

Queensland
Competition
Authority

Handbook

Making a competitive neutrality
complaint to the Queensland
Competition Authority

State government

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Complaints about state government businesses

This handbook discusses complaints about state government agencies. For complaints about a local government business, refer to the handbook for complaints against local government businesses.

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INTRODUCTION

This handbook discusses the process involved in making a competitive neutrality complaint to the Queensland Competition Authority (QCA). It is not intended as a discussion of the Queensland Government's policy regarding competitive neutrality.

The Queensland Government's competitive neutrality policy is set out in the document [Competitive Neutrality and Queensland Government Business Activities](#). The Queensland Government also has a policy statement for local government—[National Competition Policy and Queensland Local Government policy statement](#). The QCA does not have a role in setting the policy framework for competitive neutrality in Queensland.



History of competitive neutrality

Competitive neutrality policy arises out of the Competition Principles Agreement of 1995, where the Commonwealth, state and territory governments agreed to implement a range of reforms in relation to competition policy in the Australian economy.

These reforms were based on the idea that free and open competition drives efficiency and is the only sustainable means of delivering the productivity improvements and innovation necessary for economic growth and job creation.

The Queensland Government's competitive neutrality policy documents, along with competitive neutrality provisions contained in legislation including the Queensland Competition Authority Act 1997 (Qld) and the Local Government Act 2009 (Qld), seek to give effect to the Queensland Government's commitments under the Competition Principles Agreement.

If you would like to make a competitive neutrality complaint, we encourage you to:

- read the Queensland Government's competitive neutrality policy
- read this handbook to understand the process involved in making a competitive neutrality complaint, including:
 - how to make the complaint
 - what information to provide
 - the process that we will follow in investigating your complaint
- read the information about competitive neutrality on [our website](#)
- download and complete our competitive neutrality complaints form and submit it to us to lodge your complaint.

We are available to explain the process and the possible outcomes of a competitive neutrality complaint. We strongly encourage you to contact us to discuss your issue before submitting a formal competitive neutrality complaint to us.

This handbook contains information about making a competitive neutrality complaint against state government agencies. A separate handbook is available if you wish to make a complaint against a local government business.

You only need to read the handbook that is relevant to your complaint, depending on whether the business that you wish to complain about is a state government or local government business.

If you are unsure about whether the business that you wish to complain about is a state government or local government business, please contact us for help.

1 WHAT IS COMPETITIVE NEUTRALITY?

1.1 Introduction

Competitive neutrality is the principle that a public sector business or agency undertaking a significant business activity should not have a competitive advantage (or disadvantage) over the private sector solely due to its government ownership. Public sector businesses should compete with private sector businesses on an equal (competitively neutral) basis.

The underlying objective of competitive neutrality is to remove distortions in resource allocations arising out of the public ownership of businesses engaged in significant business activities. This objective is based on the idea that if government businesses have unfair advantages (or disadvantages), this could promote economic inefficiency.¹

For example, if a government business can price below its competitors because it is exempt from paying a tax solely because it is a government entity, then its competitors cannot compete on an equal basis, even though they may be producing the relevant goods or services more cheaply than the government business.

The principle of competitive neutrality seeks to address a range of competitive advantages that public sector businesses may benefit from—including not only pricing and financial advantages, but also regulatory and procedural advantages.

1.2 The principle of competitive neutrality

The principle of competitive neutrality is described in the *Queensland Competition Authority Act 1997* (Qld) (QCA Act), [section 38](#).



Principle of competitive neutrality

- (1) The principle of competitive neutrality is the principle that a government agency carrying on a significant business activity should not enjoy a competitive advantage over competitors or potential competitors in a particular market solely because the agency's activities are not subject to 1 or more of the following—
- (a) full Commonwealth or State taxes or tax equivalent systems;
 - (b) debt guarantee fees directed towards offsetting the competitive advantages of government guarantees;
 - (c) procedural or regulatory requirements of the Commonwealth, the State or a local government on conditions equivalent to the conditions to which a competitor or potential competitor may be subject, including, for example, requirements about the protection of the environment and about planning and approval processes.

In summary, the competitive neutrality principle means that government businesses should not benefit from the following competitive advantages:

¹ Economic inefficiency includes productive, allocative and dynamic inefficiency.

- financial advantages—for example, where a government business has an exemption from paying a tax, does not have to earn profits that reflect those market competitors need to earn², or has access to less expensive funds because of an implicit or explicit government guarantee
- regulatory advantages—for example, where a government business has an exemption from complying with certain regulations that apply to private sector businesses (such as environmental regulations)
- procedural advantages—for example, 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).

