

GUIDELINES ON THE MANAGEMENT OF COMPETITIVE NEUTRALITY COMPLAINTS

Department of Local Government

Introduction

These Guidelines assist councils to develop a complaints management system for competitive neutrality issues. The Guidelines build on general information given previously to councils in the Department's Practice Note No.9 "Complaints Management in Councils" (August, 1994). These Guidelines must be read together with the Practice Note to understand what is required.

Competitive neutrality is one of the principles of national competition policy, which is being applied throughout Australia at all levels of Government. The framework for the application of national competition policy to councils was developed in co-operation with the Local Government and Shires Associations. It is found in the Government's *Policy Statement on the Application of National Competition Policy to Local Government*, sent to all councils in August 1996.

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 (*Policy Statement*, paragraph 4.43). 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.

Requirements of National Competition Policy

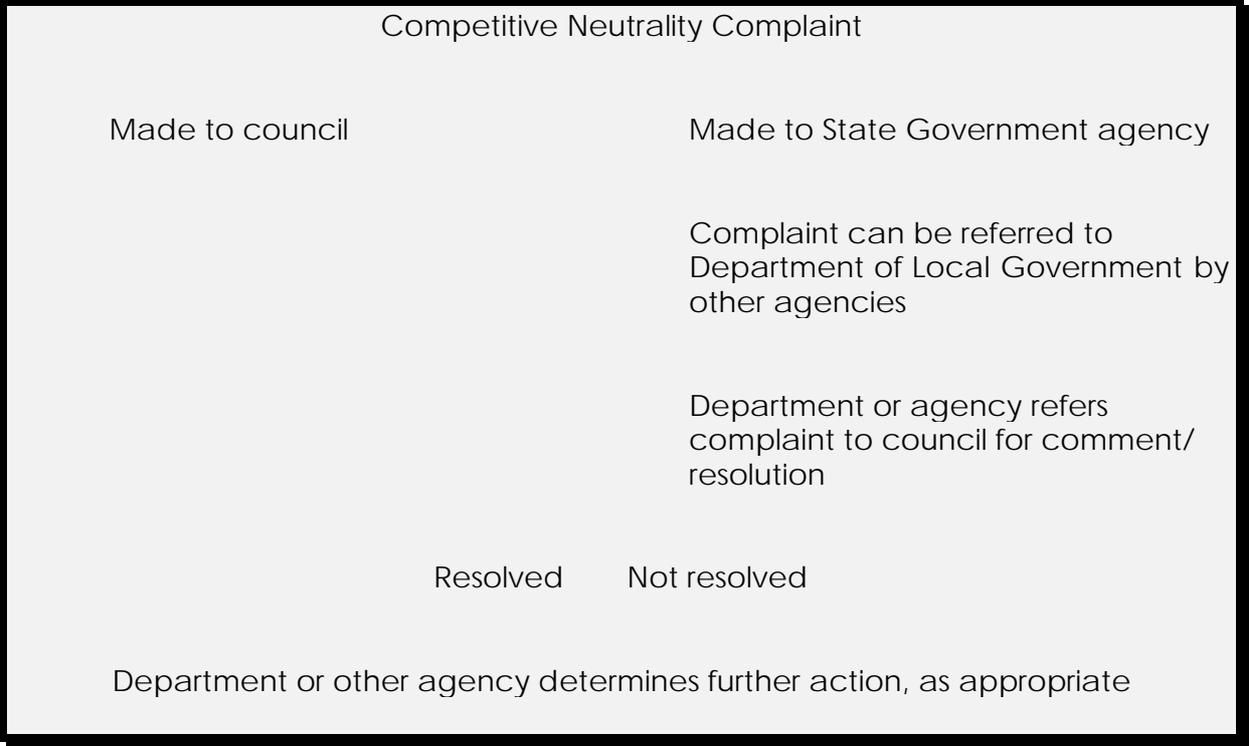
Under the principles of national competition policy, Commonwealth, State and local governments must each establish an effective system to deal with complaints relating to competitive neutrality in respect of their businesses. The framework which applies to complaints concerning council businesses is explained in the *Policy Statement* (see paragraphs 4.36-4.39).

