

Queensland
Competition
Authority

Handbook

Making a competitive neutrality
complaint to the Queensland
Competition Authority

Local government

SEPTEMBER 2021



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Complaints about local government businesses

This handbook discusses complaints about local government agencies. For complaints about a state government business, refer to the handbook for complaints against state 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), the Local Government Act 2009 (Qld), and the City of Brisbane Act 2010 (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 local government businesses. A separate handbook is available if you wish to make a complaint against a state government agency.

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 good or service 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 competitive neutrality principle is described in [section 43\(3\)](#) of the *Local Government Act 2009* (Qld).



Competitive neutrality principle

Under the **competitive neutrality principle**, an entity that is conducting a business activity in competition with the private sector should not enjoy a net advantage over competitors only because the entity is in the public sector.

The Local Government Act applies to all local governments (councils) in Queensland, with the exception of the Brisbane City Council. The *City of Brisbane Act 2010* (Qld) applies to the Brisbane City Council; however, in relation to competitive neutrality, many of the sections of the City of Brisbane Act are similar to those sections in the Local Government Act. For example, the same description of the competitive neutrality principle appears in the City of Brisbane Act, [section 47\(3\)](#). For convenience, we have only referred to the [Local Government Act](#) (and the related [Local Government Regulation 2012](#)) in this handbook. If you have a complaint against the Brisbane City Council, we can help explain, if needed, the relevant provisions of the [City of Brisbane Act](#) (and the related [City of Brisbane Regulation 2012](#)) that would apply to your complaint.

¹ Economic inefficiency includes productive, allocative and dynamic inefficiency.

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

- 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 own or 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.

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. In relation to local governments, our role is to receive, investigate and report on complaints about the alleged failures of local governments to comply with the principle of competitive neutrality.

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

Our report to the local government provides advice and recommendations only, and the local 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 that relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle.

The Queensland Government's competitive neutrality policy for local governments is set out in the document [National Competition Policy and Queensland Local Government](#). The QCA does not have a role in setting the policy framework for competitive neutrality in Queensland.

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 45 of the Local Government Regulation](#) 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 business activity and the relevant local government that you wish to complain about

2

Contact the relevant local government

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 business activity and the relevant local government

If you wish to make a competitive neutrality complaint, the first step is to identify the business activity that you wish to make a complaint about (for example, the lawn-mowing activities of a council).

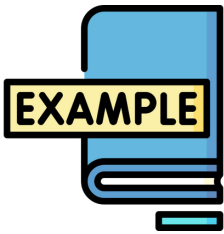
A business activity is an activity involving trade in goods or services to clients. It does not include non-business, non-profit activities of a local government, such as regulatory or approvals processes. In the case of most local governments, business activities would cover undertakings such as water and sewerage services, public transport, entertainment venues, caravan parks, off-street parking and other activities that could reasonably be regarded as being able to be delivered by a private sector business (for the purpose of earning profits) in the absence of the local government's involvement.

A competitive neutrality complaint in this context is a complaint about the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle. The competitive neutrality principle will not apply to all business activities of a council; we will consider whether it applies as part of our investigation.

Once you have identified the business activity that you wish to complain about, the next step is to identify the relevant local government that carries out that business activity. The business activity will be carried out either directly by the local government, or by a separate business that is owned, operated or controlled by the local government. We provide two examples below of identifying the local government that you wish to complain about.

The [Find Your Council tool](#) provided by the Local Government Association of Queensland can also be used to find the relevant local governments in Queensland. We can assist you with identifying the relevant business and local government that is the subject of your complaint.

This step can be completed by answering **questions 7, 8 and 9** of our [complaints form for local government businesses](#).



A business activity run directly by a local government

Bob, who owns a lawn-mowing business, wants to make a competitive neutrality complaint against the lawn-mowing activity conducted by his local government.

Bob uses the [Find Your Council tool](#) to find that his local government is the ABC Council (a fictional council).