If you run a business and are concerned that a government business may be competing with you on an unequal basis due to the government business's financial, regulatory or procedural advantages, you may lodge a competitive neutrality complaint with us (see section 2 of this handbook).

It is important to note that competitive neutrality does not require that businesses (government or private) compete on an equal footing in all areas. Businesses may have comparative advantages or disadvantages due to factors such as their size, assets, skills, experience and culture. Competitive neutrality is limited to addressing advantages that government businesses may enjoy in the financial, regulatory or procedural areas described above.

1.3 What is the QCA's role in competitive neutrality?

Our role in relation to competitive neutrality is limited to Queensland state and local government agencies. We have two key functions in relation to competitive neutrality:

- (1) to advise government agencies about complying with the principle of competitive neutrality
- (2) to receive, investigate and report on complaints about the alleged failures of government agencies to comply with the principle of competitive neutrality.

We have an advisory role in relation to competitive neutrality complaints. This means we investigate a complaint and provide a written report to the government about the investigation and the results of the investigation.

Our report to the government provides advice and recommendations only, and the government *is not required to accept the advice.*

If you have a competitive neutrality query or complaint in relation to a federal government business, you should contact the [Australian Government Competitive Neutrality Complaints Office](#) (located within the Productivity Commission). If you have a competitive neutrality query or complaint in relation to a business operated by a state or local government outside of Queensland, you should contact the relevant regulator for that state or local government. This is the case even if your business is based in Queensland.

² The appropriate level of profit will differ between business activities, and we will consider this on a case-by-case basis. The Australian Competitive Neutrality Complaints Office, our Commonwealth Government equivalent, has published a [research paper](#) on this matter.

If your complaint relates to the conduct of a Queensland state or local government business where there is a use of market power not related to its government ownership, you should direct your complaint to the [Australian Competition and Consumer Commission \(ACCC\)](#). You may have a complaint because a state or local government business has market power due to its size, market share or product offering, and is using its market power in a way that adversely affects your business. It is not illegal to have market power or to use it, and it is not illegal to seek to obtain market power by offering the best products and services. However, a business with a substantial degree of power in a market is not allowed to engage in conduct that has the purpose, effect or likely effect of substantially lessening competition in a market. This behaviour is referred to as 'misuse of market power'—there is more information about misuse of market power and other types of anti-competitive behaviour on the [ACCC website](#).

If your complaint relates to the conduct of a private business (that is, a business not owned by a local, state or federal government), you should direct your complaint to the ACCC.

If you are unsure of who to contact regarding your competitive neutrality query or complaint, you can [contact us](#) for advice.

2 MAKING A COMPETITIVE NEUTRALITY COMPLAINT

2.1 What is a competitive neutrality complaint?

A competitive neutrality complaint is a complaint about the alleged failure of a government agency to comply with the principle of competitive neutrality.

If you wish to make a formal competitive neutrality complaint to us, your complaint must contain certain information in order to be valid. We have developed a [complaints form](#) (available on our website) to help people who wish to make a complaint to meet these information requirements. It is not necessary to use this form to make a competitive neutrality complaint. However, a complaint must be made in writing. If you wish to submit a complaint without using the complaints form, you need to meet the information requirements contained in [section 41 of the QCA Act](#) for making a competitive neutrality complaint.

The following sections of this handbook discuss the four main steps to follow when making a competitive neutrality complaint, and the information that must be provided as part of the complaint.

Making a competitive neutrality complaint

1

Identify the state government agency that you wish to complain about

2

Contact the state government agency

3

Lodge a formal competitive neutrality complaint with us

4

Request that we protect any confidential information in your complaint (if applicable)

2.2 Step 1: Identify the state government agency that you wish to complain about

If you wish to make a competitive neutrality complaint, the first step is to identify the state government agency that you wish to make a complaint about.

We can only investigate competitive neutrality complaints against state government agencies that are:

- (a) on the [list of significant business activities](#) (available on our website), or
- (b) [government-owned corporations](#).

Government-owned corporations in Queensland include commercial businesses in energy, water, rail and ports. The Queensland Government established these businesses because they provide critical infrastructure and services to the economy and because the marketplace did not support the private establishment of these businesses. More information about government-owned corporations can be found on the [Queensland Treasury website](#).

