



# Determination

Application for authorisation AA1000414

lodged by

Council Solutions & Ors

in respect of

joint procurement, negotiation and contracting for  
kerbside waste collection services

Date: 12 October 2018

Authorisation number: AA1000414

Commissioners:           Sims  
                                      Keogh  
                                      Rickard  
                                      Cifuentes  
                                      Court  
                                      Featherston

## Summary

**The ACCC grants authorisation to Council Solutions, Adelaide City Council and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the Participating Councils) to jointly procure the collection of domestic waste, recyclables and organics through kerbside collection, including the supply and maintenance of mobile garbage bins.**

**The ACCC grants authorisation until 30 June 2031.**

Council Solutions and the Participating Councils (together, the Applicants) are seeking authorisation to conduct a joint procurement process to appoint to the Participating Councils a single supplier of kerbside waste collection within their municipalities, using a 3-Bin System (domestic waste, recyclables and organics).

In the context of procuring these services, the Councils may be considered to be each other's competitors. Therefore, by conducting their procurement jointly rather than individually, they risk breaching competition laws. Accordingly, the Applicants have sought authorisation from the ACCC, which would give them legal protection to conduct joint procurement. Broadly, the ACCC can grant authorisation if it is satisfied that the likely public benefits outweigh the likely public detriments.

The Participating Councils consider that the proposed joint procurement will provide value for money, improve waste management and reduce waste, to achieve environmental and economic benefits for their communities. The ACCC considers that the Participating Councils are well informed and well placed to make the assessment as to whether a joint procurement process is likely to provide this outcome. It is in their interest to ensure that this is the case and they are accountable to their ratepayers for doing so.

Based on the information before it, the ACCC considers that the Participating Councils jointly procuring kerbside collection services will contribute to the achievement of these aims and is likely to result in lower prices and/or improved quality of waste management services for their ratepayers. The ACCC is satisfied that these likely benefits to the public will outweigh the detriments to the public from the joint procurement. Accordingly, the ACCC grants authorisation until 30 June 2031. This allows for the tender process, commissioning of collection trucks and a proposed contract length of up to 10 years (initially seven years with the option of a three year extension).

It is common practice throughout Australia for groups of local councils to collaborate to procure waste services to reduce transaction costs, pool resources and expertise and achieve economies of scale. The ACCC has authorised 30 such arrangements, concluding they were likely to result in a net public benefit through improved service quality at lower cost. The joint procurement process for which the Applicants have sought authorisation is similar to a number that the ACCC has authorised.

In 2016, the ACCC denied authorisation for Council Solutions and five Adelaide Councils (the four Councils participating in the current process plus Tea Tree Gully) to jointly procure kerbside waste collection services, receipt and processing services and waste disposal services via a single Request For Proposal process. Under the Request for Proposal, each council would have individually decided which supplier to appoint for each service stream, meaning there was the potential for a large number of possible service stream and supplier combinations.

The ACCC was concerned that the size and scope of the 2016 proposal, covering multiple waste service streams, and the uncertainty about the possible outcomes arising from the Request for Proposal process, would reduce or eliminate transaction cost savings and may mean that some suppliers were unable to participate in the tender process.

In this 2018 application, Council Solutions has sought to address the issues associated with the 2016 application by proposing to:

- run a separate tender process for three service streams; kerbside waste collection services, processing services and ancillary services
- issue a more tightly prescribed Request for Tender for each service stream, instead of a Request for Proposal, and
- appoint a single kerbside collections supplier for all four Councils.

This application for authorisation relates only to kerbside waste collection services. Council Solutions and the Participating Councils have lodged separate applications for authorisation to jointly procure processing services and ancillary waste services and the ACCC expects to release final determinations about these applications in November 2018.

The ACCC acknowledges the many submissions from industry participants, both concerned about, and supporting, the proposed arrangements. The Applicants and other interested parties have given the ACCC an extensive amount of information on a public and confidential basis.

A number of these submissions expressed strong views about how the Participating Councils should structure their procurement arrangements and, in effect, called on the ACCC to play the role of arbiter of how the waste services industry in South Australia (SA) should be structured. However, the ACCC's role is limited to determining whether to grant authorisation (and on what terms). This involves assessing whether the likely public benefits of the Proposed Conduct for which the Applicants have sought authorisation outweigh the likely public detriments. Beyond that, it is not the ACCC's role to determine how the Participating Councils, or suppliers of waste services, should operate. In this respect, as noted, the Participating Councils are ultimately accountable to their ratepayers and communities.

The ACCC considers that the current application addresses the concerns identified in 2016 as they relate to joint procurement of kerbside waste collection services by simplifying the process and providing greater certainty.

The ACCC considers that the joint procurement process is likely to result in a public benefit by stimulating additional competition to provide kerbside waste collection for the Participating Councils. The ACCC considers that the proposed joint tender is likely to increase the purchasing power of the Participating Councils in contracting for the supply of kerbside collection services. This increased purchasing power is likely to be reflected in the negotiated terms and conditions of agreements, resulting in lower prices and/or better quality of waste management services delivered to the Participating Councils' ratepayers.

In particular, the Proposed Conduct is likely to offer potential suppliers some transaction cost savings and other efficiency gains that could be passed on in lower cost or improved services. Further, a guaranteed contract of around 180,000 rateable

properties for at least seven years is likely to provide greater incentives for suppliers to compete for the tender.

Some interested parties have raised concerns that combining the kerbside collection needs of the Participating Councils into a single contract covering around 180,000 rateable properties will limit competition and exclude some potential suppliers who would be likely to compete to supply these services if each Council tendered separately.

The ACCC's inquiries, including discussions with potential suppliers and other groups which have undertaken similar joint procurement processes, do not support this concern. The bidders for, and winners of, municipal kerbside collection work in Australia, whether supplying individual councils or groups of councils, generally come from a defined pool of national and multinational long-standing suppliers. The ACCC considers that, while the larger size of the tender may attract certain additional bidders and deter some others, overall most potential suppliers who would be likely to compete to supply the Participating Councils if they each ran separate tender processes are also likely to compete for the joint contract.

In this respect, the concerns expressed by interested parties about the proposed joint procurement lessening competition are not that the joint tender will confer market power to the Participating Councils and therefore allow them to depress prices below competitive levels. Rather, some parties are concerned that, despite their good intentions, the Participating Councils are mistaken in their belief that joint procurement will result in better outcomes for their ratepayers and, as a result, the joint procurement process will have the unintended consequence of limiting the field of potential bidders and raising prices.

The Participating Councils have the experience and expertise to assess what type of kerbside waste collection arrangements are likely to deliver them the best outcomes for their communities. Further, authorisation does not require the Participating Councils to enter into a contract: it provides legal protection to undertake joint procurement. The ACCC considers that once the Participating Councils have tested the market through jointly calling for tenders, if they find that the proposed joint procurement process is not going to deliver better outcomes in terms of prices and quality of service for their ratepayers, they would be unlikely to proceed with a joint contract. Accordingly, the ACCC considers that concern that the proposed joint procurement could result in higher prices is unlikely to be realised.

The ACCC also considers that the proposed joint procurement is likely to generate public benefits in the form of transaction cost savings for the Participating Councils compared with each Participating Council conducting its own procurement process.

The ACCC also considers that the proposed joint procurement is likely to generate public benefits through small improvements in:

- efficiency in managing the kerbside waste collection contract
- efficiency in the supply of kerbside waste collection services
- environmental outcomes.

The ACCC considers that the Proposed Conduct is unlikely to result in a public detriment by reducing competition to supply collection services to the Participating

Councils and other councils in Adelaide in the longer term. For example, the ACCC has considered concerns that unsuccessful tenderers would permanently leave the market, leaving a more concentrated and less competitive set of firms to compete for future contracts. However, the ACCC considers this concern is unlikely to be realised.

Neither of the two companies which currently hold contracts to supply kerbside collection services to the Participating Councils were originally based in South Australia, and both have extensive operations around Australia. The ACCC considers that there will be sufficient opportunities for those suppliers who do not win the contract with the Participating Councils to remain active in waste services in SA and elsewhere in Australia. Most suppliers also have municipal collection contracts in SA or elsewhere in Australia and barriers to expanding into new geographic areas for medium to large, established operators do not appear to be high.

The ACCC considers that the public benefits of the proposed joint procurement are likely to outweigh any public detriment.

The ACCC has decided to grant authorisation until 30 June 2031.

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## The application for authorisation

1. On 14 March 2018, Council Solutions Regional Authority (Council Solutions), on behalf of itself, the Corporation of the City of Adelaide and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the **Participating Councils**) (together, the **Applicants**) lodged application for authorisation AA1000414 with the Australian Competition and Consumer Commission (**ACCC**). Council Solutions, on behalf of itself and the Participating Councils, is seeking authorisation to jointly procure the collection of domestic waste, recyclables and organics through kerbside collection, including the supply and maintenance of mobile garbage bins, for 13 years.<sup>1</sup> The application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (the **Act**).
2. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the Act. Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the Act but nonetheless consider it is not harmful to competition and/or there is an offsetting public benefit from the conduct.<sup>2</sup>
3. On 20 July 2018, the ACCC issued a draft determination proposing to grant authorisation until 30 June 2031. At the time of releasing the draft determination, the ACCC also granted interim authorisation for Councils Solutions and the Participating Councils to enable them to commence the tender and contract negotiation process. Interim authorisation does not extend to entering into or giving effect to any waste collection contracts.

## The Proposed Conduct

4. Council Solutions and the Participating Councils seek authorisation for:
  - Council Solutions, on behalf of the Participating Councils, to conduct a collaborative competitive tender process for Waste Collection Services, to evaluate the responses in collaboration with the Participating Councils and to negotiate the contractual framework on behalf of the Participating Councils
  - the Participating Councils to individually enter into a contract on a joint and not several basis with the successful supplier, and
  - ongoing administration and management of the resultant contract to be undertaken jointly by Council Solutions and the Participating Councils<sup>3</sup> (the **Proposed Conduct**).
5. The Applicants describe the Waste Collection Services the subject of the application as follows.

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<sup>1</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 1, available: [ACCC Public Register](#).

<sup>2</sup> Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at [www.accc.gov.au/publications/authorisation-guidelines-2013](http://www.accc.gov.au/publications/authorisation-guidelines-2013).

<sup>3</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 1, available: [ACCC Public Register](#).

6. Waste Collection Services involves the collection of domestic waste, recyclables and organics in each of the respective Participating Councils' areas through utilisation of the 3-Bin System, including the supply and maintenance of the mobile garbage bins.<sup>4</sup>
7. Waste Collection Services utilise custom-designed waste collection vehicles to traverse the area to be serviced and empty mobile garbage bins that residents place at the kerbside with their unwanted recyclables, organic and residual waste. The waste collection vehicles are fitted with data-gathering systems to record the service delivery and inspect waste as it is unloaded from the mobile garbage bins into the vehicle.<sup>5</sup>
8. Once sufficient waste has been collected into the body of the vehicle, the driver transits from the collection area to a designated drop-off point where the waste is unloaded.
9. The waste is subsequently processed or discarded to landfill as appropriate for the type of waste material.<sup>6</sup> Application AA1000414 does not extend to such processing or disposal.
10. The successful supplier will be required to provide weekly and fortnightly services. Waste Collection Services may include the supply and maintenance of mobile garbage bins and/or fitting of radio-frequency identification (RFID) tags with the supply of the mobile garbage bins, or supply and/or retrofitting of RFID tags.<sup>7</sup>
11. Waste Collection Services, for the purpose of the current application, does not include Bulk Bins, Hard Waste and Street Litter Bins.<sup>8</sup>
12. The Applicants seek authorisation until 30 June 2031. This period comprises:
  - publication of the Request For Tender (RFT) for Waste Collection Services in August 2018
  - tender open period of six to eight weeks (the tender is currently open with a closing date of 12 December 2018)
  - tender evaluation period that allows for the contract to be awarded by May 2019
  - nine to twelve months to allow for the purchase and commissioning of new trucks
  - contract commencement from May 2020, with a rolling start across the Participating Councils to allow for current contractual arrangements to conclude, with all Participating Councils operating under the new contract by May 2021, and

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<sup>4</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

<sup>5</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

<sup>6</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

<sup>7</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

<sup>8</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).