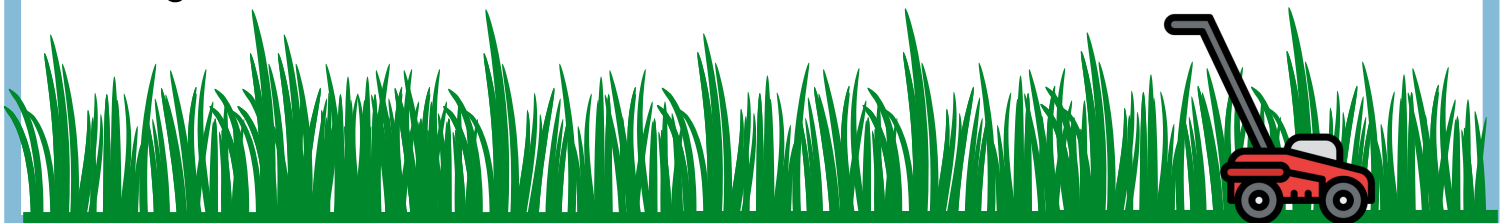
Bob contacts the ABC Council and finds out that the lawn-mowing activity is conducted directly by the council—it directly employs staff to mow lawns.

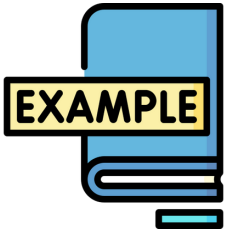
In this case, Bob's complaint would be against the ABC Council.

On our complaints form for local government businesses:

- For question 7, Bob would select 'ABC Council' from the dropdown list (as ABC Council is a fictional council used for this example only, it does not actually appear in the dropdown list).
- For question 8, to describe the business activity Bob is complaining about, he could write 'providing lawn-mowing services'.
- For question 9, which asks Bob if the local government is conducting the business activity through a separate business entity, Bob could write 'not applicable', as the lawn-mowing services are provided directly by the council (see below for an example of a separate business entity).

Please note that the competitive neutrality principle may not apply to Bob's complaint. We will consider whether it applies as part of our investigation.





A separate business entity to the local government

Bob, who owns a lawn-mowing business, wants to make a competitive neutrality complaint against the lawn-mowing activity conducted by his local government.

Bob uses the [Find Your Council tool](#) to find that his local government is the ABC Council (a fictional council).

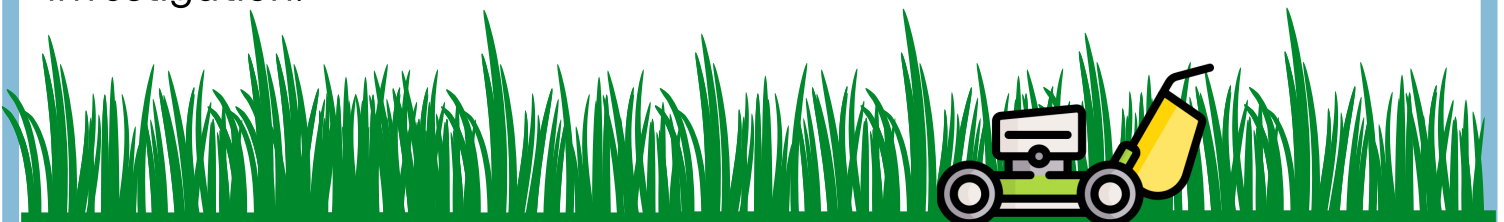
Bob contacts the ABC Council and finds out that the lawn-mowing activity is conducted by a separate business entity, a company named ABC Mowing Pty Ltd. ABC Mowing Pty Ltd employs staff to mow lawns. ABC Mowing Pty Ltd is owned and controlled by the ABC Council.

In this case, Bob's complaint would be against the ABC Council, as that is the council that owns and controls the business that he wishes to complain about.

On our complaints form for local government businesses:

- For question 7, Bob would select 'ABC Council' from the dropdown list (as ABC Council is a fictional council used for this example only, it does not actually appear in the dropdown list).
- For question 8, to describe the business activity Bob is complaining about, he could write 'providing lawn-mowing services'.
- For question 9, which asks Bob if the local government is conducting the business activity through a separate business entity, Bob would write 'ABC Mowing Pty Ltd'.

Please note that the competitive neutrality principle may not apply to Bob's complaint. We will consider whether it applies as part of our investigation.



2.3 Step 2: Contact the relevant local government

After you have identified the local government that you wish to make complaint about, the next step is to contact that local government directly to discuss your concerns.