Broadly, local government is given the responsibility of resolving complaints in the first instance, with review by the State Government where warranted. This system of complaints handling will be reviewed annually for 2 years to determine whether it is adequate or another system is warranted. An effective complaints mechanism in each council is an important part of the application of national competition policy and should not be underestimated. It will indicate that council is not only able to deal effectively with complaints, but will provide a check for council that it is complying with the spirit and requirements of the *Policy Statement*.

Complaints regarding competitive neutrality will be made either to council directly or to the State Government. The Department of Local Government has been nominated as the State agency responsible for handling these complaints. Once a complaint is referred to the Department, the Government has agreed that all such complaints will be forwarded to councils for resolution in the first instance. The Department of Local Government will pursue any complaints which have not been

adequately resolved by council. Further consideration/ investigation of complaints will be handled under existing legislation (ie the Local Government Act, 1993).

The framework can be drawn as:



What is a 'competitive neutrality complaint?'

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" (*Policy Statement*, paragraph 4.1).

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" (*Policy Statement*, paragraph 4.30).

A complaint regarding competitive neutrality is:

- 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;
- A complaint that council has not abided by the spirit of competitive neutrality in the conduct of a business activity.

A competitive neutrality complaint is **not**:

- ☒ a complaint regarding the level of service provided by a business activity (eg water quality inadequate, garbage bin not collected);
- ☒ a complaint regarding the cost of the service, unless it is that council has not costed its service to take competitive neutrality into account;
- ☒ 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.

Complaints that do not concern competitive neutrality should be dealt with through council’s usual complaints system.

What is an effective complaints handling system?

All councils should have a complaints management system in place for all types of complaints and/or customer feedback. The Department provided information to councils on the establishment of a system in Practice Note No.9, “Complaints Management in Councils”.

For those councils with an effective system already in place, the addition of competitive neutrality issues should require very little or no change to the existing procedures. It may mean that training on competitive neutrality issues may be required for complaints handling officers, for example.

Council should firstly refer to Practice Note No.9 for an understanding of the basic reasons for, and requirements of, a complaints system. These Guidelines do not reiterate the elements of a complaints system, which are common to both competitive neutrality and other complaints. Rather, these Guidelines expand on issues which may need particular attention in dealing with competitive neutrality complaints. The Practice Note and these Guidelines are intended to be read together.

Council will also gain assistance from “Effective Complaint Handling Guidelines” released by the Ombudsman in 1995. These are directly applicable to councils and deal with many of the same issues as the Department’s Practice Note. Standards

Australia have also published an Australian Standard on Complaints Handling, AS 4269-1995, which will also be a worthwhile reference document.

The Department's Practice Note states "each council will need:

- a complaints policy,
- clear responsibilities,
- handling procedures, and
- trained staff".

A complaints policy

Council should already have a complaints policy which is simple and clear. Examples are given in the Practice Note. The policy should be available to the public on request.

It is not necessary to alter a policy to make specific mention of competitive neutrality complaints, unless council wishes to, or unless the policy is inapplicable for some reason. (For example, council may set up a different procedure for competitive neutrality complaints, to that reflected in the policy.)

Clear responsibilities

The Practice Note discusses three different levels which complaints may go through, from resolution by front line staff, review by another council officer, to referral to an outside agency (Practice Note, paragraph 2.3).

Competitive neutrality complaints may involve specialised issues and be infrequently received. It is open to council to nominate a particular position/s as responsible for competitive neutrality complaints, rather than expecting (and training) front line staff to handle these issues. This person may be the council's existing complaints officer (possibly the Public Officer), or another person.

However, the position responsible should not be involved in council's business activities, but should be independent of the business. This is necessary to maintain the accountability of council as the business 'owner'. It also ensures probity.