- a proposed maximum 10-year contract operating term.<sup>9</sup>

### **Proposed tender structure**

13. The Applicants describe the proposed tender process as follows.
14. Council Solutions will undertake a competitive RFT process for the provision of Waste Collection Services to all four Participating Councils collectively. The RFT process will be open to all suitably qualified suppliers. Council Solutions will make the tender documents available on the SA Tenders & Contracts website, which provides access to all publicly available bidding opportunities. Advertising an RFT on SA Tenders & Contracts is the primary method by which SA councils procure Waste Management Services.<sup>10</sup>
15. Prior to release of the RFT, an evaluation plan was established setting out the evaluation process and criteria against which all tenderers will be assessed. The evaluation criteria was outlined in the RFT documentation. Evaluation of responses will be undertaken by an evaluation team comprising of Council Solutions, a Waste Service Management Project team consisting of a representative from each Participating Council and expert advisors.<sup>11</sup>
16. At the time of releasing the Waste Collection Services RFT to the market, the final locations for delivery of the collected materials will not have been confirmed. Accordingly, to support an effective and equitable tender and evaluation process, prices will be sought from potential suppliers to deliver the materials collected to one of two central locations (referred to as 'centroids') for receipt, transfer (where applicable) and processing by the relevant processor. These centroids have been selected based on the general locations of current receipt, transfer and processing facilities in SA in relation to the Participating Councils.<sup>12</sup>
17. The potential suppliers will be asked to provide a price for each Participating Council for delivery to each of the centroid locations to ensure that topographical and service density differences between each local government area are accounted for in tendered prices. However, the contract will be awarded to one supplier for supply to all Participating Councils. A price for transportation of collected materials beyond the centroids will also be sought in the RFT process to allow for potential suppliers located outside the centroids to compete. Their intention is that at the time of finalising the evaluation process and awarding the contract for Waste Collection Services, the locations for receipt, transfer and processing of collected materials will be known.<sup>13</sup>

### **Ongoing administration of the contract<sup>14</sup>**

18. As part of the ongoing contract management and administration, Council Solutions and representatives from each Participating Council will participate in

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<sup>9</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 12, available: [ACCC Public Register](#).

<sup>10</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 9, available: [ACCC Public Register](#).

<sup>11</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 9, available: [ACCC Public Register](#).

<sup>12</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 9, available: [ACCC Public Register](#).

<sup>13</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, pp. 9-10, available: [ACCC Public Register](#).

<sup>14</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 10, available: [ACCC Public Register](#).

joint decisions, activities (including the sharing of information) and discussions which may include, but are not limited to:

- contamination management
  - community education
  - reporting waste audits, and
  - assessment of supplier performance.
19. Council Solutions will perform a central contract management role, being primarily responsible for and taking the lead on:
- pricing reviews
  - exercising contract options
  - reviewing and verifying data, and
  - measuring and monitoring Key Performance Indicators.
20. Each of the Participating Councils will retain some contract management responsibility, such as:
- maintenance of bin and Service Entitled Premises register
  - internal reporting
  - approval of new services and removal of expired services, and
  - providing the customer interface to their communities.

### **The rationale for the Proposed Conduct**

21. The Applicants submit that the Proposed Conduct, which is termed the Waste Service Management Project, seeks to establish strategic partnerships that provide the best possible benefits and services to the Participating Councils' communities. They submit that these strategic partnerships will provide value for money, improve waste management and deliver waste reduction outcomes and environmental sustainability across multiple municipalities to achieve environmental and economic benefits for their communities.<sup>15</sup>

## **The Applicants**

### **Council Solutions**

22. Council Solutions is a regional subsidiary established in December 2012 in accordance with the *Local Government Act 1999* (SA). Its constituent Councils

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<sup>15</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 12, available: [ACCC Public Register](#).

are Adelaide City Council and the Cities of Charles Sturt, Marion, Onkaparinga, Salisbury and Tea Tree Gully.<sup>16</sup>

23. Council Solutions' primary purpose is to improve the financial sustainability of its constituent Councils through collaborative strategic procurement, contract negotiation and management.<sup>17</sup> During 2016/17, more than \$63.5 million of Council expenditure was undertaken utilising Council Solutions' collaborative contract arrangements.<sup>18</sup>
24. Council Solutions is owned by the constituent Councils and governed by a Board of Management, formed by the Chief Executive Officers of each of the six constituent councils and an Independent Chair.<sup>19</sup>

### **Participating Councils**

25. The Participating Councils and Council Solutions are an unincorporated joint venture with the purpose of undertaking the Proposed Conduct.<sup>20</sup>
26. The Participating Councils are:
  - the Corporation of Adelaide City Council and the Cities of Charles Sturt and Marion (each being constituent members of Council Solutions), and
  - the City of Port Adelaide Enfield (which is not a constituent member of Council Solutions).<sup>21</sup>
27. The Participating Councils are local government authorities and bodies corporate incorporated under the provisions of the *Local Government Act 1999* (SA). The functions of each Participating Council include providing services and facilities that benefit its area, its ratepayers and residents, and visitors to its area, in respect of waste collection and control or disposal services or facilities.<sup>22</sup>
28. The sizes of the Participating Councils are outlined in Table 1.

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<sup>16</sup> The Cities of Onkaparinga, Salisbury and Tea Tree Gully are non-participating councils for the purpose of the proposed joint procurement process for which authorisation is sought.

<sup>17</sup> The governing charter as gazetted 20 December 2012.

<sup>18</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 4, available: [ACCC Public Register](#).

<sup>19</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 4, available: [ACCC Public Register](#).

<sup>20</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 4, available: [ACCC Public Register](#).

<sup>21</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, pp. 4-5, available: [ACCC Public Register](#).

<sup>22</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 7, available: [ACCC Public Register](#).

Table 1: Statistical data for the Participating Councils

Council	Population	Rateable Properties	Land Area
City of Adelaide	23,396	22,435	15.6
City of Charles Sturt	114,688	55,175	54.8
City of Marion	90,602	41,376	55.6
City of Port Adelaide Enfield	123,947	61,026	91.8
<b>TOTAL</b>	<b>352,633</b>	<b>180,012</b>	<b>217.8</b>
All Greater Adelaide Region Councils	1,429,122	686,236	10,882.50

29. The Participating Councils are situated within the Adelaide metropolitan area. A map showing the location of each of the Participating Councils is provided in Map 1 below.

Map 1: Location of the Participating Councils within the Metropolitan Adelaide area<sup>23</sup>



<sup>23</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 6, available: [ACCC Public Register](#).

## Previous application for authorisation

30. In December 2016, the ACCC issued a determination denying authorisation to Council Solutions and a group of five metropolitan councils in SA who had applied to jointly procure waste management services.
31. Council Solutions, on behalf of Adelaide City Council, Charles Sturt, Marion, Tea Tree Gully, and Port Adelaide Enfield, sought authorisation for 17 years (with a proposed maximum contract term of 10 years) to jointly procure the supply of:
  - waste collection services
  - the receiving and processing of recyclables
  - the receiving and processing of organics, and
  - waste disposal services.
32. Council Solutions proposed to run a joint process to procure all these waste management service streams at once, via a single Request for Proposal process.
33. Under the Request for Proposal process, tenderers would not have been required to tender to service all Councils or all these waste management service streams. Each Council would have individually decided which supplier to appoint for each service stream, meaning there was the potential for a large number of possible service streams and supplier combinations. The effect of this arrangement would have been that unless a supplier wanted to limit itself to one option, it would have been required to prepare a proposal that covered multiple permutations and combinations of waste streams, in case only part of the proposal was successful.
34. The ACCC concluded that the 2016 proposal was likely to result in some public benefits in the form of:
  - small improvements in efficiency related to community education
  - small improvements in efficiency in the supply of recyclables and organics processing, and
  - small improvements in environmental outcomes.
35. The ACCC considered that the 2016 proposal was likely to result in some public detriment constituted by a lessening of competition through:
  - deterring or preventing some potential suppliers from tendering or from submitting competitive bids
  - reducing competition for the supply of waste services to Participating Councils in the longer term, and
  - reducing competition for the supply of waste services to non-participating councils.

36. On balance, the ACCC was not satisfied that the net public benefit test for granting authorisation was met.
37. Council Solutions has sought to address the ACCC's concerns with the 2016 application in the following ways:
  - Council Solutions has split the conduct into three separate tenders for different service streams: waste collection services, processing services and ancillary services. The current application relates to collection services only. Separate applications have been lodged covering the processing and ancillary service streams.
  - Council Solutions proposes to issue a more tightly prescribed RFT for each service stream, instead of a broad Request for Proposal.
  - Council Solutions proposes to appoint a single supplier to provide kerbside collection services to all four Participating Councils.
  - Council Solutions seeks authorisation for 13 years, with a proposed maximum contract term of 10 years.
38. The current application also covers four, instead of five, Councils. The City of Tea Tree Gully is no longer participating.

## Related applications

39. On 4 May 2018, Council Solutions lodged two further applications for authorisation for itself and the Participating Councils in respect of the following service streams:
  - **Council Solutions & Ors (processing), AA1000419:** joint procurement of waste processing services, comprising the receiving and processing of recyclables, receiving and processing of organics and receiving and processing or disposal of residual waste.
  - **Council Solutions & Ors (ancillary), AA1000420:** joint procurement for the collection of ancillary waste services, comprising the multi-unit collection of Bulk Bins and processing or disposal of the waste (including the supply and maintenance of the bins), kerbside collection and processing or disposal of Hard Waste and collection of park and footpath litter and/or recycling bins and disposal or processing of the waste.
40. The ACCC released draft determinations proposing to grant authorisation to both applications on 14 September 2018. The ACCC expects to release final determinations for both applications in late November 2018. The applications and public submissions received are available on the ACCC's Public Register: [processing](#) and [ancillary](#).
41. The ACCC notes that some potential suppliers offer services across more than one of the service streams covered by the three applications. As the three applications concern separate service streams, and separate areas of competition, the ACCC has assessed each application separately. However, in undertaking its assessment the ACCC has had regard to the possibility that one supplier may be awarded contracts across multiple service streams.

42. The ACCC's final determination in this matter should not be taken to indicate its likely view of the other two applications for authorisation.

## Other authorisations

43. It is common practice throughout Australia for groups of local councils to collaborate to jointly procure waste services.<sup>24</sup> The objective of such collaboration is to reduce transaction costs, pool resources and expertise and achieve economies of scale.
44. The ACCC has authorised 30 arrangements of this type, concluding that these were likely to result in a net public benefit through improved quality of services at lower cost to the councils participating. Many of these have involved the procurement of kerbside waste collection services.<sup>25</sup>
45. The ACCC has granted authorisations for the joint procurement of kerbside collection services for periods ranging from 10 to 19 years.
46. The joint procurement process that the Applicants have proposed in their current application for authorisation is similar to a number of those which the ACCC has previously authorised.

