or Queensland Competition Authority using the complaints form available on the Queensland Competition Authority website: <https://www.qca.org.au/project/make-a-competitive-neutrality-complaint/>
  - 2.3 As such, once a formal competitive complaint is made, the complaint must be referred to (the QCA), and QCA will investigate it through their processes (set out in sections 46 to 55 of the Local Government Regulation).
  - 2.4 The council does not itself investigate formal competitive neutrality complaints.
  - 2.5 Once the QCA's investigation is complete, QCA will provide a copy of their report to council. The council will be required to respond to the report, pursuant to section 55 of the Local Government Regulation.
3. Council process after lodgement of formal competitive neutrality complaint

- 3.1. Council will endeavour to ensure at all times that its Business Activities are conducted in keeping with the CNP and the related requirements contained in the Act and the Regulation.
- 3.2. In keeping with Section 56 of the Regulation, Council will maintain a register of its Business Activities to which the CNP applies.
- 3.3. Notwithstanding Statement 1 above, Council recognises the right of an Affected Person to make a complaint in keeping with Section 45 of the Regulation. Council encourage persons who believe they are an Affected Person, to make raise their concerns in the first instance with Council and resort to a Complaint to the QCA only if they are not satisfied with the response or resolution offered by Council.
- 3.4. Council intends, to the greatest practical extent, to deal with any Complaint fairly, promptly, professionally, in confidence (subject to any legal requirements), in keeping with the letter and spirit of the requirements contained in the Act and the Regulation, and in a manner respectful to the Complainant.
- 3.5. Council commits to providing adequate resources and trained employees to deal with Complaints and to keep the Register.
- 3.6. All Complaints must:
  - a. be made in writing,
  - b. identify the name and contact details, in the minimum, an email address (or failing which a postal address) and a contact phone number.
  - c. contain the following information (in keeping with the Regulation):
    - i. the Business Activity to which the complaint relates to,
    - ii. evidence of Council's failure to comply with the CNP in conducting the said Business Activity,
    - iii. evidence that the Complainant is an Affected Person,
    - iv. details of how the Complainant is, or may be, affected by Council's alleged failure to adhere to the CNP.
- 3.7. All Complaints must be addressed to the CEO and:
  - a. be forwarded via email to [info@whitsundayrc.qld.gov.au](mailto:info@whitsundayrc.qld.gov.au);
  - b. posted to PO Box 104, Proserpine, QLD 4800; or
  - c. be delivered to any of Council's customer service centres as detailed on Council's website [www.whitsundayrc.qld.gov.au](http://www.whitsundayrc.qld.gov.au).
- 3.8. Upon receiving a Complaint, the CEO will assign an Employee at manager level or senior, to perform an initial assessment of each complaint in terms of its seriousness, complexity and degree of urgency.
- 3.9. An Employee assigned to conduct initial assessment of a Complaint will be independent of the Business Activity to which the Complaint relates to, as well as Employees who have direct responsibility for the implementation of CNP and related obligations under the Act and Regulation.
- 3.10. On receiving a Complaint, Council will ensure that QCA is informed of the Complaint as soon as practicable in keeping with the Regulation.
- 3.11. Council will maintain a Register as required by the Regulation.

- 3.12 Council will ensure that Complaints are responded to as quickly as possible, taking into consideration the complex nature of such complaints.
- 3.13. If a Complainant is not satisfied that a Complaint has been satisfactorily resolved, Council will inform the Complainant of any further right of review under the Act and Regulation.
- 3.14. Council will co-operate fully with any external investigating authority charged with dealing with a Complaint such as the QCA.
- 3.15. This policy is not a tool to bring Council Business Activities to a halt nor to delay or prevent Council making decisions.
- 3.16. If there is any conflict between this Policy and/or any associated processes and the requirements of the Act, Regulation or any other relevant legislation, the legislative requirements will take precedence.

## Applicable Legislation

Local Government Act 2009 (Act)

Section 44 Local Government Regulation 2012 (Regulation)

## Definitions

**Affected Person** refers to a person (or an organisation) as defined by Section 48(3) of the Act, namely a person who competes with a Business Activity conducted by the local government (for purposes of this Policy, Council), and claims to be adversely affected by an alleged of Council to adhere to CNP or a person who intends to compete with a Business Activity conducted by Council and claims to be hindered from doing so due to an alleged of Council to adhere to CNP.

**Business Activity(ies)** refer to the term as used in the Act, namely an activity that trades in goods and/or services, conducted by a local government (for purposes of this Policy, Council).

**CEO** refers to the Chief Executive Officer of the Whitsunday Regional Council appointed in accordance with the Local Government Act 2009.

**Competitive Neutrality Complaint or Complaint** refers to a complaint, made by an Affected Person in writing to Council or to the QCA, that relates to the failure of Council to conduct a Business Activity in accordance with the CNP.

**Competitive Neutrality Principle or CNP** refers to the principles under which Council conducts its Business Activities to ensure that such Business Activities do not enjoy a competitive advantage over other similar business due to the mere fact that the Business activity is owned and/or operated by Council. As per the Act, CNP may be applied either by Commercialisation of a Business Activity or by applying FCP to a Business Activity.

**Complainant** refers to the Affected Person making the complaint.

**Council** refers to the Whitsunday Regional Council

**Employee** refers to any employee, contractor, volunteer etc. of the Council.

**Policy** refers to this Competitive Neutrality Complaints Management Policy.

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**QCA** refers to the Queensland Competition Authority.

**Register** refers to Council's register of Business Activities to which CNP applies, maintained in keeping with Section 56 of the Regulation, which shall also contain information regarding Complaints made in relation to such Business Activities as well as decisions and recommendations made with regard to such Complaints.

## Related Documents

Competitive Neutrality Complaints Form

## Human Rights Compatibility Statement

This Policy has been assessed as compatible with the Human Rights protected under the *Human Rights Act 2019*.

| COUNCIL POLICY                |                                                |                    |                 |
|-------------------------------|------------------------------------------------|--------------------|-----------------|
| Date Adopted by Council       | 28 October 2021                                | Council Resolution | 2021/10/28.06   |
| Effective Date                | 28 October 2021                                | Next Review Date   | 28 October 2022 |
| Responsible Officer(s)        | Manager Governance and Administration Services | Revokes            | LSP_OMCEO_26    |
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