If you have a complaint against a state government agency that is not on the list of significant business activities, we encourage you to contact the agency directly and attempt to resolve your issue with them.

2.3 Step 2: Contact the state government agency

After identifying the state government agency that you wish to make a complaint about, the next step is to contact that agency directly to discuss your concerns and to make a genuine attempt to resolve the complaint with that government agency.

If you do make a formal competitive neutrality complaint, you will be required to provide information that shows that you have made a genuine attempt to resolve the complaint with the state government agency. We may refuse to investigate a competitive neutrality complaint if we believe there was not a genuine attempt to resolve the complaint with the agency.

2.4 Step 3: Lodge a formal competitive neutrality complaint with us

If your attempt to resolve the complaint directly with the government agency has not been successful, you may submit a competitive neutrality complaint to us.

A formal competitive neutrality complaint must contain certain information—these information requirements are set out in [section 41\(2\) of the QCA Act](#).



Making a competitive neutrality complaint

The complaint must—

- (a) be in writing; and
- (b) contain details of the alleged failure of a government agency to comply with the principle of competitive neutrality; and
- (c) include sufficient details to show—
 - (i) the person and the government agency are, or could be, in competition in a particular market; or
 - (ii) how the person is, or could be, adversely affected by the competitive advantage the person alleges is enjoyed by the government agency; and
- (d) include sufficient details to show whether the person has made a genuine, but unsuccessful, attempt to resolve the subject matter of the complaint with the government agency.

We have developed a [complaints form](#) (available on our website) to assist people who wish to make a complaint to meet these information requirements. If you need assistance with completing any of the questions in the form, you can [contact us](#).

The following sections discuss each of these information requirements in more detail.

2.4.1 A complaint must be in writing

This requirement for the complaint to be in writing will be met if you complete our complaints form and submit the form and supporting documents to us through the [competitive neutrality complaints portal](#) on our website or by post.

Anyone who does not wish to use the complaints form must provide us with a written complaint. Any issues that you may have discussed with us by telephone must be put into writing for the complaint to be a valid competitive neutrality complaint.

2.4.2 Details of alleged failure of state government agency to comply with principle of competitive neutrality

This information requirement can be met by completing **question 14** of [our complaints form for state government businesses](#).

Your competitive neutrality complaint must contain details of how the state government agency allegedly failed to comply with the principle of competitive neutrality. That is, you must show how the state government agency enjoys a competitive advantage over your business—the advantage may be of a financial, regulatory or procedural nature.

For example, a state government agency may:

- be exempt from paying federal or state taxes or charges
- not have to earn profits that reflect those market competitors need to earn
- be exempt from paying debt guarantee fees for loans or debts
- have access to less expensive loans or funds because of an explicit government guarantee, such as a formal legal document that states the government will guarantee that agency's loans

- have access to less expensive loans or funds because of an implied government guarantee
- be exempt from complying with government regulations, such as environmental regulations
- be exempt from having to supply certain information for government processes, such as consultants reports for planning processes
- be exempt from having to undergo government approvals processes, such as planning and approval processes.

2.4.3 Being in competition in a particular market, or adversely affected by competitive advantage

Your competitive neutrality complaint must include sufficient details to show:

- (a) that you (or your business) are, or could be, competing with the government agency in a particular market (Part A); or
- (b) how you (or your business) are, or could be, adversely affected by the competitive advantage that you allege is enjoyed by the government agency (Part B).

To meet the legislative requirements for a valid complaint, you only need to show either Part A or Part B, not both.

However, we encourage you to provide as much detail as possible for both Part A and Part B to assist us with fully investigating your complaint. If your circumstances do not satisfy one requirement, it may still satisfy the other requirement.

Part A: Being in competition in a particular market

This information requirement can be met by completing **questions 8 to 11** of [our complaints form for state government businesses](#).

Your complaint must include sufficient details to show that your business is (or could be) competing with the government agency in a particular market.

A market is an area of close competition between firms. A market is typically defined by reference to its product and geographic dimensions—that is, what goods and/or services you provide, and where you provide them. A key part of defining the relevant market involves identifying strong or close substitutes for the goods and/or services that your business provides.

If you operate your own business, you will likely have a good idea of who your competitors are. You might consider these other businesses to be your competitors, because you know that your customers will switch to your competitors if your product offering is not competitive in terms of price or quality. That is, you and your competitors' products are substitutes.

In the context of a state government agency, if you sell a good or service that can be considered to be a substitute for a good or service that a government agency provides, you may be considered to be competing with the government agency in the market for that good or service.