## Consultation

47. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
48. The ACCC invited submissions from a range of market participants, including waste and recycling service providers, industry agencies, government agencies/bodies, neighbouring councils and parties who provided a submission in response to the 2016 application.<sup>26</sup>
49. The ACCC received submissions from 44 interested parties.<sup>27</sup>
50. The submissions in support of the application argue that the Proposed Conduct will result in cost savings for the Participating Councils through increased service efficiencies and the administration of a single joint tender process; and will promote competition for the supply of waste collection services, providing better value for money for ratepayers.
51. The submissions opposed to the application argue that:
- Transaction cost savings are unlikely to be realised because all four Councils will need to remain heavily involved in the tender process and the ongoing management of collection services in their respective Council areas.

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<sup>24</sup> SA examples include procurements related to Barossa Regional Procurement Group, Adelaide Hills Region Waste Management Authority, Northern Adelaide Waste Management Authority and East Waste.

<sup>25</sup> See at [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister): Bathurst, Blue Mountains and others; Shellharbour and Wollongong; Loddon Mallee; Hunter Resource Recovery and Brisbane Redlands.

<sup>26</sup> A list of the parties consulted and the public submissions received is available from the ACCC public register: [www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register](http://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register)

<sup>27</sup> A number of parties provided more than one submission.

- Efficiencies in the provision of collection services are unlikely to be realised because the successful tenderers will still need to tailor their services to the specific needs of each individual Council; and each Council's individual population is of sufficient size for the service provider to realise economies of scale, so aggregating the Councils' demand is unlikely to generate further efficiencies.
  - A tender process of the proposed size will exclude or deter many suppliers from tendering.
  - Awarding a contract of the proposed size to a single provider could result in fewer waste services providers in Adelaide, which would impact competition in the long term.
52. In particular, two associations that count current collectors for the Participating Councils among their members have expressed concerns to the ACCC. These are:
- The Waste & Recycling Association of SA (WRASA). WRASA's position is supported by member firm Solo Resource Recovery (Solo), the current kerbside collector for the Cities of Adelaide, Charles Sturt and Marion. Solo has also provided a submission opposing the application.
  - The Waste & Recycling Industry Association of SA (WRISA). Port Adelaide Enfield's current kerbside collector, Cleanaway, is a member of WRISA and has written in support of WRISA's submission.
53. The ACCC also received a number of submissions that did not express a view about whether authorisation should be granted.
54. In addition, the ACCC directly contacted and held discussions with a number of parties including other Adelaide councils, groups of councils in other states who jointly procure collection services and potential suppliers of collection services. These discussions were initiated by the ACCC and conducted on a confidential basis.
55. The submissions by Council Solutions, the Participating Councils and interested parties, and information obtained through the ACCC's market inquiries, are considered as part of the ACCC's assessment of the application for authorisation.
56. Public submissions received and other information which relates to the application for authorisation may be obtained from the [ACCC's Public Register](#).



## ACCC assessment

57. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
58. The Applicants have sought authorisation for the Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting authorisation in relation to conduct unless it is satisfied in all the circumstances that the conduct would result or be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the conduct.<sup>28</sup>

## Relevant areas of competition

59. The ACCC does not consider it necessary to precisely define the relevant areas of competition in assessing the Proposed Conduct.
60. The four Participating Councils are all in what is called the Greater Adelaide Region, consisting of 27 councils. About 19 of the councils may be considered to be within metropolitan Adelaide, while the remainder touch the fringes of Adelaide, being in areas such as the Barossa region and Fleurieu Peninsula.
61. For the purposes of best assessing the Proposed Conduct, the ACCC has focused on an area of competition for the acquisition of services for the kerbside collection of municipal/domestic waste, recyclables and organics in metropolitan Adelaide.
62. Currently, of the 19 councils in metropolitan Adelaide:
  - Eight councils each independently procure domestic waste collection from the private sector (seven from Solo and one from Cleanaway), including the four Participating Councils.
  - The City of Onkaparinga 'self-supplies' (i.e. runs bin collection in-house) the collection of domestic waste destined for landfill, while contracting out collection of recyclables and organics to Solo.
  - Seven councils procure their collection services from East Waste. East Waste is a Regional Subsidiary, or statutory body corporate, established and owned by these councils to jointly operate collection services in their areas.
  - Three councils procure waste services from or through another Regional Subsidiary, Northern Adelaide Waste Management Authority (NAWMA), which has arranged for Suez to carry out kerbside collections.
63. Some interested parties have raised concerns that the Proposed Conduct will reduce competition for the supply of mobile garbage bins to the Participating Councils and other councils in Adelaide. The ACCC has also considered the impact of the Proposed Conduct on this area of competition.

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<sup>28</sup> As the Applicants have sought authorisation for conduct which may include cartel conduct, section 90(8) requires the ACCC to be satisfied under the net public benefit test in section 90(7)(b) when making its determination.

## Future with and without

64. To assist in its assessment of the Proposed Conduct against the authorisation test, the ACCC compares the public benefits and public detriments likely to arise in the future with the conduct for which authorisation is sought, against those in the future without the conduct the subject of the authorisation.
65. WRASA submits that perhaps the most likely scenario without the Proposed Conduct is that Port Adelaide Enfield and Charles Sturt tender together without outsourcing the procurement and contract management functions. WRASA submits that the most likely scenario with regards to the City of Marion is that it tenders with its neighbouring councils that it currently procures waste services with, West Torrens and Holdfast Bay.<sup>29</sup>
66. WRASA also submits that if the proposed joint tender goes ahead, Tea Tree Gully and Onkaparinga councils will also likely join the Council Solutions Group.<sup>30</sup>
67. In response, Council Solutions submits that WRASA's characterisation of the likely future without the Proposed Conduct is merely speculative.<sup>31</sup> With respect to Tea Tree Gully and Onkaparinga, Council Solutions submits that these councils would not be able to join the Participating Councils in jointly tendering for waste management services unless authorised by the ACCC.<sup>32</sup>
68. The ACCC notes that there are a range of possible options the Participating Councils could explore if they did not jointly tender as proposed. These options include each Council procuring kerbside collection services individually or seeking to partner with other councils as the City of Marion has done in the past.
69. The ACCC notes WRASA's submission that without the Proposed Conduct, Port Adelaide Enfield and Charles Sturt would tender together and the City of Marion would tender with its neighbouring councils. While these are possibilities, the ACCC considers that no evidence has been presented to support an argument that these are likely outcomes if the Proposed Conduct does not proceed.
70. Accordingly, the ACCC considers that the most appropriate comparison to the Proposed Conduct is each Council individually procuring kerbside collection services.
71. Where the Participating Councils individually procure kerbside waste collection services, the timing of each tender process is likely to vary because existing contracts are due to expire at different times. Participating Councils would be free to offer and award contracts of a length of their choice.
72. With respect to Tea Tree Gully and Onkaparinga councils joining the Council Solutions Group, the ACCC notes that authorisation has not been sought, and any authorisation granted would not extend to these councils jointly procuring kerbside collection services with the Participating Councils. Accordingly, the ACCC considers that the future with the conduct for which authorisation is sought does not include these councils joining the group.

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<sup>29</sup> Waste & Recycling Association of SA Inc submission, dated 24 August 2018 (received 11 September 2018), p.3, available: [ACCC Public Register](#).

<sup>30</sup> AA1000414, pre decision conference record, 27 August 2018, p. 5: available: [ACCC Public Register](#).

<sup>31</sup> Council Solutions further submission, dated 20 September 2018, p. 1, available: [ACCC Public Register](#).

<sup>32</sup> Council Solutions further submission, dated 12 September 2018, p. 8, available: [ACCC Public Register](#).

## Public benefit

73. The Act does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (Tribunal) which has stated that the term should be given its widest possible meaning, and includes:
- ...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.<sup>33</sup>
74. The ACCC notes the aims of the Participating Councils to provide value for money, improve waste management and reduce waste, and to achieve environmental and economic benefits for their communities. The Participating Councils consider that the proposed joint procurement is their best means of achieving these aims. The ACCC considers that the Participating Councils are well informed and well placed to make this assessment. It is in the interest of the Participating Councils to ensure that this is the case and they are accountable to their ratepayers for doing so.
75. Council Solutions estimates that the range of possible savings from joint procurement of kerbside collection services, with a notional contract value of \$12 million per annum, would be in the range of \$160,000 to \$800,000 per annum or \$1.6 million to \$8.0 million over the proposed 10 year term of the contract. This is equivalent to a gross average saving in the range of 1.4% to 6.8%.<sup>34</sup>
76. The Participating Councils cite the savings they consider have been realised by them in previous joint procurement exercises, including joint procurement of waste management services, in support of the claimed public benefits of the Proposed Conduct.<sup>35</sup>
77. A number of submissions have raised concerns about the Proposed Conduct and questioned whether these benefits will be realised.
78. Having regard to the submissions of the Applicants and interested parties and information available to the ACCC, the ACCC has considered five claimed public benefits of the Proposed Conduct:
- stimulation of competition
  - transaction cost savings
  - improved efficiencies through combined contract management
  - improved efficiencies in the supply of kerbside waste collection services, and
  - improved environmental outcomes.

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<sup>33</sup> *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

<sup>34</sup> Council Solutions further submission, dated 12 September 2018, p. 12, available: [ACCC Public Register](#).

<sup>35</sup> See, for example, City of Charles Sturt submission, dated 27 August 2018, p. 1 and City of Marion submission dated 10 September 2018, p 2, available: [ACCC Public Register](#).

79. More generally, the ACCC notes that a number of submissions have expressed strong views about how the Participating Councils should structure their procurement arrangements and, in effect, called on the ACCC to play the role of arbiter of how the waste services industry in South Australia should be structured. However, the ACCC's role is limited to determining whether to grant authorisation (and on what terms). This involves assessing whether the likely public benefits of the Proposed Conduct for which Council Solutions has sought authorisation outweigh the likely public detriments. Beyond that, it is not the ACCC's role to determine how the Participating Councils, or suppliers of waste services, should operate. In this respect, as noted, the Participating Councils are ultimately accountable to their ratepayers and communities.
80. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

## **Stimulation of competition**

### ***Applicants' and interested parties' submissions***

81. Council Solutions submits that the opportunity presented by the Participating Councils under the Proposed Conduct will encourage all potential suppliers capable of providing Waste Collection Services to compete and submit tenders when the RFT is called. Council Solutions submits that there are currently at least six potential suppliers in the market who have the capacity to provide Waste Collection Services to the Participating Councils. However, not all of these suppliers regularly tender for waste collection opportunities presented by SA Councils.<sup>36</sup>
82. Council Solutions states that notwithstanding the diversity of potential suppliers in the market, as a result of procurement processes undertaken by Regional Subsidiaries and individual Councils, only three suppliers are currently contracted to provide services to the Greater Adelaide Region Councils which procure Waste Collection Services via tender.<sup>37</sup>
83. Council Solutions states that feedback provided by potential suppliers during its consultation with the market indicated that the contract opportunity presented via the Proposed Conduct is attractive. The collaborative approach of four Councils utilising a single RFT with standardised specifications further encourages competition by reducing the tendering workload for the potential suppliers. Council Solutions submits that receiving the maximum number of tenders will allow the Participating Councils to compare all the service options available and unlock the best possible value for money for ratepayers.<sup>38</sup>
84. Council Solutions also submits that by jointly procuring Waste Collection Services, the Participating Councils may also benefit from a preparedness on the part of some tenderers to reduce the margin they apply to their tendered prices. This is

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<sup>36</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.26, available: [ACCC Public Register](#).

<sup>37</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.26, available: [ACCC Public Register](#).

