

	<b>COUNCIL POLICY</b>	
	<b>Competitive Neutrality Complaints</b>	
	POLICY NO	095
	DEPARTMENT	ORGANISATIONAL SERVICES
	PROGRAM	Governance & Safety
ADOPTED BY COUNCIL	9 October 2019, Folio 64599	

## 1.0 Scope

This policy applies to Competitive Neutrality Complaints regarding Business Activities undertaken by Mackay Regional Council (MRC) that are in direct competition, or have the potential to be in competition, with the private sector.

## 2.0 Purpose

To provide a process for resolving competitive neutrality complaints.

## 5.0 Background

Under section 48 of the *Local Government Act 2009*, MRC is required to adopt a process for resolving Competitive Neutrality Complaints.

Competitive Neutrality Complaints that cannot be resolved after the Internal Review Process (discussed below) can be referred to the Queensland Competition Authority.

## 3.0 Reference

- *Local Government Act 2009*
- *Local Government Regulation 2012*

## 4.0 Definitions

**“Affected Person” is:**

- (a) a person who –
  - (i) competes with the MRC in relation to the Business Activity; and
  - (ii) claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by MRC; or
- (b) a person who –
  - (i) wants to compete with MRC in relation to the Business Activity; and
  - (ii) claims to be hindered from doing so by a competitive advantage that the person alleges is enjoyed by MRC.

**“Business Activity”** means an activity of MRC that involves the supply of goods and/or services to clients on a commercial basis and in direct competition, or potential competition, with the private sector. It could include, for example:

- Water and sewerage services;
- Off-street parking;
- Cultural sporting and recreational facilities.
- Tourism facilities

However, the term does not apply to any operation where the overall expenditure on the business activity for the previous financial year was less than \$325,000

The following business activities are also excluded by the Local Government Act

- a building certifying activity;
- a roads activity; or
- activities related to the provision of library services.

**“Competitive Neutrality Complaint”** is a complaint that:-

- (a) relates to the failure of MRC to conduct a Business Activity in accordance with the Competitive Neutrality Principle; and
- (b) is made by an Affected Person.

**“Competitive Neutrality Principle”** is the principle that an entity conducting a Business Activity should not enjoy a net competitive advantage over competitors solely because the entity is in the public sector.

**“Competitive Advantage”** is an advantage that the MRC may have over a private sector business providing the same goods or services because of the inherent financial advantages of Local Government.

**Council** shall mean the Mayor and Councillors of Mackay Regional Council.

**“Internal Review Officer”** is MRC’s Manager Governance & Safety or any person acting in that position.

**MRC** shall mean Mackay Regional Council.

## 6.0 Policy Statement

### 6.1 Internal Review Process

The Internal Review Process is MRC’s process for attempting to resolve Competitive Neutrality Complaints prior to the complainant exercising the right to make a formal complaint to the Queensland Competition Authority.

Only people who are adversely affected by the business activity being undertaken by MRC are able to lodge a complaint, and it must be on the basis that MRC is benefiting from a competitive advantage due to its public sector status. Accordingly, the Internal Review Process commences with the submission of a written complaint to the Internal Review Officer specifying:

- How the complainant is an “affected person”; and

- How the complainant believes the competitive neutrality principle has been breached, together with any supporting evidence that the complainant has.

The Internal Review Process follows a number of steps which must be conducted within certain timeframes. The Internal Review Officer must within 10 business days of receiving the written complaint, acknowledge its receipt in writing and request any further information required to properly consider the complainant's concerns. When undertaking the Internal Review Process, the Internal Review Officer must:

- seek to establish the facts relating to the concerns expressed by the complainant. This may involve meeting with the complainant, collecting data, holding further meetings and recommending mediation;
- within 45 days of receiving the complainant's written complaint, develop a draft response to be forwarded to the complainant and requesting his/her views on that draft response, and
- upon receipt of the complainant's views on the draft response, provide a report to MRC's Chief Executive Officer (CEO) and Director responsible for the Program identified in the complaint on the findings of that Officer's initial investigation and the complainant's views on the draft response.
- Within 10 days of receiving the Internal Review Officer's findings and the complainant's views on the draft response, the CEO or nominee must send a response to the complainant.
- That response must include details of how to make a formal complaint to the Queensland Competition Authority should the complainant be dissatisfied with the adopted response.

## 6.2 Reporting Requirements

The *Local Government Regulation 2012* requires that MRC prepare and maintain a record of all Competitive Neutrality Complaints, associated decisions and recommendations.

MRC will maintain a register of all Competitive Neutrality Complaints, associated decisions and recommendations and report these in MRC's Annual Report.

## 7.0 Review of Policy

This policy will be reviewed when any of the following occur:

1. The related documents are amended or replaced.
2. Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three years.

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Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
2	Review of Policy	Minor Amendments	Council	09.10.19