



2018

Guidance note

Queensland Productivity Commission's process for competitive neutrality complaints



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This guidance note provides a summary of the Queensland Productivity Commission's (the Commission) process when it receives, assesses and reports on competitive neutrality complaints.

Section 1 explains competitive neutrality and the criteria for complaints about competitive neutrality.

Section 2 describes the process for a complaint about a state government-owned business.

Section 3 describes the process for a complaint about a local government-owned business.

Competitive neutrality

Meaning of the term

Competitive neutrality, in simple terms, is the principle that a government business or agency, should compete with private business on an equal footing.

That is, a government business should not benefit from any net advantage (or disadvantage) due to its government ownership in the following areas (the 'competitive neutrality principle areas'):

- **Financial**—for example, where a government business has an exemption from paying a tax or is charged a different rate of interest.
- **Regulatory**—for example, where a government business has an exemption from complying with a requirement in a regulation.
- **Procedural**—for example, where a government business does not have to supply the same information for a government approval process as a private sector business.

Certain policies and legislation apply (see 'Role of the Commission' on the right).

Further information on competitive neutrality and how it should be applied is found in these policies and legislation.

A competitive neutrality complaint

To qualify as a competitive neutrality complaint, the complaint must:

- be about a government-owned business that is failing to apply the competitive neutrality principle when operating a business activity

- be made by an *affected* person or business
- meet the complaint criteria in the relevant legislation.

Role of the Commission

The Commission has an *advisory role*. This means it provides independent advice to the State or local government—but any action is ultimately a matter for that government.

The Commission follows the relevant legislation and government policies when it handles complaints.

The following acts, regulations and policies apply:

a) For state government-owned businesses

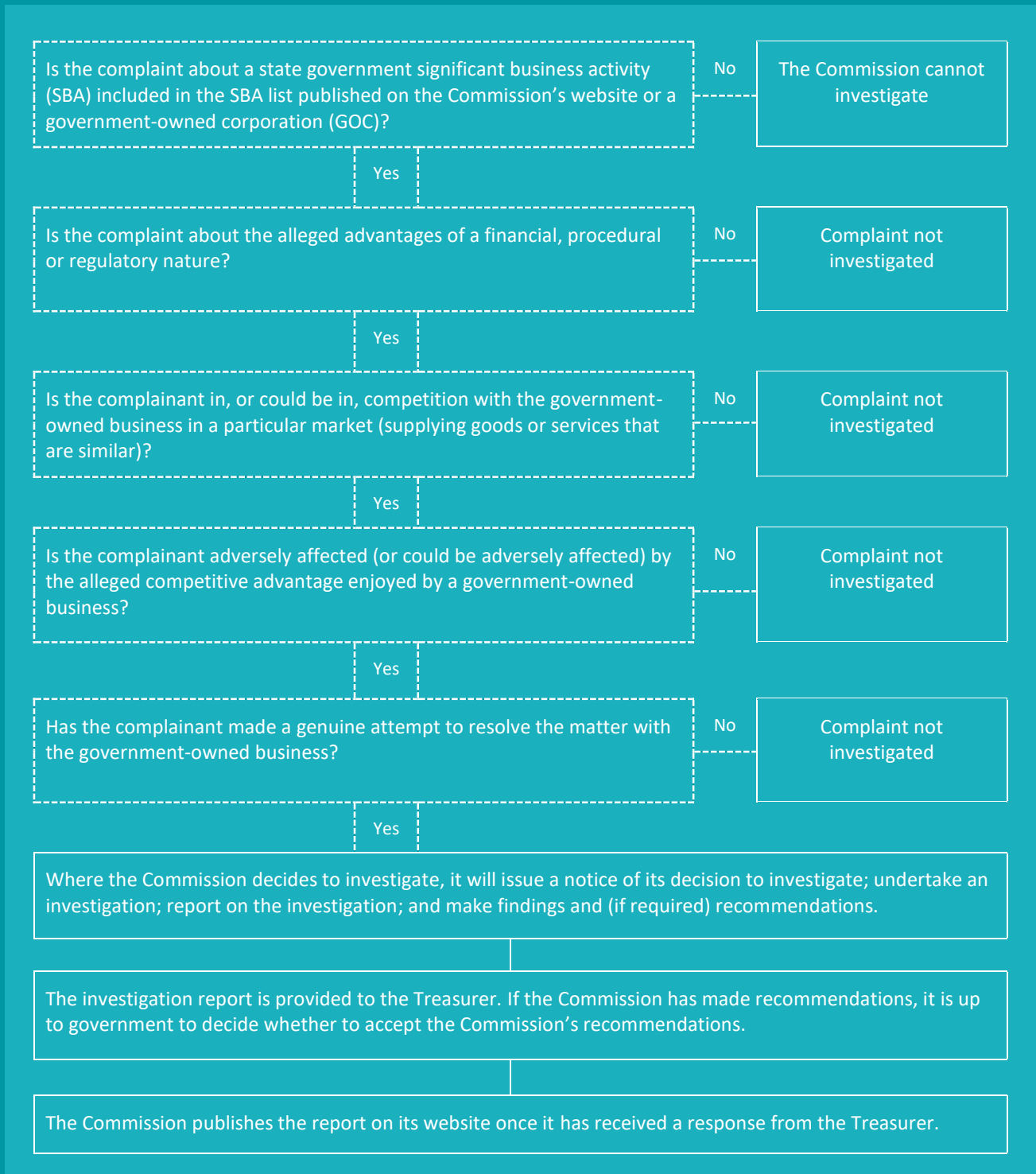
- *Queensland Productivity Commission Act 2015* (QPC Act)
- *Queensland Productivity Commission Regulation 2015* (QPC Regulation)
- National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities 1996 (CN Policy)