Part B: Adversely affected by competitive advantage

This information requirement can be met by completing **questions 12 to 13** of our complaints form for state government businesses.

Your complaint must include sufficient details to show that your business is (or could be) negatively affected by the competitive advantage that you allege is enjoyed by the state government agency.

This question can be answered in two parts. First, you should identify the competitive advantage that you allege is enjoyed by the state government agency. Some examples of competitive advantages include where an agency:

- is not required to make a profit or 'break even'
- is not required to achieve a commercial rate of return on its assets
- is exempt from certain regulations, such as opening hours, licenses and environmental issues
- does not have to pay certain federal or state taxes
- benefits from having its business activities subsidised by other parts of the government.

Second, you should show how your business is (or could be) negatively affected by these competitive advantages. This could be, for example, through evidence of lost revenues and lost tenders.

State government agencies may enjoy some competitive advantages that negatively affect your business but are not a concern from a competitive neutrality point of view. That is, state government agencies may enjoy advantages that are natural in a competitive market, such as having:

- more customers
- more technologically advanced assets
- more skilled or experienced staff
- more innovative production methods or customer service.

Competitive neutrality is concerned with advantages that a state government agency may enjoy because it is a public sector agency—that is, financial, regulatory and procedural advantages.

2.4.4 Genuine attempt to contact the government agency

This information requirement can be met by completing **question 15** of our complaints form for state government businesses.

Your complaint must include sufficient details to show that you have made a genuine attempt to resolve the issue with the government agency.

You need to provide evidence of your attempts to contact the government agency—for example, emails and meeting notes.

If you cannot show that you have made a genuine attempt to resolve the complaint with the government agency, we may refuse to investigate your complaint. Section 3 of this handbook contains more information on our investigative process after we receive your complaint.

2.5 Step 4: Request that we protect any confidential information in your complaint

We encourage you to provide us with as much information and detail as possible as part of your complaint, so that we can fully understand and investigate it. Some of the information that you provide to us may be commercially sensitive or commercial-in-confidence, such as financial or legal information about your business.

If you believe that the disclosure of any of the information that you have given to us as part of your complaint is likely to damage your commercial activities, you may request that we keep that information confidential.

You can make this request by filling out the last page of the competitive neutrality complaints form—the 'Confidentiality request form'. You do not have to use this form to request that we protect the confidential information in your complaint, but if you choose to not use the form, you must ensure that you meet the requirements for making a confidentiality request in [section 52 of the QCA Act](#).

We may accept your confidentiality request if we are satisfied that your belief (that the disclosure of the information that you have claimed as confidential is likely to damage your commercial activities) is justified, and that the disclosure of the information would not be in the public interest.

If we accept your confidentiality request, we will not include the confidential information in the investigation report about your competitive neutrality complaint, or otherwise disclose it to an external party. External parties are people other than:

- (a) the Treasurer
- (b) a member of the QCA board
- (c) a member of the QCA staff who would ordinarily receive the information in performing their duties
- (d) a contractor of the QCA (such as a consultant) who would ordinarily receive the information in performing their contracted role.

Any information relating to a government agency may still be given to the responsible minister for that government agency, even if it is accepted as confidential. Any information relating to a local government may still be given to the local government, even if it is accepted as confidential.

Additionally, the legislation allows us to disclose the information in a report or to an external party if it is disclosed in a way that could not reasonably be expected to identify the person requesting confidentiality.

Please only claim confidentiality over sensitive or commercial-in-confidence information. Do not claim confidentiality over the entirety of your complaint, as it may hinder our ability to report on our investigation of your complaint, and we may not accept your confidentiality claim.

Examples of confidential information

We provide some examples below of possible categories of information that you may wish to request that we keep confidential.

We will assess your confidentiality request based on the facts of your case. This means that even if your information does not fit into one of the categories below, we may still accept it as confidential. Similarly, even if your information fits into one of the categories below, there may be cases where we will not accept it as confidential information.

Categories of confidential information include:

- (a) commercially sensitive costs—cost information that would affect your ability to negotiate competitive bids or prices in the future
- (b) market or strategic knowledge—information about the features of the market that your business operates in that may not be available to the public

- (c) intellectual property—productive new ideas you create, such as an invention, a design, a method of producing goods or a process for providing a service
- (d) personal information—information that is not available publicly that reveals personal information and details about a person.

