



## **9. GOVERNANCE**

Policy 9.3

COMPETITIVE NEUTRALITY

Version 5

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### 9.3 COMPETITIVE NEUTRALITY

#### **OBJECTIVE:**

To ensure Council deals with complaints regarding competitive neutrality in an efficient manner.

#### *POLICY:*

#### **INTRODUCTION**

In April 1995, the Council of Australian Governments (COAG) ratified the National Competition Policy. The Policy is aimed at increasing consumer and business choice, reducing production and transportation costs in an effort to lower prices for goods and services, and creating an overall business environment in which to improve Australia's international competitiveness.

One of the major components of the National Competition Policy is the principles contained in the *Competition Principles Agreement*. The Agreement is aimed at encouraging, efficient public sector (government) service provision by exposing public (government) business functions to competition, where appropriate. The Agreement provides a policy framework that facilitates the creation of competitive markets for public sector goods and services, where appropriate.

*The Competition Principles Agreement* requires the creation of an effective regime to deal with complaints that Council business activities are not competing in the market against private businesses on a "level playing field" and are operating with competitive advantage.

This document constitutes a formal mechanism established by Lithgow City Council for the handling and management of competitive neutrality complaints. By establishing clear guidelines and procedures for the handling and management of competitive neutrality complaints, the Council will be in stronger position to ensure:

- non regulatory service functions operate under similar competitive pressures to those experienced by the private sector; and
- Services provided are relevant, cost effective and operationally efficient.

This document has a threefold purpose.

- Firstly, it may be used by members of the public and the owners of businesses competing in the same market as Lithgow City Council to submit complaints to the Council alleging that the Council is operating with net competitive advantages as a result of the Council's ownership of a business activity or service.
- Secondly, it will provide a formal mechanism for the investigation, determination and advice of the outcome of a complainant alleging that non regulatory service functions discharged or business activities operated by the Council are operating with competitive advantage over other private businesses.
- Thirdly, it will serve to ensure that Council staff continuously monitor non regulatory services provided by the Council and that services provided operate under the principles of Competitive Neutrality.

## **THE COMPETITIVE NEUTRALITY PRINCIPLE**

Competitive neutrality is one of the principles of National Competition Policy which is applied throughout Australia at all levels of Government, including Local Government. Competitive neutrality is based on the concept of a "level playing field" for competitors in a market, be they public or private sector competitors. Government business organisations, whether they are Commonwealth, State or Local Government, should operate without net competitive advantages over businesses as a result of their public ownership.

Where Lithgow City Council competes in the market place with other private businesses, the Council will do so on the basis that it does not utilise its public position to gain an unfair advantage over private businesses who may be in competition with the Council.

## **WHAT IS A COMPETITIVE NEUTRALITY COMPLAINT?**

A complaint regarding competitive neutrality **IS**:

- A complaint Lithgow City Council has not met its requirements under the National Competition Policy Statement of Pricing and Costing for Council Businesses - a Guide to Competitive Neutrality and includes concern that the Council has not established an effective Competitive Neutrality Complaints Management System.
- A complaint that Lithgow City Council has not abided by the spirit of competitive neutrality in the conduct of Council business activities.

A competitive neutrality complaint is **NOT**:

- A complaint regarding the level of service provided by a business activity such as water quality inadequate, a mobile garbage bin not collected or the condition of a road or footpath.
- A complaint regarding the cost of the service, unless it is that Lithgow City Council has not costed the service the service to take competitive neutrality into account.
- A complaint regarding the trade practices laws and their application to the Lithgow City Council.

## **COUNCIL BUSINESS ACTIVITIES SUBJECT TO COMPETITIVE NEUTRALITY**

### *Category 1 Business Activities*

The following Lithgow City Council owned and operated activities have been categorised as *Category 1 Businesses* and are subject to competitive neutrality. Each business activity has an annual gross operating income over \$2M per year.

- Water
- Sewerage

Council has adopted the following attributes in respect of Category 1 Business Activities:

- A Corporatisation Model
- Full cost attribution including:
  - tax equivalent regime payments
  - debt guarantee fees, where the business benefits from Council's borrowing position by comparison with commercial rates
  - return on capital invested
- Identified any subsidies paid to the business
- Operate within the same regulatory framework as private businesses

## **HOW TO LODGE A COMPETITIVE NEUTRALITY COMPLAINT**

A competitive neutrality complaint should be made in writing using a standard form available for that specific purpose from the Customer Service Centre at the Lithgow City Council Administrative Headquarters, 180 Mort Street Lithgow.

Complaints may also be made over the counter and by telephone. Council's Public Officer will provide advice and assistance with the preparation and submission of competitive neutrality complaints.

### **1. Time Limits**

Competitive neutrality complaints will be acknowledged within 7 days and responded to by Lithgow City Council within 30 days of the date of submission of the complaint.

If the competitive neutrality complaint requires detailed investigation, the complainant will be informed of progress at regular intervals.

### **2. Remedies**

Competitive neutrality complaints which establish that Lithgow City Council:

- (i) has not met its requirements under the National Competition Policy Statement or *Pricing and Costing for Council Businesses - a Guide to Competitive Neutrality*;

OR

- (ii) has not abided by the spirit of competitive neutrality in the conduct of Council business activities,

will result in changes to the Council's business practice to ensure future and continued compliance with the principle of competitive neutrality.

### **3. Alternatives**

Any complainant dissatisfied with Lithgow City Council's determination of a competitive neutrality complaint may refer the complaint to either the:

- NSW Department of Local Government; or
- NSW Ombudsman; or
- NSW Independent Commission Against Corruption (ICAC); or
- Australian Competition and Consumer Commission (ACCC).

Alternatively, the competitive neutrality complaint may be referred direct to one of these agencies and Lithgow City Council bypassed.

## WHO WILL BE DEALING WITH THE COMPETITIVE NEUTRALITY COMPLAINT?

The Lithgow City Council Public Officer will diligently, fairly and honestly investigate all competitive neutrality complaints. The Public Officer will submit an investigation report to the Council's General Manager within 21 days of the competitive neutrality complaint being received. Where the complaint is justified, such report will contain recommendations for changes to the Council's business activities practice to ensure future and continued compliance with the principle of competitive neutrality.

A response to the competitive neutrality complaint will be provided by the General Manager within 30 days of the date of submission of the complaint.

The Public Officer performs a role which is independent and separated from the management and control of Council business activities.

## CONFIDENTIALITY

All competitive neutrality complaints received will be determined by the Council in the strictest confidence.

## FURTHER INFORMATION

Further information or advice may be obtained by contacting the Lithgow City Council Public Officer between 8.15 am and 4.30 pm on telephone (02) 6354 9999. All enquiries or requests for further information will be maintained in the strictest confidence.

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