b) For local government-owned businesses:

- *Local Government Act 2009* (LG Act)
- *Local Government Regulation 2012* (LG Regulation)
- National Competition Policy Implementation in Queensland: National Competition Policy and Queensland Local Government 1996 (LG CN Policy)

State government-owned businesses

The complaints process is guided by the QPC Act, QPC Regulation and CN Policy, which set out the requirements for making a complaint, the Commission's investigation about a complaint, and the respondent on the investigation.



Business activities a complaint may be made about

A competitive neutrality complaint can be made about a business that is a significant business activity (SBA). SBAs are:

- included on the SBA list published on the Commission's [website](#)
- government-owned corporations (GOCs).

The person making a complaint

A complaint can be made by an *affected* person or business. An *affected* person or business is (or could be):

- in competition with a government-owned business in a market (supplying goods and services that are similar)
- adversely affected by a competitive advantage (financial, regulatory or procedural) that is alleged to be enjoyed by the government-owned business.

Making a complaint

A complaint must be made in writing and must include details to demonstrate that:

- a government-owned business has failed to comply with the principle of competitive neutrality (financial, procedural or regulatory)
- the complainant is, or could be, in competition with a government-owned business in a market (supplying goods or services that are similar)
- the complainant is, or could be, adversely affected by the competitive advantage a government-owned business enjoys
- the complainant has taken steps to resolve the matter with the government-owned business.

Decision to investigate

Request for further information

Within a reasonable timeframe, we may request (in writing) that the complainant provide clarifying or additional information to support the evidence provided with the complaint.

The information that we request must be necessary and reasonable to help us decide whether to investigate.

Decision not to investigate

We will not investigate a complaint where we reasonably believe any of the following is true:

- The complainant is not, and could not be, in competition with the government-owned business in a market (supplying goods or services that are similar).
- The complaint is frivolous or vexatious—this is considered to be a complaint made without sufficient justification—or any serious purpose or value—and is purely to cause annoyance.
- The complainant has failed to provide further information within the stated timeframe (without a reasonable excuse), when requested by us.
- A genuine attempt has not been made to resolve the matter with the relevant State government-owned business entity.
- The complaint is not about competitive neutrality.

If we decide not to investigate a complaint, the complainant will be notified within 14 days of the decision being made. The written notice will state the decision and the reasons for the decision.

Decision to investigate

If we decide to investigate a complaint, a written notice of investigation will be sent to:

- the complainant
- the State government-owned business entity
- the Minister responsible for the government-owned business
- any person we consider appropriate to contact about the investigation.

How the complaint is investigated

Matters we must consider

We must consider whether the government-owned business has a competitive advantage—of a financial, procedural or regulatory nature—because it is owned by government.

We can only investigate complaints about competitive advantages that fall in these three competitive neutrality principle areas and where appropriate, make recommendations to address those advantages or disadvantages.

Consultation

We may consult someone who has been given a notice of investigation. 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 consultation may be included in the investigation report.

Timing

We aim to complete an investigation within six months from the time the notice of investigation is sent.

However, the time taken for an investigation may vary due to the complexity of the matters under investigation, the quality of information available and whether the information has been provided punctually.

Investigation report

We must prepare a written report about the investigation for the Treasurer, which:

- provides details of the investigation
- contains our findings
- if required, contains our recommendations.