The person responsible must be given clear instructions as to his or her role, and the extent of responsibility and delegations to resolve a complaint. In the handling of competitive neutrality complaints, that person should be made accountable under the general complaints system (see Practice Note, paragraph 2.6 "Control"). This includes providing information which is incorporated into the general system.

Handling procedures

How to lodge complaints

The procedure for making competitive neutrality complaints should be clear to the community (Practice Note, paragraph 2.6. "How to lodge complaints"). This includes information on how a complaint can be lodged, where it can be lodged and with whom. It is also important to give an indication of the time in which council will respond to the complaint. The Practice Note recommends the publication of a brochure or display of information about complaints procedures.

Examples:

- * The Department of Local Government's "Guarantee of Service" brochure provides information on how it will respond to various kinds of correspondence, including specific information on how to make a complaint.
- * The Department of Urban Affairs and Planning's "Commitment to Service '96" brochure is another example. That Department also has a standard form for the lodging and processing of complaints/ comments.
- * The Land Titles Office has a standard form for the lodging of comments and a second standard form for staff to follow through the complaint and record action taken.
- * The Ombudsman's "Effective Complaints Handling Guidelines" contains an example form for the lodging and following up of complaints.

Council may not need to change its existing information for the public, depending on the procedures which it has set up for competitive neutrality complaints and other complaints.

Records

It is essential for council to establish a records management system where competitive neutrality complaints, both verbal and written, are registered and tracked. This is fundamental as:

1. A complaints handling system will be of little benefit to council and the complainant unless a records management system is established. Council must be able to account for complaints received and respond to every complainant, as part of its core customer service requirements. In addition, complaints are a valuable means of community feedback for council. Council will benefit from the information provided by a complaints system, in order to better its services, improve its information etc.

2. The *Policy Statement* requires councils to provide a summary of their progress in implementing competitive neutrality as part of their annual reports (*Policy Statement*, paragraph 4.46). This includes reporting on competitive neutrality complaints. The Department must include a summary of local government progress in its annual report. The Department's summary must also refer to complaints received. Annual reporting requirements are discussed below.

Time limits

Council should establish time limits within which a complaint must be responded to. For example, the Department's "Guarantee of Service" brochure lists a number of 'prompt service' time limits for the processing of various correspondence. The Department aims to respond to all general correspondence, including complaints, within four weeks.

Council may set its own response targets. A four week period for response to competitive neutrality complaints may be reasonable.

Remedies

Council should make it clear what remedies it can provide to resolve a competitive neutrality complaint. As it is not a service-based complaint, council will probably not have to take any individual action such as collecting garbage, restoring a footpath etc. The most common forms of resolution may be:

- to provide more information to the complainant for a more accurate understanding of competition policy;
- to investigate/ review council's business activity if a legitimate complaint is made;
- to change council's business practice where a complaint is justified.

Alternatives

Council should inform complainants of alternative options if council is unable to resolve the complaint. The role of State and Federal agencies is discussed below.

Training

This will be an important issue for council in relation to competitive neutrality complaints. Staff nominated as complaints handlers for these issues will need training in the principles of competitive neutrality as outlined in the *Policy Statement* and "Pricing and Costing for Council Businesses - A Guide to Competitive Neutrality". They may also need specific information on the operation of council's business activities in relation to competitive neutrality.

One of the most effective ways to determine training needs is to consult with staff and local government unions. Training needs can be incorporated within existing planning arrangements. For example, councils under the Local Government (State) Award are required to have a "training plan" in place.

Council's reporting requirements for competitive neutrality

Council is required to provide a summary of its progress in implementing the competitive neutrality principles in its annual report (*Policy Statement*, para 4.46). Detailed information concerning the content of annual reports in relation to competitive neutrality is contained in "Pricing and Costing for Council Businesses - A Guide to Competitive Neutrality". The establishment of a complaints handling mechanism is part of the implementation of competitive neutrality, and so will be part of the summary of progress required of council in its annual report.