You must make a genuine attempt to resolve the complaint with that local government. All local governments are required by the [Local Government Act](#) and [Local Government Regulation](#) to have a process for resolving competitive neutrality complaints, including a process for resolving an issue before it becomes a formal competitive neutrality complaint. We encourage you to contact the local government and ask to engage in their process to resolve your issue.

If you are unsatisfied with the local government's response to your concerns, you may make a formal competitive neutrality complaint either to us or directly to the local government. If you make a formal competitive neutrality complaint to the local government, they will refer that complaint to us to investigate.

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 local government. We may refuse to investigate a competitive neutrality complaint if we believe there was no genuine attempt to resolve the complaint with the local government.

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

2.4.1 A complaint must be in writing

This requirement for the complaint to be in writing will be met if you complete the [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 our complaints form must still put their complaint into writing. The complaint will need to meet the information requirements contained in [section 45 of the Local Government Regulation](#) for making a competitive neutrality complaint.

2.4.2 Details of alleged failure of the local government business to comply with principle of competitive neutrality

This information requirement can be met by completing **question 10** of [our complaints form for local government businesses](#). If you need assistance with completing this question or the form generally, you can [contact us](#).

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

For example, a local government business 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.
- not be complying with the code of competitive conduct for local government business activities (see box below).

Code of competitive conduct for local government business activities

One way that a local government may not be complying with the principle of competitive neutrality is if it is not complying with the code of competitive conduct.

The code of competitive conduct specifies how local governments can apply the competitive neutrality principle to the local government businesses that are covered by the code. The code includes provisions on pricing, financial reporting and the treatment of community service obligations. The code is contained in part 2, division 5 of the Local Government Regulation.

All local governments are required to establish a register of business activities to which the competitive neutrality principle applies. This register must state, among other things, the business activities to which the code of competitive conduct applies, and the date from which the code applies to each business activity.

The code of competitive conduct applies to building certifying activities and roads activities conducted by certain local governments. A building certifying activity involves performing building certifying functions within the meaning of section 10 of the Building Act 1975 (Qld), and the code of competitive conduct applies to building certifying activities carried out by the list of local governments provided in section 38 of the Local Government Regulation. A roads activity involves constructing or maintaining a state-controlled road (that the state put out to competitive tender), or submitting a competitive tender in relation to constructing or maintaining a road in that local government's own area, or in the area of another local government.

The code of competitive conduct may also apply to business activities of a local government that exceed an annual current expenditure amount of \$340,000 over the previous financial year. This current expenditure amount is the total of the business activity's operational costs, administrative and overhead costs, costs of resources and depreciation.

A local government can decide by resolution to apply the code of competitive conduct to additional businesses activities not required by the Local Government Act or Local Government Regulation, or to not apply the code to certain business activities, even though the current expenditure for those activities exceeds the \$340,000 limit.

If you believe that the code of competitive conduct applies to a business activity of a local government, and you believe that business is not complying with the code, you may submit a competitive neutrality complaint in relation to the issue.

2.4.3 Being in competition in a particular market

This information requirement can be met by completing **questions 11 to 14** of [our complaints form for local government businesses](#).

Your complaint must include sufficient details to show that your business is (or could be) competing with the local government business 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, and you are likely to be competing in the same market.

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

2.4.4 Adversely affected by failure to comply with competitive neutrality principle

This information requirement can be met by completing **question 15** of our [complaints form for local government businesses](#).

Your complaint must include sufficient details to show that your business is (or may be) negatively affected by the local government business's alleged failure to comply with the competitive neutrality principle. This could be through evidence of lost revenues or lost tenders, for example.

2.4.5 Genuine attempt to contact the relevant local government

This information requirement can be met by completing **question 16** of [our complaints form for local government businesses](#).

Your complaint must include sufficient details to show whether you have made a genuine attempt to resolve the issue with the relevant local government before making a formal competitive neutrality complaint.

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

We may refuse to investigate a formal complaint if there is no evidence of a genuine attempt to resolve the issue with the relevant local government before the formal competitive neutrality complaint was made.

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 your complaint. 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 the information you have provided 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 55A of the Local Government Regulation](#).

