

TENTERFIELD SHIRE COUNCIL

POLICY STATEMENT

HEADING:

Competitive Neutrality Complaints

MEETING ADOPTED AND RESOLUTION NO.:

**23 August 2017
168/17**

HISTORY OF DOCUMENT PREVIOUSLY ADOPTED:

27 April 2000	334/00
16 December 2004	656/04
19 December 2012	524/12
24 June 2015	189/15

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 are the principles contained in the *Competition Principles Agreement*. This Agreement is aimed at encouraging efficient public sector (government) service provision by exposing public 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 Tenterfield Shire 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 a 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.

Policy Statement No. 1.032
Date of Effect: 23 August 2017
Policy Name: Competitive Neutrality Complaints

Review Date:
August 2020

Responsible Officer:
Chief Corporate Officer

- Firstly, it may be used by members of the public and the owners of businesses competing in the same market as Tenterfield Shire 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 operate under the principles of Competitive Neutrality.

Policy:

The Competitive Neutrality Principle

Competitive neutrality is one of the principles of National Competition Policy which is being 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 be Commonwealth, State or Local Government, should operate without net competitive advantages over businesses as a result of their public ownership.

Where Tenterfield Shire Council competes in the market place with other private businesses in the Tenterfield Shire area, 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 that Tenterfield Shire 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 Tenterfield Shire 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 inadequate water quality, 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 Tenterfield Shire Council has not costed the service to take competitive neutrality into account.
- A complaint regarding the trade practices laws and their application to the Tenterfield Shire Council.

Council Business Activities Subject To Competitive Neutrality

Category 1 Business Activities

Tenterfield Shire Council does not operate any Category 1 Business Activities (i.e. business activities that exceed the \$2M annual sales turnover threshold).

Category 2 Business Activities

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

- Tenterfield Water Supply
- Tenterfield Sewerage Service

Council applies the following attributes in respect of Category 2 Business Activities:

- i. Identify any subsidy to the business activity as part of the calculation of costs.
- ii. Apply full cost attribution where practicable.
- iii. Determine the extent to which the business will be separated from other associated mainstream activities.
- iv. 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 Tenterfield Shire Council Administrative Office, 247 Rouse Street, Tenterfield.

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.

5.1 Time Limits

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

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

5.2 Remedies

Competitive neutrality complaints which establish that Tenterfield Shire 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.

5.3 Alternatives

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

- NSW Division 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 Tenterfield Shire Council bypassed.

Who Will Be Dealing With The Competitive Neutrality Complaint

The Tenterfield Shire Council Public Officer will diligently, fairly and honestly investigate all competitive neutrality complaints within 30 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.

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 Tenterfield Shire Council Public Officer between 9 am and 4:30 pm on telephone (02) 6736 6000. All enquiries or requests for further information will be maintained in the strictest confidence.

ADDRESS:

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.....
.....



DATE:

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The General Manager
Tenterfield Shire Council
PO Box 214
TENTERFIELD NSW 2372

Dear Sir/Madam

I hereby submit a complaint that Tenterfield Shire Council is operating a business activity and not observing the principle of competitive neutrality contrary to the National Competition Policy Principles Agreement.

Council Business Activity:

..... (Identify Business Activity)

Nature of Competitive Neutrality Non Compliance:

.....
.....
.....
.....
..... (State Nature of Complaint)

Would you investigate my complaint and advise me of what action Council will take to implement the principle of competitive neutrality in the operation of the abovementioned Council business activity.

Yours faithfully

Signed