

REVIEW OF ANTI-COMPETITIVE PROVISIONS
AMENDMENT SUBORDINATE LOCAL LAW NO. 1
(TEMPORARY HOMES AND LOCAL GOVERNMENT AREAS) 2025

1. Background

Under the National Competition Policy (NCP), all levels of government must review all legislation that contains measures that may restrict competition. A Public Interest Test (PIT) is the mechanism for conducting the legislation review process.

The NCP is implemented by an inter-governmental agreement signed by the Council of Australian Governments (COAG) and includes the Competition Principles Agreement (CPA), which establishes the principles covering pro-competitive reform of government business enterprises and government regulation. Under clause 5(1) of the CPA, the guiding principle is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Under the agreement, the Queensland Government requires local governments to review anti-competitive provisions in any proposed local law before the law is adopted.

2. Review of Anti-Competitive Provisions

A review of anti-competitive provisions is conducted against the principles and objectives set by the CPA. Clause 5(9) of the CPA requires a review to:

- (a) clarify the objectives of the legislation;
- (b) identify the nature of the restriction on competition;
- (c) analyse the likely effect of the restriction on competition and on the economy generally;
- (d) assess and balance the costs and benefits of the restriction; and
- (e) consider alternative means of achieving the same result including non-legislative approaches.

Without limiting the matters that may be taken into account, clause 1(3) of the CPA sets out the following matters which, where relevant, must be taken into account:

- (a) government legislation and policies relating to ecologically sustainable development;
- (b) social welfare and equity considerations, including community service obligations;
- (c) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- (d) economic and regional development, including employment and investment growth;
- (e) the interests of consumers generally or of a class of consumers;
- (f) the competitiveness of Australian businesses; and
- (g) the efficient allocation of resources.

Under section 38 of the *Local Government Act 2009*, a local government must not make a local law that contains an anti-competitive provision unless the local government has complied with the procedures prescribed under a regulation for the review of anti-competitive provisions.

Under section 15 of the *Local Government Regulation 2012*, a provision is identified as creating a barrier to entry to a market or competition within a market if, in applying the procedures of the Competition Policy Guidelines, Council identifies the provision as creating one of those barriers.

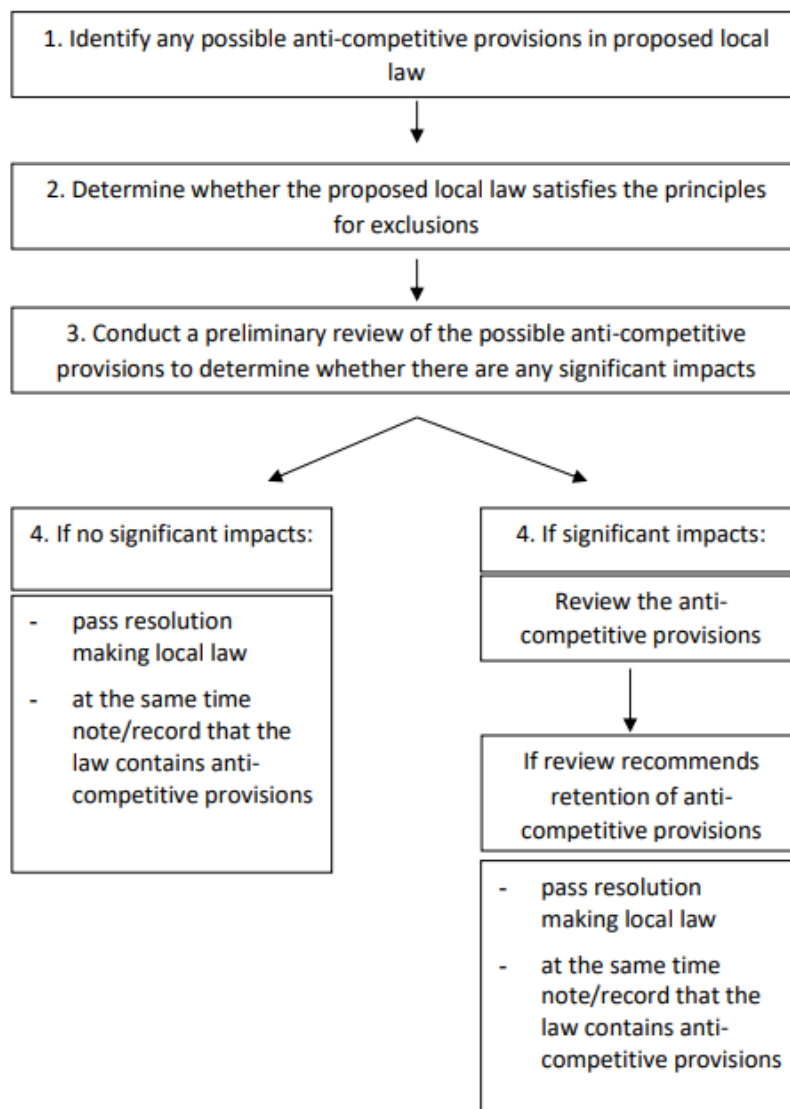
Council is required to undertake a review of possible anti-competitive provisions in accordance with the *National Competition Policy - Guidelines for Conducting Reviews on Anti-Competitive Provisions in Local Laws (2022)* ('the Competition Policy Guidelines').