<sup>38</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.26, available: [ACCC Public Register](#).

because large waste collection contracts are seen as representing a solid base load of work with significant and reliable cash flow and reduced commercial risk.<sup>39</sup>

85. WRISA submits that the greatest stimulation of a market occurs when there is a dynamic market with a consistent pipeline of opportunities available to all or most contractors. WRISA submits that the Proposed Conduct contradicts this and is likely to result in fewer suppliers responding to the RFT.<sup>40</sup> This view was supported by a number of other interested parties, including some suppliers of waste management services, who argue that the size of the proposed contract would make it difficult for smaller potential suppliers to compete.<sup>41</sup>
86. The MRA Group, which has been engaged by Solo but states it has provided a submission in its own right, submits that it undertook a review of publicly available Council reports across Australia to test the relationship between contract size and the number of tenderers. The MRA Group states that it took all available published reports and reviewed the number of complying tenderers for the collection service. The MRA Group states that in total 38 Council reports were available in the last five years. The MRA Group submits that the results show that when tenders get above about 110,000 tenements, the number of tenderers falls away. The MRA Group submits that while there is a degree of noise in the data (a function of the inclusion of regional and metropolitan areas and the tender specification content), the trend is clear. The largest number of tenderers consistently correlates with the smaller contract offerings. The findings of the MRA Group review are available on the ACCC's public register.<sup>42</sup>
87. WRISA also notes MRA Group's findings and submits that this supports the argument that, due to their size and geographic spread, the four participating councils jointly tendering might receive two to three tenders while the four councils tendering separately might attract at least five to six tenders each.<sup>43</sup>
88. A number of interested parties submit that a tender process of the size Council Solutions is proposing will significantly limit competition and exclude a number of market participants who would likely bid for waste from the Participating Councils if offered through individual tender processes. These parties argue that the proposed contracts are highly capital intensive, require significant upfront investment and carry a risk of pricing the contract incorrectly.<sup>44</sup>
89. For example, the MRA Group estimates that the capital cost of servicing the joint contract could be up to \$58 million consisting of:

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<sup>39</sup> Council Solutions submission in support of application for authorisation, dated 18 May 2018, p.24, available: [ACCC Public Register](#).

<sup>40</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 8, available: [ACCC Public Register](#).

<sup>41</sup> Four Seasons Waste submission, dated 22 August 2018, p. 1, Small Business Commissioner of South Australia submission, dated 12 September 2018, p. 2, Australian Small Business and Family Enterprise Ombudsman submission, dated 20 August 2018, p. 1, Solo Resource Recovery submission dated 12 September 2018, p. 2: [ACCC Public Register](#).

<sup>42</sup> MRA Group submission, dated 24 August 2018, p. 2, available [ACCC Public Register](#).

<sup>43</sup> Waste & Recycling Association of SA Inc submission, dated 24 August 2018 (received 11 September 2018), p.16, available: [ACCC Public Register](#).

<sup>44</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 2, Cleanaway Waste Management Ltd, submission of 25 April 2018, Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.10, 25, 31, Business SA submission dated April 2018, p2, Wilson Waste submission, dated 10 August 2018, p. 1, Scout Recycling Centres South Australia submission, dated 31 July 2018, p. 1, Trevor Hatch Waste & Recycling submission dated 16 August 2018, p. 1, Four Seasons Waste submission, dated 22 August 2018, p. 1, Signal Waste & Recycling submission dated 22 August 2018, p. 1, JR Richards & Sons submission, dated 12 September 2018, p. 2, Greenaway submission, dated 20 August 2018, p. 1, MRA Group submission, dated 24 August 2018, p. 2, Adelaide Eco Bins submission, dated 22 August 2018, p. 1, Australian Small Business and Family Enterprise Ombudsman submission, dated 20 August 2018, p. 1, available: [ACCC Public Register](#).

- \$24.3 million for mobile garbage bins at \$45 per bin for three colour bins per household for 180,000 households
- as much as \$23.7 million for collection vehicles (72 trucks at \$330,000 per truck), and
- \$10 million for a depot of sufficient scale to house 72 vehicles.

The MRA Group states that this analysis does not include the bank guarantees required by Council Solutions and individual Councils.<sup>45</sup>

90. The MRA Group and WRASA submit that it is extremely difficult for any small to medium sized service provider to raise the combined \$58 million in capital in the Australian financial market at this time, even with a guaranteed service payment contract. This will limit small and medium sized suppliers from tendering and, if they did tender, they would need to include the significant risk premium that would be demanded by the lending agencies. The MRA Group and WRASA submit that, in contrast, larger companies have the capability to self-finance and will not need to bear a financial risk premium, giving them a competitive advantage.<sup>46</sup>
91. Solo, the current supplier of kerbside collection services to three of the four Participating Councils, submits that it would not have the financial capacity to tender for the proposed contract. In this respect, Solo submits that its current contracts with the Participating Councils were won at different times, and at the time of tendering for each contract Solo had confidence in its financial position before tendering for the next respective contract. Solo submits that tendering for all four Councils at the same time is an entirely different proposition and raises the risk profile and capital investment required beyond the reach of a company like Solo as well as some of the larger companies.<sup>47</sup>
92. Council Solutions submits that the guarantee of supply of waste, and therefore payments from the Participating Councils to the contractor, provides a guarantee of cash flow with which a successful contractor can underwrite capital repayments. Given this guarantee of supply, collection contractors with a demonstrable record of successfully undertaking collection contracts rarely have difficulty arranging debt finance for the advance purchase of collection vehicles from traditional debt financing sources.<sup>48</sup>
93. In addition, Council Solutions submits that the quantum of capital required is nowhere near the amount suggested by the MRA Group and WRASA. In particular:
  - A full roll-out of new mobile garbage bins will not be required. The proposed contract will include the replacement and/or maintenance of existing bins and supply of bins to new premises. This will amount to some thousands of bins, not hundreds of thousands or tens of thousands. Further, any bulk roll-out of new bins will be negotiated with the contractor, where the bins will be paid for by the Council on delivery and ownership will transfer to the Council.

<sup>45</sup> MRA Group submission, dated 24 August 2018, p. 1, available [ACCC Public Register](#).

<sup>46</sup> MRA Group submission, dated 24 August 2018, p. 1, Waste & Recycling Association of SA Inc submission, received 11 September 2018, p.16, available: [ACCC Public Register](#).

<sup>47</sup> Solo Resource Recovery submission dated 24 August 2018, p. 3: [ACCC Public Register](#).

<sup>48</sup> Council Solutions further submission, dated 12 September 2018, p.13, available: [ACCC Public Register](#).

- Council Solutions estimates the number of trucks required to service the contract is between 30 and 50 (not 72). Council Solutions states that this would be known to Solo (who has engaged the MRA Group as a consultant), being the current provider of services to three of the four Participating Councils.
  - Because of the number of trucks required, the required depot will also be significantly smaller than the MRA Group estimate. Further, the likely tenderers either already have a presence in Adelaide and are capable of accommodating the required fleet, or can rent suitable accommodation.<sup>49</sup>
94. More generally, Council Solutions submits that there are no small businesses which provide 3-Bin System Waste Collection Services to the Participating Councils or any of the Greater Adelaide Region councils. Additionally, any of the potential suppliers which could demonstrate the experience and financial capacity that would convince any council in the Greater Adelaide Region, regardless of size, to confidently enter into a contract for Waste Collection Services are not small businesses.
95. Council Solutions submits that there is no doubt that large contracts of the size proposed by Council Solutions will limit the number of tenderers with the experience, capacity, balance sheet and risk appetite to tender for the works. Council Solutions submits that notwithstanding that, there is a reasonable expectation that a minimum of 3 and a maximum of 6 tenderers will be attracted to the joint tender process.<sup>50</sup>

### **ACCC view**

96. The ACCC notes the Participating Councils' aim in establishing the proposed joint procurement process. That is, to provide value for money, improve waste management and deliver waste-reduction outcomes and environmental sustainability across their municipalities, and to achieve environmental and economic benefits for their communities. The Participating Councils consider that aggregating their service volumes is likely to be desirable to potential suppliers and attract significant competition.
97. However, in the context of procuring kerbside collection services, the Participating Councils may be considered to be each other's competitors. Therefore, absent authorisation, by conducting their procurement jointly rather than individually, they risk breaching competition laws. Broadly, the competition laws the Participating Councils would be at risk of breaching, as they relate to the Proposed Conduct, are designed to prevent consumer harm arising from buyers gaining market power to depress prices below efficient levels, which could lead to inefficiently low levels of supply, firms exiting the market and ultimately a more concentrated market, leading to higher prices in the long run.
98. However, the concerns expressed by interested parties about the Proposed Conduct lessening competition in this case are not that the joint tender will confer market power on the Participating Councils and therefore allow them to depress prices below competitive levels. Rather, some parties are concerned that, despite their good intentions, the Participating Councils are mistaken in their belief that joint procurement will result in better outcomes for their ratepayers and, as a

<sup>49</sup> Council Solutions further submission, dated 12 September 2018, p.13 & 14, available: [ACCC Public Register](#).

<sup>50</sup> Council Solutions further submission, dated 12 September 2018, p.15, available: [ACCC Public Register](#).

result of this mistake, the joint procurement process will have the unintended consequence of limiting the field of potential bidders and raising prices. That is, the Participating Councils are inadvertently conferring market power to a small group of larger suppliers who will exploit that market power to the disadvantage of the Participating Councils and their ratepayers.

99. The ACCC considers that this is unlikely to be the case. The ACCC considers that the proposed joint tender is likely to increase the purchasing power of the Participating Councils in contracting for the supply of kerbside collection services. All else being equal, this increased purchasing power is likely to be reflected in the negotiated terms and conditions of service agreements, resulting in lower prices and/or better quality of waste management services delivered to the Participating Councils' ratepayers.
100. As discussed below, the ACCC also considers that the Proposed Conduct is likely to offer suppliers the opportunity to make transaction cost savings and other efficiencies compared with tendering for and supplying these services to the Participating Councils individually. Further, the ACCC considers that the Proposed Conduct, by offering a guaranteed contract for a larger volume of waste than any of the Participating Councils could offer individually (around 180,000 rateable properties, for at least seven years), is likely to provide a greater incentive for the suppliers who typically win these contracts to compete for it, while recognising that the tender opportunities may not be commercially attractive to every current or potential service provider.
101. Accordingly, the ACCC considers that the Proposed Conduct is likely to result in a public benefit by stimulating competition to provide kerbside collection services to the Participating Council, resulting in lower prices and/or better quality of waste management services delivered to the Participating Councils' ratepayers.
102. The ACCC notes the concerns raised by some interested parties that the size of the proposed contract may preclude some potential suppliers from bidding and thereby lessen competition for the supply of kerbside collection services to the Participating Councils.
103. The MRA Group and WRASA submitted information and data in support of their submission that individual council tender processes / smaller tender processes attract more tenderers than joint / larger tender processes.
104. The ACCC also reviewed a number of joint procurement processes involving collection services in recent years in and outside SA and spoke to a number of council groups whose joint procurement arrangements have been authorised by the ACCC.
105. The ACCC also requested and received confidential information from the four Participating Councils about their most recent waste services procurement processes involving collections.
106. While strong inferences cannot necessarily be drawn from this sample size, the ACCC considers that the information available to it, including that provided by the MRA Group and WRASA, does not support the argument that, all else being equal, councils of the size of the four Participating Councils would attract more tenders if they each ran individual tender processes than they would through the proposed joint tender process.