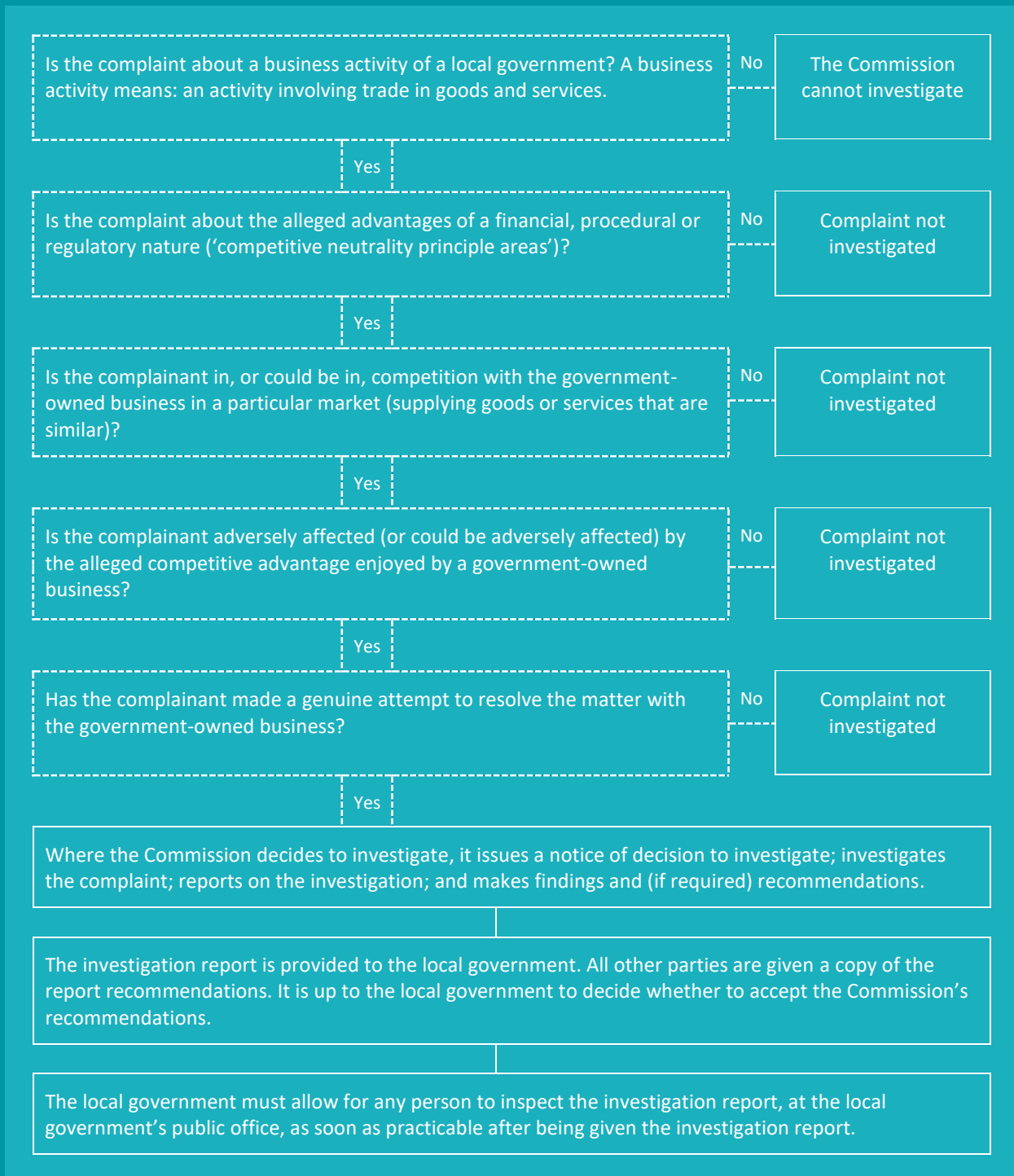
We must publish the investigation report on our website as soon as practicable after receiving the Treasurer's response.

Recommendations

The Commission has an advisory role. This means we provide independent advice to the government—but any action will ultimately be a matter for the government.

Local government-owned businesses

The complaints process is guided by the LG Act, LG Regulation and LG CN Policy, which set out the requirements for making a complaint, the Commission's investigation about a complaint, and the respondent on the investigation.



Businesses a complaint can be made about

A complaint may be made about a business activity that is owned by a local government. A business activity means: an activity involving trade in goods and services.

For example, a local government-owned business activity could be sewerage and water services, building certification, roads activity, library services, providing off-street parking or sporting facilities.