Council will be required to include information on the implementation of competitive neutrality beginning in the annual report for 1997-1998. The Pricing and Costing Guideline contains specific information as to timing.

The Department's role

The Department of Local Government is given a role under the *Policy Statement* in handling competitive neutrality complaints, and also through its annual reporting requirements.

As discussed earlier, local government is given the responsibility of resolving complaints in the first instance, with review by the State Government through the Department of Local Government where warranted. This system of complaints handling will be reviewed annually for 2 years to determine whether it is adequate or another system is warranted.

Complaints handling

The framework of handling complaints concerning councils and the role of the Department is explained on pages 1-2. In carrying out its responsibilities to refer competitive neutrality complaints to councils and to consider further action, the Department will operate within the existing processes set up under the Local Government Act 1993.

Annual reporting

The Department is required to include certain information in its annual report regarding local government and competitive neutrality. It must include a summary of the overall progress of NSW councils in implementing competitive neutrality. This includes information on the competitive neutrality complaints that have been received by the Department. The Department's annual report for 1997-98 will contain this information.

Other State agencies

The Ombudsman

The Ombudsman's Office may receive complaints that concern competitive neutrality either in part or in whole. That Office will continue to carry out its role in relation to local government, which may involve the consideration of competitive neutrality issues as part of a complaint. It may also decline to investigate a complaint on the basis that the Department is the most appropriate agency to pursue competitive neutrality complaints. That Office has taken steps to be able to identify complaints relating to competitive neutrality and will, in appropriate cases, refer them to the Department. A formal liaison mechanism between the Office and the Department has been put into place.

The Independent Commission Against Corruption

The ICAC may also receive complaints/ information that concern competitive neutrality. Where the complaint also involves a matter within its jurisdiction, the ICAC may choose to investigate such a complaint, as is currently the case. Alternatively, there is already a formal mechanism under the Independent Commission Against Corruption Act for the referral of matters to other bodies for action. The Commission may also require the relevant body to report back to the Commission regarding any action taken. The Department may be formally referred matters concerning competitive neutrality through this means. Conversely, the Department may formally refer matters to the ICAC for consideration where this is relevant to the ICAC's role.

As part of the normal liaison arrangements that exist between the Commission and the Department, the Commission will be referring in the first instance to the Department all complaints it receives which relate to competitive neutrality in local government, even where the Commission retains an interest in the matter.

The Australian Competition and Consumer Commission (ACCC)

Council may also receive complaints which focus on trade practices issues, rather than competitive neutrality. These will involve the application of the Trade Practices Act 1974 to local government. As outlined in the *Policy Statement*, local government has been subject to 'competition' rules contained in Part IV of the Trade Practices Act since 20 July 1996.

If council received a complaint that it is not able to answer, or if the complainant remains unsatisfied, the complainant can be referred to the Australian Competition and Consumer Commission, which is the Federal agency handling trade practices issues and investigations. The ACCC provides a phone information service to any person (including council staff) to assist in the understanding of the Act. The Commission also receives formal complaints which it may investigate. Their numbers are (02) 9230-9133 (Sydney), (02) 6264-1166 (Canberra) and (02) 6761-2000 (Tamworth).

References

NSW Government Policy Statement on the Application of National Competition Policy to Local Government, June 1996.

Pricing and Costing for Council Businesses - A Guide to Competitive Neutrality, NSW Department of Local Government, draft released for comment, April 1997. Final Guideline to be finalised by June 1997.

Practice Note No.9 - Complaints Management in Councils, August 1994, Department of Local Government and Co-operatives.

Effective Complaint Handling Guidelines, 1995, Office of the NSW Ombudsman. The Guidelines also contain a reference list for assistance in alternative dispute resolution.

AS 4269-1995 *Australian Standard Complaints Handling*, 1995, Standards Australia.