107. With respect to the MRA Group's review of tender processes, the ACCC notes that for the 17 identified tender processes to service between 40,000 and 70,000 properties (roughly the number of properties three of the four Participating Councils each have individually), the average number of tenders submitted was 3.47. For the 11 identified tender processes covering more than 70,000 properties, the average number of tenders submitted was 3.56.
108. With respect to tenders for more than 110,000 properties, the sample size was small (6 tenders). The average number of tender responses for these tender processes was 3.17. However, for tenders greater than 130,000 properties the average was 3.4 and for the four largest tender processes (between 240,000 and 500,000 properties) the average was 3.5.
109. More generally, the ACCC notes that the number of tenders is only one of the ways in which competitive tension between potential suppliers manifests itself. In this respect, the ACCC's review of the Participating Councils' procurements for collection services and the other procurement exercises noted above, including the information provided by the MRA Group and WRASA, indicates that, regardless of whether the contract size is large or small or the procurement is for a single council or more than one council, the bidders for and winners of such kerbside collections work largely come from the defined pool of national and multinational, long-standing collections-services providers. These are Cleanaway, Veolia, Suez, JJ Richards, Remondis and Solo (Solo being particularly prominent in Adelaide as a proportion of its national municipal kerbside collections business). Smaller firms rarely feature in these procurement exercises.
110. As noted, Council Solutions has submitted that, rather than being a deterrent, collaborative procurement opportunities that aggregate service volumes are highly desirable to suppliers and attract significant competition. It is unlikely that the Participating Councils would have established the proposed joint procurement arrangement unless they consider this to be the case because it would undermine their overall objective.
111. The ACCC also notes that if the proposed joint tender does have the intended outcome of resulting in a better deal for ratepayers, as the ACCC considers is likely, this will mean a lower price for the successful tenderer. The opposition of some potential suppliers may reflect this.
112. More generally, if the Participating Councils' belief that joint procurement will result in better outcomes for their ratepayers and the ACCC's conclusion that this is likely to be the case proves to be incorrect, this will be reflected in the terms of tender bids. If, at that point, it was apparent that jointly tendering had had the unintended consequence of limiting the field of potential bidders and raising prices, it would be expected that the Participating Councils would reconsider whether to proceed with the joint procurement rather than enter into a contract on unsuitable terms. Authorisation does not require the Participating Councils to enter into a contract: it provides legal protection to undertake the joint procurement.
113. The ACCC considers that the size of the proposed joint tender will mean that some suppliers are not in a position to effectively compete for the contract, for example, because of the upfront capital cost required to service the Councils. However, the ACCC views this as an outcome of a competitive process rather than a public detriment resulting from the Proposed Conduct.

114. Accordingly, the ACCC considers that the Proposed Conduct is likely to result in a public benefit by stimulating additional competition to provide kerbside collection services to the Participating Councils.

## Transaction cost savings

### *Applicants' and interested parties' submissions*

115. Council Solutions submits that tender processes to procure waste management services involve considerable time and resources replicated across each Council. For potential suppliers, there is also significant time and resources involved in responding to multiple tender processes conducted by individual councils, as each council would ordinarily have its own service specifications, contract conditions and evaluation criteria.<sup>51</sup> Council Solutions submits the Proposed Conduct will result in transaction cost savings for both the Participating Councils and potential suppliers by reducing the complexity of the process compared with each Council tendering individually.<sup>52</sup>
116. Under the Proposed Conduct, Council Solutions intends to centrally undertake a number of tasks relating to the administration and documentation of the RFT. Whilst the Participating Councils will still have a role in reviewing and endorsing the documentation, Council Solutions submits that their individual contribution to the administration of the process will be substantially reduced.<sup>53</sup>
117. Council Solutions submits that a single joint tender process will remove the duplication of work required to prepare, present, respond, negotiate, evaluate and award suppliers for four councils individually.<sup>54</sup> The Participating Councils would issue a single tender document to the market for the provision of waste collection services with, to the greatest extent possible, aligned specifications, service standards, data capture and reporting and bin types.<sup>55</sup>
118. Council Solutions further submits that the Proposed Conduct will result in transaction cost savings through shared technical, legal and probity advice and streamlining contract management, as activities such as price reviews, extension negotiations and monitoring of KPIs can be undertaken jointly.<sup>56</sup>
119. WRISA and WRASA submit that the Proposed Conduct will not result in tender process cost savings because the involvement of Council Solutions adds an extra layer of bureaucracy.<sup>57</sup>
120. WRISA submits that while resources for each of the Participating Councils are being reduced, the work required is merely being transferred to Council

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<sup>51</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 17, available: [ACCC Public Register](#).

<sup>52</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 9, available: [ACCC Public Register](#).

<sup>53</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 18, available: [ACCC Public Register](#).

<sup>54</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 10, available: [ACCC Public Register](#).

<sup>55</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 18, available: [ACCC Public Register](#).

<sup>56</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 22, available: [ACCC Public Register](#).

<sup>57</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 7, available: [ACCC Public Register](#), Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 3 available: [ACCC Public Register](#).

Solutions.<sup>58</sup> WRISA also submits that it is unlikely the Participating Councils will benefit from any cost savings in relation to ongoing administration because such advice will still be required in relation to the specific service requirements for each of the Participating Councils.<sup>59</sup>

121. WRASA submits that each step of the tender process, from tender specification to contract award, will still need to be reviewed and agreed by each Council through their independent internal review processes. WRASA therefore considers that, because individual councils are required to negotiate and agree with other councils and Council Solutions, the work involved is greater and more complex than current practice, thereby increasing coordination costs.<sup>60</sup>
122. In response, Council Solutions submits that it will perform numerous tasks that each Council would need to undertake individually if conducting its own tender process.<sup>61</sup> Council Solutions also refutes WRASA's claim that Council Solutions adds a layer of bureaucracy, stating that the Participating Councils are in the best position to identify the costs and benefits attributable to using Council Solutions.<sup>62</sup> All four Participating Councils provided submissions stating that they consider that the proposed joint tender is likely to realise transaction cost savings for them.<sup>63</sup>
123. The City of Marion and the City of Charles Sturt both individually submit that they have already achieved significant cost savings through collaborative procurements provided by Council Solutions on behalf of constituent councils, including arrangements for bituminous road works, legal services and temporary labour hire.<sup>64</sup>
124. As evidence of cost savings achieved as a result of collaborative procurements, the City of Marion also submits that \$1 million per annum was saved from its previous collaborative market approach with West Torrens for waste services.<sup>65</sup>
125. The City of Charles Sturt submits that joint procurement means that work is being done once rather than four times. The City of Charles Sturt submits that money has already been saved in the current process through using joint expert technical and commercial expertise and joint legal support which has enabled the Participating Councils to prepare their tender documentation ahead of the anticipated market release more cost effectively. The City of Charles Sturt also submits that from the bidders' perspective, they are dealing with a consistent specification and can respond as a single offer and that tender negotiations are done once rather than four times.<sup>66</sup>
126. The City of Adelaide submits that the resourcing it is using on this project, including administration, technical, legal and probity costs, standardising

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<sup>58</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 5, available: [ACCC Public Register](#).

<sup>59</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 5, available: [ACCC Public Register](#).

<sup>60</sup> Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 39 available: [ACCC Public Register](#).

<sup>61</sup> Council Solutions further submission, dated 18 May 2018, p.16, available: [ACCC Public Register](#).

<sup>62</sup> Council Solutions response to written submissions from interested parties (2), dated 12 September 2018, p.4, available: [ACCC Public Register](#).

<sup>63</sup> Adelaide City Council submission, dated 27 August 2018, p. 2, City of Charles Sturt submission, dated 27 August 2018, p. 2, City of Port Adelaide Enfield submission, dated 10 September 2018, p. 1, City of Marion submission dated 10 September 2018, p. 1, available: [ACCC Public Register](#).

<sup>64</sup> City of Marion submission, dated 10 September 2018, p.1, available: [ACCC Public Register](#), The City of Charles Sturt submission, dated 10 September 2018, p.2-3, available: [ACCC Public Register](#).

<sup>65</sup> The City of Marion submission, dated 10 September 2018, p.1, available: [ACCC Public Register](#).

<sup>66</sup> City of Charles Sturt submission, dated 27 August 2018, p. 2, available: [ACCC Public Register](#).

specifications, KPI setting and monitoring and contract management, is significantly lower than if they needed to undertake the procurement themselves.<sup>67</sup>

127. WRASA submits that the final price schedule for the collection tender will have potentially thousands of combination options for bidders to complete to accommodate the geographical spread of the Councils, use of centroids, council/tonnage bracket combination, long lead times and other uncertainties and multiple waste streams. WRASA submits that the pricing combinations will generate incomparable submissions and tenders that Council Solutions will not be able to assess.<sup>68</sup> In support of this argument, WRASA submitted a report prepared for WRASA by Quantitative Strategies which estimates that the number of tender prices bidders will have to provide could be up to 1,188. Jeffries Groups similarly submits that the number of combinations and permutations will increase the complexity, and consequently the cost, of the joint tender process.<sup>69</sup>
128. In response, Council Solutions submits that Quantitative Strategies' report attempts to imply that tenderers will be required to undertake an inordinate amount of work in completing pricing schedules, on the simplistic proposition that each price submitted is a completely independent estimate of price based on separate modelling and estimation of resourcing needs which is not correct.<sup>70</sup>
129. Council Solutions submits that for each of the three kerbside waste streams (residual waste, recyclables and organics), tenderers will be invited to provide a collection price for each Participating Council:
- to deliver to a facility within a 5km radius of a northern centroid, and
  - to deliver to a facility within a 5km radius of a southern centroid.<sup>71</sup>
130. These collection services will be the basis for tender modelling of fleet configurations, collection routes, financing and resourcing needs, from which estimates of tendered prices will be developed for these core services. Council Solutions estimates that upwards of 85% to 90% of all modelling and estimating for the collection services involved will be dedicated to these core services.<sup>72</sup>
131. Council Solutions submits that on this basis, tenderers are invited to submit six core/base prices for collection and delivery for each Participating Council, and then provide prices for variants, based on the core prices. Council Solutions argues that the prices sought are the same as those commonly requested in similar tenders around the country and that most, if not all, tenderers will be familiar with these requirements.<sup>73</sup>

### **ACCC view**

132. In the course of this review and in previous reviews about similar joint procurement proposals, the ACCC has received information from collections

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<sup>67</sup> Adelaide City Council submission, dated 27 August 2018, p. 2, available: [ACCC Public Register](#).

<sup>68</sup> Waste and Recycling Association of South Australia, dated 24 August 2018 (received 11 September 2018), p.4, available: [ACCC Public Register](#).

<sup>69</sup> Jeffries Group submission, dated 16 August 2018, p.1, available: [ACCC Public Register](#),

<sup>70</sup> Council Solutions further submission, dated 20 September 2018, p.1, available: [ACCC Public Register](#).

<sup>71</sup> Council Solutions further submission, dated 20 September 2018, p.1, available: [ACCC Public Register](#).

<sup>72</sup> Council Solutions further submission, dated 20 September 2018, p.1, available: [ACCC Public Register](#).

<sup>73</sup> Council Solutions further submission, dated 20 September 2018, p.2, available: [ACCC Public Register](#).

procurers and providers in and outside SA supporting the view that transaction cost savings can result from collaborative procurement by councils by facilitating the reduction of unnecessary duplication of costs incurred by councils and/or suppliers to conduct or participate in individual tender processes.