3 THE QCA'S INVESTIGATION PROCESS

3.1 Our decision to investigate the complaint

Once we receive a valid competitive neutrality complaint, we are required to investigate that complaint, unless the following reasons apply.

We can refuse to investigate a competitive neutrality complaint if:

- we believe the person making the complaint is not, and could not be, in competition in a particular market with the government agency
- we believe the person making the complaint has not made a genuine attempt to resolve the complaint with the government agency
- we formally requested more information from the person making the complaint (with a written notice under section 42 of the QCA Act—see section 3.2 below), and the person has failed to provide this information without reasonable excuse
- we believe the complaint is frivolous or vexatious.

A frivolous complaint is one that has no serious purpose or value. It may be a complaint about a minor issue that would not justify the resources required to investigate it, or a complaint about a thing that is not reasonable to spend time complaining about.

A vexatious complaint is one (or a series of many) that is made to harass, annoy, frustrate or to waste the time and money of the person against whom the complaint is made. Vexatious complaints include ones that are made:

- to abuse the complaints process
- without fair or reasonable grounds
- is brought for a wrongful purpose, such as to pressure the person against whom the complaint is made to take action in another matter that is unrelated to the complaint.

If we refuse to investigate the complaint, we will give the person who made the complaint a notice that states our decision to refuse to investigate, and the reasons for the decision. This notice will be given within 14 days after we decide to refuse to investigate the complaint.

If we decide to investigate the complaint, we will give written notice of investigation to:

- the person who made the complaint
- the government agency that is the subject of the complaint
- the minister responsible for the government agency
- any other person we consider appropriate to contact about the investigation.

Our investigation will then begin within a reasonable period after the notice of investigation is given.

3.2 Request for further information from the person who is making the complaint

As we investigate a complaint, we may seek further information from the person making the complaint, to support the complaint and to assist our investigations. Any further information that we request must be information that we consider is necessary and reasonable to help us decide whether or not to investigate the complaint.

If we require further information, we may give the person who is making the complaint a written notice to request clarifying or additional information, within a reasonable time-period as stated in the notice. People can request that we keep any information provided to us confidential, by completing the confidentiality request form on the last page of our [complaints form](#), and attaching this form as part of their response to us. For more information about claiming confidentiality, see section 2.5 above.

If we do not receive the information requested in our notice without reasonable excuse, we may decide that we are unable to continue to investigate the complaint.

3.3 How the complaint is investigated

We will investigate whether the government agency that is the subject of the complaint has a competitive advantage of a financial, regulatory or procedural nature, and whether the government agency has failed to comply with the principle of competitive neutrality.

3.3.1 Consultation

During the investigation, we may consult with various parties, including the person making the complaint, the government agency that is the subject of the complaint, and any other person we consider appropriate. This could include an invitation to provide a written submission, meet with us, talk to us on the phone or exchange emails.

Information collected during the investigation may be included in the investigation report. Any person who provides information to us can request that we keep the information they have provided confidential (see section 2.5 above).

3.3.2 Power to require certain information from the government agency

We may require the government agency that is the subject of the complaint to give us information that is relevant to the complaint, or to produce a document relevant to the complaint. We will do so by giving the government agency a written notice that states the information and/or documents that we require, and the timeframe that it must be provided within.

The government agency is required to comply with such a notice, unless:

- the information or document is subject to legal professional privilege, parliamentary privilege or public interest immunity
- giving the information or document to us is prohibited under an Act
- giving the information or document could reasonably be expected to prejudice an investigation into a possible contravention of a law.

3.3.3 Timing

The time taken for an investigation will vary depending on the complexity of the matters under investigation, the quality of the information available and whether the information has been provided in a timely manner.

All investigations will be completed as soon as practicable.

3.4 Investigation report and outcome

After our investigation of the competitive neutrality complaint is complete, we will prepare a written report about the investigation and the results of the investigation and provide the report to the Treasurer. We may make recommendations in our report about how the government agency may address any failure to comply with the principle of competitive neutrality.

Our report provides advice and recommendations only, and *the Treasurer is not required to accept the advice or to take any action in response to our report*, other than to give us a response to the report as soon as practicable after receiving it.

Once we receive the Treasurer's response to the report, we will publish the report on our website. We may recommend that the publication of the report be delayed, and the reasons for this recommendation will be included in the report. If such a recommendation is accepted by the Treasurer, the report will be published at the end of the recommended delay period.

We will advise the party who made the complaint once we have published the report and the Treasurer's response on our website.