

# Queensland Productivity Commission Regulation 2015

Explanatory notes for SL 2015 No. 170

made under the

*City of Brisbane Act 2010*

*Local Government Act 2009*

*Queensland Productivity Commission Act 2015*

## General Outline

### Short title

*Queensland Productivity Commission Regulation 2015*

### Authorising law

Section 252 of the *City of Brisbane Act 2010*

Section 270 of the *Local Government Act 2009*

Sections 36, 46 and 51 of the *Queensland Productivity Commission Act 2015*

### Policy objectives and the reasons for them

The *Queensland Productivity Commission Act 2015* (the Act) commenced on 20 November 2015, establishing the Queensland Productivity Commission (the Commission) as an independent economic advisory body, with the broad aims of lifting productivity, improving living standards and driving economic growth.

While the core role of the Commission is to conduct formal public inquiries, reviews and investigations into complex economic and policy issues, it will also be responsible for the State's competitive neutrality functions. This function was previously performed by the Queensland Competition Authority (QCA). The *Queensland Productivity Commission Regulation 2015* (the Regulation) supports the Act in connection with this function. It both prescribes certain matters and makes consequential amendments to facilitate the effective transfer of the competitive neutrality function from the QCA to the Commission.

The Act provides a principle of competitive neutrality in regard to State Government significant business activities. It defines a "significant business activity" and provides a process for persons to lodge competitive neutrality complaints. It provides a detailed process for the Commission to follow when receiving, investigating and reporting on complaints about alleged failures by government agencies to comply with the principle of competitive neutrality.

Subject to the Act, the Regulation prescribes a competitive neutrality policy which gives the Commission scope and appropriate guidance to accept and provide advice on competitive neutrality issues and complaints in circumstances when a formal competitive neutrality investigation may not be necessary (e.g. complaints in regard to government businesses that do not come within the strict meaning of government “significant business activities” or for alleged breaches of competitive neutrality principles that are not expressly defined in the Act). This is consistent with the role historically undertaken by Queensland Treasury.

The Act makes consequential amendments to the *City of Brisbane Regulation 2012* (COBR) and the *Local Government Regulation 2012* (LGR) to make the Commission the body responsible for undertaking the competitive neutrality complaints functions in regard to complaints against local government businesses. The Commission replaces the QCA in this role.

The Regulation prescribes an additional function of the Commission to be processing, investigating and reporting on a competitive neutrality complaint under the COBR or the LGR. This enables the Commission to require the production of information in relation to this function.

Finally, the Regulation makes consequential and other amendments to the COBR and the LGR to deal with the transition of the competitive neutrality complaints function from the QCA to the Commission by immediately transferring any existing complaints being considered by the QCA to the Commission upon commencement of the Regulation.

The Regulation also makes a minor amendment to the COBR in regard to its annual reporting of competitive neutrality complaints, reflecting the Commission’s role as the new complaints body.

## **Achievement of policy objectives**

### ***Prescribed matters***

The Regulation prescribes matters necessary to support the Act.

#### *Competitive Neutrality Policy*

Pursuant to section 36 of the Act, the Regulation makes the ‘*Competitive Neutrality and Queensland Government Business Activities*’ policy (Competitive Neutrality Policy), made by Queensland Treasury, the prescribed competitive neutrality policy under the Act.

The Competitive Neutrality Policy is about the application of the principle of competitive neutrality, and the handling of competitive neutrality complaints.

#### *Functions for power to require information*

Pursuant to section 46 of the Act, the Regulation prescribes an additional function of the Commission to be processing, investigating and reporting on a competitive neutrality complaint under the COBR or the LGR. This enables the Commission to require the production of information in relation to this function.

### **Consequential and other amendments**

The Regulation makes consequential and other amendments to local government legislation to support the Commission in undertaking the competitive neutrality complaints function.

Amendments to the COBR and the LGR provide that any competitive neutrality investigations that are currently underway in the QCA are transferred to the Commission.

A further minor consequential amendment concerning annual reporting is also made to the COBR to reflect the replacement of the QPC from the QCA.

### **Consistency with policy objectives of authorising law**

The Regulation is consistent with the policy objectives of the *Queensland Productivity Commission Act 2015*; the *City of Brisbane Act 2010* and the *Local Government Act 2009*.

### **Inconsistency with policy objectives of other legislation**

No inconsistencies with the policy objectives of other legislation have been identified.

### **Alternative ways of achieving policy objectives**

The Regulation is the only effective means of achieving the policy objectives.

### **Benefits and costs of implementation**

The Regulation supports the authorising law and imposes no additional costs on persons or organisations.

### **Consistency with fundamental legislative principles**

The Regulation is consistent with fundamental legislative principles, as set out in section 4 of the *Legislative Standards Act 1992*.

### **Consultation**

The Commission was consulted and supports the Regulation. There was no external consultation in relation to the Regulation.

The Office of Best Practice Regulation was consulted on the Regulation and advised that a Regulatory Impact Statement is not required.

## Notes on provisions

### Part 1 Preliminary

#### Short title

*Clause 1* provides that the short title is the *Queensland Productivity Commission Regulation 2015*

### Part 2 Prescribed matters

*Clause 2* provides that the 'Competitive Neutrality and Queensland Government Business Activities', edition 1 policy, made by Queensland Treasury, is the prescribed competitive neutrality policy for the purposes of section 36(2) of the Act.

*Clause 3* provides when the Commission is undertaking a function that involves processing, investigating and reporting on a competitive neutrality complaint under the *City of Brisbane Regulation 2012* (COBR) or the *Local Government Regulation 2012* (LGR), this is a prescribed function for the purposes of 46(1)(b) of the Act.

### Part 3 Consequential and other amendments

#### Division 1 Amendment of *City of Brisbane Regulation 2012*

*Clause 4* provides that Division 1 of the Regulation amends the COBR.

*Clause 5* provides that the annual report of the Brisbane City Council must contain its responses to any recommendations on competitive neutrality complaints undertaken by the Commission. This reflects the fact that the Commission has replaced the QCA as the investigatory body responsible for undertaking competitive neutrality complaints against Brisbane City Council.

*Clause 6* replaces a heading in the COBR so that it is clear that the transitional provisions in ch 10 pt 2, and the transitional provisions in ch 10 pt 3, relate to different regulations.

*Clause 7* inserts a new Chapter 10, Part 3 heading, to provide that any existing competitive neutrality complaints that are currently in the process of being undertaken by the Queensland Competition Authority (QCA) are transferred to the Commission at the commencement of the Regulation.

#### Division 2 Amendment of *Local Government Regulation 2012*

*Clause 8* provides that Division 2 of the Regulation amends the LGR.

*Clause 9* inserts a new Chapter 14 in the LGR to provide that any existing competitive neutrality complaints that are currently in the process of being undertaken by the QCA are transferred to the commission at the commencement of the Regulation.