133. In this case, the ACCC considers that the Proposed Conduct is likely to reduce or remove some duplication by Participating Councils of tender-related tasks such as preparation of tender documents, briefing sessions for prospective tenderers and contract preparation. The greater involvement of Council Solutions in the coordination and management of the tender process increases the potential for these cost savings to be realised.
134. Similarly, responding to a single tender process is likely to reduce the duplication of work required by tenderers.
135. The ACCC considers that transaction cost savings from reducing duplication are likely to be partially offset by the cost required to coordinate internally within the group of Councils. The Participating Councils will be responsible for endorsing the procurement process and will have representatives on the evaluation panel responsible for evaluating tenders received. This will involve coordination to determine the characteristics, objectives and preferences of each Council.
136. However, overall, the ACCC considers that, relative to each Participating Council separately conducting its own procurement process, the Proposed Conduct is likely to result in a public benefit in the form of transaction cost savings, principally for councils but also for suppliers. In this respect, the ACCC notes the views of the Participating Councils that this has been their experience in the past and that transaction cost savings are already being realised in relation to the current joint procurement process commenced under interim authorisation.
137. With respect to the number of pricing combinations tenderers will be required to submit, there is the potential for additional complexity resulting from tenderers having to tender based on delivering materials to nominated centroids rather than the actual, to be confirmed, receipt and processing location(s). However, other than this potential additional complexity, the proposed joint tender is similar to many of the 30 such matters the ACCC has previously considered. That is, it involves tendering to provide collection services covering a number of waste streams (organics, recyclables and residual) to a number of Councils through a single process.
138. Even with respect to the use of centroids, uncertainty about precise delivery points in collections contracts is not uncommon as often collections contracts are longer than receipt and processing contracts and accordingly, receipt and processing points do change during the life of collections contracts.

## **Improved efficiencies through combined contract management**

### ***Applicants' and interested parties' submissions***

139. Council Solutions submits that contract management tasks include:
  - benefits realisation reporting, data analysis and feedback and identification of changes that can improve efficiencies – to be undertaken by Council Solutions

- compliance with contractual requirements such as safety inductions, licence and accreditation updates, insurance certificates and any other objective compliance measure – to be undertaken by Council Solutions with Participating Councils contributing as required
  - conformance, ensuring that all parties adhere to their requirements under the contract including monitoring KPIs, data review and certification, pricing reviews and document management – to be undertaken by Council Solutions, and
  - ensuring that services are delivered (that is, bins emptied and waste deposited at the agreed facility as per agreed timings) – to be undertaken by the Participating Councils with support from Council Solutions.<sup>74</sup>
140. Council Solutions submits that providing designated contract management across the four Councils will remove duplicated effort associated with these tasks and a dedicated focus will be applied in extracting maximum value and performance from the contract.<sup>75</sup>
141. In particular, Council Solutions submits that the collection of good quality and consistent data across the four Councils will assist in policy and strategy development, monitoring and evaluation of service delivery and investment decisions.<sup>76</sup>
142. The City of Adelaide submits that in past collaborative procurements, the support it received from Council Solutions has driven efficiencies and allowed it to focus on operational issues, rather than administrative and performance management issues.<sup>77</sup> The City of Charles Sturt and the City of Port Adelaide also submit the Proposed Conduct will achieve efficiencies through shared contract and performance management.<sup>78</sup>
143. WRISA submits that after awarding the contract, administration will fall back to the individual Councils and, as such, cost savings will not be realised.<sup>79</sup>
144. The MRA Group submits that in a governance arrangement review it conducted for councils in Tasmania, the centralised processes of a collaborative procurement group consisting of seven councils and a coordinating regional body slowed down decision making processes and caused delays to decisions. The MRA Group argues that Council Solutions has not demonstrated how its decision making process will either speed up decisions or reduce Council labour costs.<sup>80</sup>
145. In response, Council Solutions provided a breakdown of estimates which, it submits, shows that by removing the duplication of some tasks ordinarily performed by all four Councils, the collaborative procurement (including the joint

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<sup>74</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.21, available: [ACCC Public Register](#).

<sup>75</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 21, available: [ACCC Public Register](#).

<sup>76</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.21, available: [ACCC Public Register](#).

<sup>77</sup> Adelaide City Council submission, dated 27 August 2018, p. 2, available: [ACCC Public Register](#).

<sup>78</sup> City of Port Adelaide submission, dated 11 September 2018, p.1, City of Charles Sturt submission, dated 10 September 2018, p.2-3, available: [ACCC Public Register](#).

<sup>79</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 6, available: [ACCC Public Register](#).

<sup>80</sup> MRA Group submission, dated 24 August 2018, p.5, available: [ACCC Public Register](#).

engagement of external consultants) will result in total savings of 5.68 full time equivalent staff (i.e. not a reduction of employees but a reduction in equivalent labour hours). Council Solutions' breakdown of these estimates is available on the ACCC's public register.<sup>81</sup>

146. More generally, Council Solutions submits that the Participating Councils are in the best position to identify costs and benefits attributed to using Council Solutions and have unanimously rejected the assertion that Council Solutions adds a layer of bureaucracy, and have separately acknowledged the savings derived from various Council Solution collaborative procurements.<sup>82</sup>

### **ACCC view**

147. The ACCC notes that most of the day-to-day operational contract management would be undertaken by each Participating Council. Nonetheless, the ACCC considers that there is some potential for cost savings to be realised through Council Solutions undertaking some contract management tasks in relation to issues common to the four Councils. However, the potential savings are likely to be somewhat offset by the cost required to coordinate internally within the group of Councils in relation to these issues.
148. The ACCC considers that if, as estimated by Council Solutions, savings of 5.68 full time equivalent staff were realised, this would represent a significant saving in resources for the Participating Councils. However, the ACCC notes that this is an estimate and based on the information before it the ACCC is not in a position to conclude whether savings of this magnitude are likely to be realised.
149. Accordingly, overall, the ACCC considers that there is likely to be some small public benefit resulting from likely efficiencies from combined contract management.
150. The ACCC considers that centrally coordinated data analysis and review also has the potential to assist in policy and strategy development and monitoring and evaluation of service delivery to the extent that the issues around operational delivery being analysed are common across the four Councils. However, based on the information provided, the extent of the commonality across the four Councils, and accordingly the utility of aggregated data, is unclear. Therefore, based on the information currently before it, the ACCC is not in a position to conclude that it is likely that this data sharing will result in a material public benefit.

## **Improved efficiencies in the supply of kerbside waste collection services**

### ***Applicants' and interested parties' submissions***

151. Council Solutions and the Participating Councils submit that the Proposed Conduct is likely to result in increased service efficiencies, particularly in allowing collection vehicles to service more than one Participating Council in any run. In particular:

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<sup>81</sup> Council Solutions submission, dated 20 August 2018, p.9, available: [ACCC Public Register](#).

<sup>82</sup> Council Solutions submission, dated 12 September 2018, p.4, available: [ACCC Public Register](#).

- The successful tenderer will be able to optimise collection routes without regard to Council borders.
  - In response to a missed service, a vehicle currently serving another Council will be able to be re-directed rather than sending out a new vehicle.
  - All spare vehicles will similarly have freedom of movement, reducing the overall number of trucks required.
  - The successful tenderer will be able to maximise utilisation of vehicles through optimisation of collection routes.<sup>83</sup>
152. WRISA submits that cross border efficiencies are unlikely to be realised because the Participating Councils do not share enough common borders.<sup>84</sup> WRISA also submits that no fewer trucks will be required because there is a direct proportionate relationship between the number of tenements serviced and the number of trucks required and this does not change with the size of the contract.<sup>85</sup> Other interested parties similarly submit that the geographic spread of the Councils undermines their ability to realise cost savings.<sup>86</sup>
153. The MRA Group and WRASA submit that if trucks did operate across council borders, there would be no plausible method to account for what proportion of the waste collected on a run was attributable to households in each council area for the purpose of billing and invoicing.<sup>87</sup>
154. In response, Council Solutions submits that bin collections are all charged by the collections contractor on a per lift rate, that is, the number of bins collected times a rate for each bin lift. Therefore, it is a simple calculation to determine the exact collection charge applicable to each Council.<sup>88</sup>
155. Some interested parties raised concerns that tendering for collection services at the same time that the processing services tender is run will create uncertainty and inefficiency, and lead to higher prices, because tenderers will not know the drop-off location for the waste at the time of tendering and will accordingly need to account for uncertainty about drop-off locations in their pricing.<sup>89</sup>
156. WRASA and JR Richards submit that it is critical for reliable collection tender pricing that the collection contract tenderer is aware of the location and requirements of the disposal and processing facilities. Aspects such as the precise location within the centroid radius, compaction ratio, wait times and

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<sup>83</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.27, Adelaide City Council submission, dated 27 August 2018, p. 2, City of Charles Sturt submission, dated 27 August 2018, p. 2, City of Port Adelaide Enfield submission, dated 10 September 2018, p. 1, available: [ACCC Public Register](#).

<sup>84</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 3, available: [ACCC Public Register](#).

<sup>85</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 10, available: [ACCC Public Register](#).

<sup>86</sup> Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 17, JR Richards & Sons submission, dated 12 September 2018, p. 1, PAR Recycling Services submission, dated 22 August 2018, p. 2, available: [ACCC Public Register](#).

<sup>87</sup> MRA Group submission, dated 24 August 2018, p. 5, Waste and Recycling Association of South Australia submission, dated 24 August 2018 (received 11 September 2018), p.5, available: [ACCC Public Register](#).

<sup>88</sup> Council Solutions submission, dated 12 September 2018, p. 14, available: [ACCC Public Register](#).

<sup>89</sup> JR Richards & Sons submission, dated 12 September 2018, p. 3, MRA Group submission, dated 24 August 2018, p. 5, PAR Recycling Services submission, dated 22 August 2018, p. 2, available: [ACCC Public Register](#).



access times can add unnecessary and significant risk and therefore truck hours.<sup>90</sup>

157. Councils Solutions submits that there are a number of reasons behind the release of the three tenders (collection, processing and ancillary services) to the market at the same time. These include practical necessity (the lead times necessary to commission new collection vehicles before the contract commences in May 2020), economic efficiency (the collections tender will represent around 60 per cent of the total value and as the main driver of cost should be considered first), and equity (flexibility about drop-off locations will provide a level playing field for collections operators with existing garaging and servicing depots). Council Solutions further submits that while each tender will have a different service scope, its own evaluation criteria and will be assessed separately, running them concurrently allows tenderers to assess the whole opportunity.<sup>91</sup>
158. The City of Charles Sturt submits that it is not uncommon for collection locations to change mid-contract (usually as a result of different contract timings). It is for this reason that it is standard practice to include a clause to calculate additional payments to a contractor for the delivery of material to an alternative facility. These clauses provide protection to potential contractors and remove the risks associated with pricing where delivery points are uncertain or may change during the term of the contract.<sup>92</sup>
159. WRISA also submits that the size of the contracts let by the Councils individually are already large enough to realise economies of scale and that beyond a certain point, the aggregation of waste volumes does not have a substantial impact on price and the approach of contractors submitting tenders.<sup>93</sup>
160. WRASA submits that contracts larger than the size of each individual participating Council exhibit diseconomies of scale and that it is easier and more cost effective to run a kerbside collection contract servicing a 'sweet-spot' size of 20,000 to 50,000 households.<sup>94</sup> The four Participating Councils together have about 180,000 rateable properties.
161. WRASA also provided a report prepared by Brian Dollery on behalf of New England Education and Research Pty Ltd. Professor Dollery's examination of Queensland councils reportedly found that no scale economies were observed for domestic waste collection and removal expenditure. Similarly, on broad expenditures by local governments, he reportedly found that there is a great deal of uncertainty about whether economies of scale exist in local government service provision and, if they do exist, at what scale they commence and cease.<sup>95</sup>
162. The MRA Group submits that the simpler the tender, the fewer options and complexities and therefore the cheaper the price. In other words, certainty is more likely to be a key driver of waste collection costs than scale economies.<sup>96</sup>

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<sup>90</sup> JR Richards & Sons submission, dated 12 September 2018, p. 2, Waste and Recycling Association of South Australia submission, dated 24 August 2018 (received 11 September 2018), p.2, available: [ACCC Public Register](#).