3. Process for Review of Anti-Competitive Provisions

In the context of local laws, an anti-competitive provision means a provision that a regulation identifies as creating barriers to—

- (a) entry to a market — this involves either prohibiting particular business activities or placing obligations on the operators of business activities; or
- (b) competition within a market — this involves giving some benefit or imposing some hindrance on particular business operators.

The process for undertaking a review of anti-competitive provisions in a local law is set out below.



4. Proposed Local Law Amendments

Proposed *Amendment Subordinate Local Law No. 1 (Temporary Homes and Local Government Areas) 2025* seeks to amend the following Subordinate Local Laws:

- *Subordinate Local Law No. 1.3 (Establishment or Occupation of a Temporary Home) 2011*; and
- *Subordinate Local Law No. 4 (Local Government Areas, Facilities and Roads) 2011*.

In accordance with section 38 of the *Local Government Act 2009*, Council must review possible anti-competitive provisions identified in proposed *Amendment Subordinate Local Law No. 1*.

STEP 1 - IDENTIFYING POSSIBLE ANTI-COMPETITIVE PROVISIONS

Currently, the only circumstances in which Council allows the use of a caravan for accommodation outside of a caravan park, is when an approval has been issued under *Local Law No. 1 (Administration) 2011* and *Subordinate Local Law No. 1.3 (Establishment or Occupation of a Temporary Home) 2011*. These approvals are limited to situations where a landowner is constructing or renovating a dwelling on their land, and they wish to reside in a caravan on that land while the dwelling is being constructed. A building approval must have been issued for the dwelling prior to an approval being granted. An approval for a temporary home may be granted for a term up to 18 months.

Section 4 of the proposed *Amendment Subordinate Local Law* proposes amendments to *Subordinate Local Law No. 1.3* which would allow people to reside in a temporary home, outside of a caravan park, in limited circumstances. The proposed amendments would allow (without approval from Council):

- (a) the use of a temporary home (not a Class 10a building) on a vacant lot for up to two weeks in any 52 week period; and
- (b) landowners or occupiers to let family or friends live in a caravan in their backyard for up to six months in a 12-month period.

STEP 2 – DETERMINING EXCLUSIONS

In some cases, depending on the nature of the local law or the proposed amendment, the local government may not be required to conduct a review of any anti-competitive provisions. The Competition Policy Guidelines confirm that the following types of local laws are excluded from a review of anti-competitive provisions:

- (i) local laws regulating the behaviour of individuals;
- (ii) local laws dealing solely with internal administrative procedures of a local government;
- (iii) local laws intended as a legitimate measure to combat the spread of pest and disease;
- (iv) local laws to ensure accepted public health and safety standards are met; and
- (v) repealing local laws.

Proposed *Amendment Subordinate Local Law No. 1 (Temporary Homes and Local Government Areas) 2025* does meet criteria (i) and (iv) for exclusion from the review of anti-competitive provisions because the Proposed Local Law Amendments:

- regulate the behaviour of individuals; and

- ensure accepted public health and safety standards are met; and
- are intended as legitimate measures to address an immediate social housing need.

STEP 3– PRELIMINARY REVIEW OF IMPACTS ANTI-COMPETITIVE PROVISIONS

The proposed amendments to *Subordinate Local Law No. 1.3* introduce possible anti-competitive provisions by allowing people to temporarily reside in caravans outside of a caravan park.

In determining whether significant impacts will exist, Council must consider the following factors:

- (i) the probability of impacts occurring;
- (ii) the size and characteristics of the affected businesses;
- (iii) the intensity of the potential impact on affected businesses;
- (iv) whether particular businesses will incur a disproportionate impact; and
- (v) the duration of the impact (for example ongoing or 'one-off').

The proposed amendments to *Subordinate Local Law No. 1.3* would allow people to reside temporarily in temporary homes outside of a caravan park. However, it is considered this would not have a significant impact for the following reasons:

- (a) the Proposed Local Law Amendments do not seek to introduce a new prescribed activity or impose additional obligations on commercial operators or businesses;
- (b) the Proposed Local Law Amendments would allow people to reside in caravans in limited circumstances only;
- (c) the amendments are being proposed as a response to the housing crisis;
- (d) there is a limited number of business operators in the region and caravans parks within the region are at capacity;
- (e) the amendments are proposed to be in effect for a limited period of time, i.e. until 31 December 2027 only, unless repealed earlier, or extended.

Therefore, it is considered that any impact on the operation of caravan parks will be minimal. No further review of the anti-competitive provisions is required.