The person making a complaint

A complaint can be made by an *affected* person or business. An *affected* person or business is (or could be):

- in competition with the local government-owned business
- adversely affected by the competitive advantage (financial, procedural or regulatory) that the local government-owned business allegedly enjoys.

Making a complaint

A complaint must be made in writing and sent to either the local government or to us.

The complaint must describe:

- the alleged advantage the complainant considers the government-owned business has
- the way the complainant is, or could be, in competition with the government-owned business
- the way in which the complainant is, or may be, adversely affected by the local government-owned business' failure to comply with the principle of competitive neutrality.

The complaint must include information to demonstrate that the complainant has made a genuine attempt to resolve the complaint with the local government.

If the complaint is made to a local government, the local government must give the complaint to us as soon as is practical.

Decision to investigate

Request for further information

Within a reasonable timeframe, we may request (in writing) that the complainant provide clarifying or additional information to support the evidence provided with the complaint.

The information that we request must be necessary and reasonable to help us decide whether to investigate.

Decision to refuse to investigate

The Commission may refuse to investigate a complaint if it reasonably believes any of the following is true:

- The complainant has not provided the information needed for the Commission to make a decision.
- The complainant is not, and will not be, in competition with the local government-owned business.
- The complainant is not, or is unlikely to be, adversely affected if the local government-owned business is not conducted in a way that complies with the competitive neutrality principle.
- The complainant has not shown that a genuine attempt has been made to resolve the matter with the relevant local government.

- The complaint is frivolous or vexatious— this is considered to be a complaint made without sufficient justification or any serious purpose or value and is purely to cause annoyance.
- The complainant has failed to provide further information within the stated timeframe (without a reasonable excuse), when requested by us.

Where we decide not to investigate the complaint, we will—within 14 days of the decision being made—issue a written notice (called a refusal notice) to the complainant and the relevant local government. The refusal notice will state that we refuse to investigate the complaint and will include reasons for the refusal.

Investigation notice

If we decide to investigate a complaint, we will send a written notice of investigation to:

- the complainant
- the relevant local government
- the local government-owned business entity, if the complaint is about a corporatised business entity
- any other person we consider appropriate.

An investigation notice will announce the decision to investigate. It will also include information about:

- details of the complaint
- making written submissions
- timelines for the investigation.

Once a notice of investigation is issued, the investigation commences.

How the complaint is investigated

Matters we must consider

The Commission is not limited in the matters it may consider when investigating a competitive neutrality complaint about a local government-owned business. However, it must consider the competitive neutrality criteria.

The competitive neutrality criteria cover matters relating to:

- the need to ensure the business activity does not have a competitive advantage (or disadvantage) of a financial, procedural or regulatory nature
- any policies of the relevant local government about the competitive neutrality principle
- policies of the relevant local government, or a relevant law about: ecologically sustainable development; industrial relations or occupational health and safety
- the need to promote competition
- the need to allocate resources efficiently.

Consultation

We will invite stakeholder submissions about the complaint. Consultation may also include requests for written information, face to face meetings, site visits, conference calls, phone calls or emails.

The information collected during consultation may be included in the investigation report.

Timing

We aim to complete an investigation within six months from the time the investigation notice is sent.

However, the time taken for an investigation may vary due to the complexity of the matters under investigation, the quality of information available and whether the information has been provided punctually.

Investigation report

The report on the investigation will state whether or not we consider the complaint has been substantiated.

If we find the business entity has a competitive advantage (or disadvantage), the report must include recommendations on how the business can conduct the activity in a way that complies with the competitive neutrality principle.

If we find a business activity is disadvantaged, the report must also include comments about the effect of the disadvantage on the business entity.

The report will include reasons for the recommendations made.

The investigation report is given to the local government (or corporatised business entity, whichever may be relevant). We are not permitted to provide the investigation report to any other person or business.

We are required to provide a summary of our recommendations (if any are made) to all parties that were sent an investigation notice.

The local government must ensure the public can inspect a copy of the report at its public office as soon as practicable after receiving the report.

Recommendations

The Commission has an advisory role. This means it provides independent advice to the local government—but any action will ultimately be a matter for the local government.

It is the responsibility of the local government to decide by resolution whether to implement the recommendations in the Commission's report.

Resolution should happen within one month after the Commission provides the report to the local government, or at the first meeting of the local government after that month.

The local government must provide a notice of the resolution to the Commission and the complainant within seven days after making the resolution. The resolution must state the reasons for the local government's decision.