<sup>91</sup> Council Solutions submission, dated 12 September 2018, p. 7, available: [ACCC Public Register](#).

<sup>92</sup> City of Charles Sturt submission, dated 10 September 2018, p. 3, available: [ACCC Public Register](#).

<sup>93</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 7, available: [ACCC Public Register](#).

<sup>94</sup> Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 30 available: [ACCC Public Register](#).

<sup>95</sup> Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.39, available: [ACCC Public Register](#).

<sup>96</sup> MRA Group submission, dated 24 August 2018, p. 2, available: [ACCC Public Register](#).

163. In support of this proposition, the MRA Group provides data which, it submits, shows that households in areas of Adelaide where councils procure their services through a regional subsidiary, namely NAWMA (three councils) and East Waste (seven councils), pay more than 30% more for residential waste services than those where councils procured the service independently. This data shows that the annual cost per tenement is \$291.77 in the NAWMA area, \$282.96 in the East Waste Area and \$215.21 for councils tendering individually.<sup>97</sup>
164. The MRA Group submits that while the cost per tenement may reflect other charges as well as collection costs, the figures nonetheless indicate that the proposition that collective procurement saves money is not necessarily supported by facts.<sup>98</sup>
165. NAWMA strongly disputes the figures provided by the MRA Group. NAWMA submits that its published and publicly available 2016/2017 budget, being the reference year referred to by the MRA Group, provides an average of \$181 per tenement for collection, disposal and processing of waste, recycling, organics and hard waste for NAWMA's three constituent councils.<sup>99</sup>
166. East Waste submits that, while it accepts the MRA Group's source data and explanations, the data may reflect other charges and the simplistic nature of the assessment does not reflect fact or reality and unfairly portrays East Waste as inefficient. East Waste submits that the MRA source data contains a number of inconsistencies in the way in which councils report. In particular, the majority of East Waste member councils have included additional items separate to their waste collection and disposal charges, such as illegal dumping. Furthermore, the East Waste data includes figures for Adelaide Hills Council, where waste collection costs are significantly higher due to the longer distances travelled, which further distorts the figures.<sup>100</sup>
167. East Waste also provided a benchmarking study that it commissioned in 2015 which, it submits, demonstrates that for the four metropolitan councils to which East Waste was then providing waste collection services, East Waste was below the metropolitan benchmark. East Waste further notes its successful tender in 2017 to supply the City of Prospect which, it submits, would not have been possible if its costs were truly 32% higher. East Waste also submits that other member councils have regularly tested the market but have chosen to remain with East Waste.<sup>101</sup>
168. A report prepared for WRASA by Economic Research Consultants also questions the significance of service efficiencies under Council Solutions' proposed arrangements. This includes noting that participating council City of Marion, which does not share a border with the three northern Participating Councils, is a 'considerable distance apart' from the other three councils.<sup>102</sup>

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<sup>97</sup> MRA Group submission, dated 24 August 2018, p. 2, available: [ACCC Public Register](#).

<sup>98</sup> MRA Group submission, dated 24 August 2018, p. 2, available: [ACCC Public Register](#).

<sup>99</sup> NAWMA Northern Adelaide Waste Management Authority submission, 25 September 2018, p. 1, available: [ACCC Public Register](#).

<sup>100</sup> East Waste submission, dated 25 September 2018, p. 1, available: [ACCC Public Register](#).

<sup>101</sup> East Waste submission, dated 25 September 2018, p. 2, available: [ACCC Public Register](#).

<sup>102</sup> Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.55, available: [ACCC Public Register](#).

169. Business SA also questions whether the inclusion of the City of Marion would realise efficiencies, given its geographic isolation from the other Participating Councils.<sup>103</sup>
170. The City of Marion submits that the Proposed Conduct will deliver residents value through increased service efficiencies. Council Solutions submits that the City of Marion, and the other Councils, will achieve a range of benefits via the Proposed Conduct that have nothing to do with whether Marion shares direct boundaries with other councils – for example, truck, fuel and maintenance purchasing in bulk and running one customer-service interface (such as a call centre).<sup>104</sup>

### **ACCC view**

171. In response to a request from the ACCC, WRASA provided information and data in support of its submission that there is a sweet-spot for kerbside collection of between 20,000 and 50,000 households and that beyond that kerbside collection exhibits diseconomies of scale.
172. The ACCC considers that the further information and data provided does not support this claim. Rather, it suggests that there is great variation in spending on collection services between councils, but with costs reducing slightly as the number of households being serviced increases. Regardless, the data suggests no significant correlation between the size of councils and the cost of waste services in those councils and does not suggest diseconomies of scale for larger contracts.
173. The ACCC also tested the 'sweet spot' contention with a range of market participants including suppliers of collection services and councils during its consultation. Most did not consider that it applied to their operations.
174. More generally, during the ACCC's market inquiries, service providers and councils expressed a range of views about whether joint procurement has realised efficiencies in the supply of kerbside waste collection services in other instances where it has been used. Some service providers identified greater efficiencies with respect to fleet optimisation and other costs in supplying services. Others indicated that aggregating the requirements of a number of councils had either not resulted in greater efficiencies or whether it had done so was unclear.
175. Some councils also identified greater efficiencies, resulting in lower prices, whereas others considered either that cost savings had not resulted or that the extent to which they had was unclear. The ACCC did not speak to any councils which considered that joint tendering for collections had resulted in higher prices.
176. The ACCC notes the range of views put forward by parties with first-hand experience in joint supply of council waste services about the extent of any efficiency gains in the delivery of these services. The views received likely reflect that the realisation of greater efficiencies is, to a large extent, dependent on factors specific to each arrangement, noting that such efficiencies are only one of the benefits that may be achieved through joint procurement.

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<sup>103</sup> Business SA submission, dated April 2018, p. 8, available: [ACCC Public Register](#).

<sup>104</sup> Council Solutions response to submissions from interested parties 18 May 2018, p23, available: [ACCC Public Register](#).

177. With respect to the Proposed Conduct, the ACCC considers that it is likely to offer suppliers some efficiencies by enabling waste collectors servicing the Participating Councils to reduce costs by:
- Providing opportunities for the design of more efficient collection routes across Participating Councils. This would be facilitated, in part, by the service provider being allowed to mix waste from the four Councils in their trucks and thereby optimise their routes.
  - Reducing the number of spare trucks needed to cover repairs and breakdowns across Participating Councils.
178. However, the ACCC considers that the magnitude of any likely efficiency gains is unclear.
179. With respect to the participation of the City of Marion in the Proposed Conduct, the ACCC notes that any efficiencies generated from the design of more efficient collection routes across Participating Councils is likely to be confined to councils close to each other. Therefore, these benefits would be unlikely to extend to the City of Marion since it is located about 12 to 15 kilometres to the south of the closest other Participating Councils, Adelaide and Charles Sturt.
180. The ACCC notes that Council Solutions does not propose to require uniform pricing across the Participating Councils. The Proposed Conduct involves tendered prices accounting for topographical and service-density differences.<sup>105</sup>
181. As noted, the ACCC has also received submissions that the City of Marion (and the other Councils) will achieve a range of benefits via the Proposed Conduct that have nothing to do with whether it shares direct boundaries with other Councils. The ACCC has not received information or submissions indicating that the City of Marion's participation in the Proposed Conduct would be likely to negate benefits likely to accrue to the three northern Participating Councils.
182. Overall, the ACCC considers that the Proposed Conduct is likely to result in a small public benefit in the form of facilitating improved efficiencies in the supply of kerbside waste collection services. The ACCC acknowledges that there is potential for more significant efficiencies to be achieved, but it does not have sufficient evidence before it to conclude that this is likely to be the case.
183. With respect to the order in which the three tender processes are offered, the ACCC considers that this is a matter for the Participating Councils. In this respect, it is not the ACCC's role through the authorisation process to determine how the Participating Councils, or suppliers of waste services, should operate.

## **Improved environmental outcomes**

### ***Applicants' and interested parties' submissions***

184. Council Solutions submits that the Proposed Conduct would allow for a unified public education program, which can help reduce contamination and increase diversion of waste from landfill.<sup>106</sup> Council Solutions notes that each Participating

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<sup>105</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, pp. 9-10, available: [ACCC Public Register](#).

<sup>106</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.24, available: [ACCC Public Register](#).

Council currently has its own independently generated educational material available for their respective communities but considers that while there is some consistency in materials across the Participating Councils, there are also differences in presentation, content and detail. Council Solutions submits that confusion among residents about accurate waste separation practices can result in inadvertent contamination of the recyclable waste and organic streams which can result in loads of potentially recoverable waste being sent to landfill.<sup>107</sup>

185. Council Solutions submits that a consistent educative approach across all Participating Councils would create more certainty for residents and visitors about correct waste separation practices, improving the likelihood that waste would be diverted from landfill. Council Solutions further submits that the Proposed Conduct will enable the Participating Councils to work together to develop targeted educational material relevant to key issues, for example combined messaging across the Participating Councils where diversion is lowest or consistent translated messaging for those from non-English speaking backgrounds.<sup>108</sup> It considers the proposed education program's increased focus on data capture and reporting, together with the commitment to feed the results to Green Industries SA, will allow the state wide education programs facilitated by Green Industries SA to become more effective.<sup>109</sup> Council Solutions submits that this will contribute to the achievement of State government waste diversion strategies and targets.<sup>110</sup>
186. The SA Environmental Protection Agency submits that the Proposed Conduct offers significant environmental benefits while Green Industries SA submits that the environmental aims of the Proposed Conduct align with priorities for action for landfill diversion targets as outlined in SA's waste strategy.<sup>111</sup>
187. WRASA submits that authorisation is not necessary to implement joint community education initiatives, as councils nationwide can and do already share educational resources without the need for a joint collection tender process.<sup>112</sup> WRASA submits that, for consistent educational messaging to result in cost savings, it is necessary for all Participating Councils to have the same bin system with the same colour lids and, at present, the colour of bin lids is not uniform across the Participating Councils. WRASA submits that the cost to align bin systems would be significant.<sup>113</sup>
188. The Australian Organics Recycling Association (AORA) submits that contamination management will need to be administered through a combination of council officers across the four Participating Councils and Council Solutions. AORA raises concerns that the involvement of more people makes responding to issues less immediate, more complex and ultimately less effective in reducing contamination.<sup>114</sup> Jeffries Group similarly submits that the involvement of Council Solutions as contract manager will frustrate the process of dealing with contamination issues, which are currently effectively managed directly with

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<sup>107</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.22, available: [ACCC Public Register](#).

<sup>108</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.23, available: [ACCC Public Register](#).

<sup>109</sup> Council Solutions further submission, dated 12 June 2018, p.2, available: [ACCC Public Register](#).

<sup>110</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.22, available: [ACCC Public Register](#).

<sup>111</sup> Environment Protection authority SA submission, dated 20 April 2018, p 1, available: [ACCC Public Register](#). Green Industries SA submission, dated 12 April 2018, p 1, available: [ACCC Public Register](#).

<sup>112</sup> Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 9, available: [ACCC Public Register](#).

<sup>113</sup> Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.19, available: [ACCC Public Register](#).