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 Minister for local government (as at September 2021, this is [the Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning](#))
- (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 local government may still be given to the local government, even if we have accepted it as confidential. Additionally, the legislation allows us to disclose the information in a report or to an external entity 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 will 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 about a local government, 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 has not made a genuine attempt to resolve the issue with the relevant local government before making a formal competitive neutrality complaint
- we believe the person making the complaint is not, and will not be, in competition with the relevant local government, after we have considered:
 - whether the person making the complaint is, or will be, supplying goods or services that are similar to the goods or services that the local government business activity supplies
 - the laws relating to competition that apply to the business activity
- the person making the complaint is not, or is unlikely to be, adversely affected if the local government business activity is not conducted in a way that complies with the competitive neutrality principle
- we believe the complaint is frivolous or vexatious
- we formally requested more information from the person making the complaint (with a written notice under [section 47 of the Local Government Regulation](#)—see section 3.2 below), and the person has failed to provide this information without reasonable excuse.

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, as well as the relevant local government that was complained about, a notice that states our decision to refuse to investigate the complaint, and the reasons for the decision. This notice will be given within 14 days after we decide to not investigate the complaint.

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

- the person who made the complaint

- the relevant local government that is the subject of the complaint
- the local government business that carries out the activity, if that business is a separate legal business entity to the local government
- any other person we consider appropriate to contact about the investigation.

The written investigation notice will (among other things):

- state our intention to investigate a competitive neutrality complaint
- state the subject matter of the complaint, or attach a copy of the complaint
- invite the person who makes the complaint to make written or oral submissions about the matter, within a reasonable period stated in the notice.

Our investigation will then begin within a reasonable period after the notices of investigation are 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 local government business that is the subject of the complaint has a competitive advantage of a financial, regulatory or procedural nature, and whether the local government business has failed to comply with the principle of competitive neutrality.

3.3.1 Matters we must consider in our investigation

We are required to consider the competitive neutrality criteria when investigating a competitive neutrality complaint. The competitive neutrality criteria are set out in [section 51 of the Local Government Regulation](#).



The competitive neutrality criteria

- (a) the need to ensure the competitive neutrality principle is complied with;
- (b) any policies of the relevant local government about the competitive neutrality principle, including, for example—
 - (i) directions the local government gives to the business entity conducting the business activity the subject of the competitive neutrality complaint; and
 - (ii) arrangements between the local government and the business entity about a competitive advantage gained, or competitive disadvantage suffered, by the business entity; and
 - (iii) social welfare and equity considerations, including, for example, community service obligations, and the availability of goods and services to consumers; and
 - (iv) policies on economic and regional development issues, including, for example, policies on employment and investment growth;
- (c) policies of the relevant local government, or a law, about—
 - (i) ecologically sustainable development; or
 - (ii) industrial relations; or
 - (iii) occupational health and safety;
- (d) the need to promote competition;
- (e) the need to allocate resources efficiently.

We can consider other matters in addition to the competitive neutrality criteria when investigating a competitive neutrality complaint.

3.3.2 Consultation

During the investigation, we may consult with various parties, including the person who made the complaint, the relevant local government 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).

3.3.3 Power to require certain information from the relevant local government

We may require the relevant local government that is the subject of the complaint (including the local government business that carries out the activity, if that business is a separate legal business entity to the local government) 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 local government a written notice that states the information and/or documents that we require, and the timeframe that it must be provided within.

The local government 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.

3.3.4 Timing

The time taken for an investigation will vary due to 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 this report to the relevant local government, and the local government business that carries out the activity, if that business is a separate legal business entity to the local government. A copy of the recommendations in the report will also be given to the person who made the complaint, as well as any other person to whom we gave an investigation notice during the investigation.

The report will state whether we consider the local government has failed to conduct a business activity in accordance with the competitive neutrality principle. Additionally, if we consider that the local government business has a competitive advantage in its operations, our report will include, among other things, recommendations on how the local government business can conduct the business activity in a way that complies with the competitive neutrality principle.

Within one month after receiving our report (or at the first meeting of the local government after that one-month timeframe), the relevant local government must decide, by resolution, whether to implement the recommendations in our report. Our report provides advice and recommendations only, and *the local government is not required to accept the advice or to take any action in response to our report.*

As soon as practicable after receiving our report, the local government must ensure that the public can inspect a copy of the report at the local government's public office. We are not required to publish the report on our website. Within seven days of making the resolution on whether to implement the recommendations in our report, the local government will give notice of the resolution to the person who made the complaint, the QCA, and the local government business that carries out the activity, if that business is a separate legal business entity to the local government.