<sup>114</sup> The Australian Organics Recycling Association, dated 16 August 2018, p.2, available: [ACCC Public Register](#).

collection contractors and council staff.<sup>115</sup> Peats submits that a third party engaged for contract management is unlikely to be motivated or exhibit due care for the cost implications that will ultimately be borne by the customer, the council and its ratepayers.<sup>116</sup>

189. In response, Council Solutions submits that contamination management on a day-to-day operational basis will continue to be managed by each Participating Council. Where consistent issues occur in one or more Councils, actions will be escalated through contract performance management undertaken jointly by Council Solutions and the Participating Councils.<sup>117</sup>
190. WRASA further submits that the Proposed Conduct will not be effective at diverting waste from landfill because evidence suggests that contracts which cover a large number of rateable properties have lower landfill waste diversion rates. WRASA considers this is due to the inflexibility of larger contracts over a longer contract term and because contracts above the 'sweet-spot' size increase collection driver anonymity, which makes kerbside bin tagging more difficult to effect.<sup>118</sup> In support, WRASA provided information which it submits shows that smaller councils have greater landfill waste diversion rates.<sup>119</sup>
191. In response, Council Solutions provided data which it claims shows that diversion rates are more consistent and on average higher as the number of rateable properties under a contract increases.<sup>120</sup> Council Solutions also submits resource recovery is related to behaviour, opportunity, motivation and a number of other human and demographic factors, of which the size of a council may possibly be a minor contributor. Council Solutions submits that diversion is achieved through effective education, community awareness and the behaviour of the ratepayer and the Proposed Conduct will assist in these education programs being more effective.<sup>121</sup> The City of Charles Sturt also submits that diversion rates are more strongly influenced by socio-economic factors.<sup>122</sup> Council Solutions argues that, generally, smaller councils are comprised of relatively wealthy and more tightly grouped socio-economic populations than is the case for larger councils. On this basis, Council Solutions submits that in the smaller councils there is:
- greater potential for behaviours that are conducive to good resource recovery, and
  - less diversity across the population thus yielding a more uniform behaviour trend in respect of resource recovery.<sup>123</sup>

### **ACCC view**

192. The ACCC recognises that, to the extent that the Proposed Conduct facilitates diversion of residual waste from landfill, it has the potential to result in improved environmental outcomes by reducing the harmful effects associated with landfill.

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<sup>115</sup> Jeffries Group submission, dated 16 August 2018, p.1, available: [ACCC Public Register](#).

<sup>116</sup> Peats Group submission, dated 21 August 2018, p. 1, available: [ACCC Public Register](#).

<sup>117</sup> Council Solutions response to written submissions from interested parties (2), dated 12 September 2018, p.2, available: [ACCC Public Register](#).

<sup>118</sup> Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 30, available: [ACCC Public Register](#).

<sup>119</sup> Waste & Recycling Association of SA Inc submission, dated 24 August 2018 (received 11 September 2018), p.8-12, available: [ACCC Public Register](#).

<sup>120</sup> Council Solutions further submission, dated 29 June 2018, available: [ACCC Public Register](#).

<sup>121</sup> Council Solutions submission, dated 12 September 2018, p. 16, available: [ACCC Public Register](#).

<sup>122</sup> The City of Charles Sturt, dated 10 September 2018, p.4, available: [ACCC Public Register](#).

<sup>123</sup> Council Solutions further submission, dated 24 August 2018, p.3, available: [ACCC Public Register](#).

193. The ACCC considers that by enabling a larger scale education program which facilitates collaboration to improve its effectiveness, the Proposed Conduct is likely to improve household waste separation practices and therefore increase the recovery of recyclable and organic material. This would result from the aggregation of education program requirements and resources, together with the coordinating role to be played by Council Solutions, which is likely to facilitate improvements in both design and delivery of community education programs across Participating Councils. This is likely to result in an environmental benefit in the form of landfill diversion.
194. In this respect, responsibility for education programs and the management of contamination issues more broadly ultimately rests with the Participating Councils. The Participating Councils believe that the proposed joint procurement process is the best and most cost effective way for them to deliver education programs to, and manage contamination issues for, their communities.
195. However, the ACCC notes that the Participating Councils can, and currently do, undertake their own community education programs. Their incentives to do so will not change under the Proposed Conduct, such that any increase in environmental benefit from improved education is likely to be small. Therefore, the ACCC considers that the Proposed Conduct is likely to result in a small public benefit in the form of improved environmental outcomes relative to individual procurement.
196. With respect to the concerns raised by WRASA that large contracts are less effective at diverting waste from landfill, the ACCC has not been provided with evidence to conclude whether or not this is the case. WRASA provided diversion rates for series of councils in metropolitan Victoria, Adelaide and NSW. However, WRASA has not publically disclosed the underlying data or publicly identified which councils make up its data sets. Accordingly, the ACCC has not had the opportunity to publicly test the data WRASA has provided.
197. However, as a general observation, the ACCC notes that there is a great deal of variance in the diversion rates of councils included in WRASA's data sets, irrespective of the size of the councils. Some of the highest and lowest diversion rates as reported by WRASA were achieved by the largest councils and, similarly, some of the highest and lowest diversion rates were achieved by smaller councils.
198. The largest data set provided by WRASA was for NSW councils. In this data set, the diversion rates for the ten smallest councils was 3.8 percent higher than for the 10 largest councils. However, the diversion rates for the five largest councils was 2.4 percent higher than for the five smallest councils.
199. While WRASA did not provide a breakdown of actual diversion rates by council for metropolitan Victoria or Adelaide (only indicative graphs were provided), in metropolitan Victoria the difference between the largest and smallest councils was small, with smaller councils averaging around a two percent higher diversion rate. In Adelaide, the difference was around five percent.
200. The ACCC considers that this reflects that there are a range of factors that can influence landfill waste diversion rates, such as government policy and regulation, local government initiatives (such as those currently run by the Participating Councils and those proposed under the Proposed Conduct), as well as demographic and behavioural factors.

## ACCC conclusion on public benefits

201. The ACCC considers that the joint procurement process is likely to result in public benefits by stimulating additional competition to provide kerbside collection services to the Participating Councils. The ACCC also considers that the Proposed Conduct is likely to generate public benefits in the form of transaction cost savings compared with each Participating Council conducting its own procurement process.
202. The ACCC also considers that the Proposed Conduct is likely to generate public benefits through small improvements in:
- efficiency in managing the kerbside waste collection contract
  - efficiency in the supply of kerbside waste collection services, and
  - environmental outcomes.

## Public detriment

203. The Act does not define what constitutes a public detriment and the ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as :

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>124</sup>

204. Some interested parties have raised concerns that the Proposed Conduct will lessen competition by deterring or preventing some suppliers from tendering or bidding competitively.
205. However, the ACCC considers that this is unlikely in practice. As discussed at paragraphs 96 to 114, rather than lessening competition, the ACCC considers that the net effect of the Proposed Conduct is likely to be to stimulate greater competition by leading to more tender participants than would otherwise be the case and/or tender participants bidding more keenly.
206. Generally, competition authorities may be concerned about joint purchasing if the buying group's size in the market would give it market power and an ability to depress prices below the competitive or efficient level. However, in this case this concern does not appear likely to arise; the four Councils account for a minority of waste collection contracts in Adelaide, and many of the relevant suppliers have contracts with dozens of councils Australia-wide. Those who oppose authorisation have put forward different concerns about possible public detriment. In particular, some interested parties have also submitted that:
- The Proposed Conduct may reduce competition to supply collection services to the Participating Councils and non-participating councils in Adelaide in the longer term.
  - The Proposed Conduct may reduce competition to supply mobile garbage bins to the Participating Councils and non-participating councils in Adelaide.

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<sup>124</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.



207. The ACCC's assessment of these potential public detriments from the Proposed Conduct follows.

## **Longer-term reduction in competition for the supply of waste services to the Participating Councils and non-participating councils**

### ***Applicants' and interested parties' submissions***

208. WRISA submits that the Adelaide market is smaller than Melbourne and Sydney and the tendering of such a large percentage of the available waste would significantly limit the competitiveness of other parties (i.e. service providers who do not win the contract). WRISA submits that essentially, the winning provider would have an almost unassailable lead in capturing market share as their competitors would not have sufficient volume of work to sustain competitive operations. WRISA states that its members have made it clear that the lessening of competition to this degree would lead to other providers divesting their interests and searching for new opportunities and new investments in other states or territories, thus further reducing competition into the future.<sup>125</sup>
209. Solo and WRASA submit that a significant proportion of collection services in Adelaide are already uncontested due to in-house arrangements adopted by some councils (see paragraph 62) and in this context the Proposed Conduct will further reduce the number of available suppliers due to the small number of individual councils that will remain available for competitive tender.<sup>126</sup>
210. A number of other interested parties also raise concerns that a contract of the size proposed will lock up a significant proportion of the market, limiting opportunities for other suppliers, including small businesses, to expand thereby distorting the collection services market.<sup>127</sup>
211. Council Solutions submits that, to the extent that the Participating Councils are competitors in the acquisition of waste collection services, their existing competitors are the other metropolitan Greater Adelaide Region Councils which provide the market with opportunities to tender for their waste collection services.
212. Council Solutions notes that one supplier, Solo, currently provides kerbside collection services to three of the four Participating Councils. Council Solutions submits that this concentration in the market has been occurring without the Proposed Conduct and that the only outcome where one provider would have a greater market share than is currently the case would be if Solo won the contract, in which case its market share would grow by one council. Council Solutions also submits that this outcome is possible both with and without the Proposed Conduct. That is, Port Adelaide is the only Council contract not already held by Solo, and Cleanaway could be displaced if Port Adelaide procured collection services individually and Solo was the successful tenderer.

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<sup>125</sup> Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 9, available: [ACCC Public Register](#).

<sup>126</sup> Solo 12/9 (3), WRASA 11/9 (1)

<sup>127</sup> Business SA submission dated April 2018, p10, Wilson Waste submission, dated 10 August 2018, p .1, Scout Recycling Centres South Australia submission, dated 31 July 2018, p. 1, Trevor Hatch Waste & Recycling submission dated 16 August 2018, p. 1, Waste and Recycling Association of South Australia submission, dated 24 August 2018 (received 11 September 2018), p.17, Four Seasons Waste submission, dated 22 August 2018, p. 1, JR Richards & Sons submission, dated 12 September 2018, p. 2, PAR Recycling Services submission, dated 22 August 2018, p. 2, Greenaway submission, dated 20 August 2018, p. 1, Adelaide Eco Bins submission, dated 22 August 2018, p. 1, available: [ACCC Public Register](#).

### **ACCC view**

213. The ACCC has considered whether the Proposed Conduct may reduce the number of suppliers of collection services in Adelaide in the longer term.

214. This may be because, for example:

- new suppliers are more likely to enter the market if there are more frequent, incremental (essentially smaller-scale) opportunities to do so than afforded by the Proposed Conduct, and
- potential suppliers that do not win the joint work of the four Participating Councils refrain from participating in the market

leaving a more concentrated and less competitive set of firms to compete for future contracts.

215. However, the ACCC considers these outcomes are unlikely to be realised.

216. Currently, of the 19 potential individual customers for municipal waste collection services in the metropolitan Greater Adelaide Region:

- Eight councils each independently procure domestic waste collection from the private sector (seven from Solo and one from Cleanaway), including the four Participating Councils.
- The City of Onkaparinga 'self-supplies' (i.e. runs bin collection in-house) the collection of domestic waste destined for landfill, while contracting out collection of recyclables and organics to Solo.
- Seven councils procure their collection services from one Regional Subsidiary, East Waste.
- Three councils procure waste services from or through another Regional Subsidiary, NAWMA, which has arranged for Suez to carry out kerbside collections.

217. Although WRASA and Solo submit that only a proportion of Adelaide councils are currently 'contestable', the ACCC considers that all the councils are likely to be contestable over the longer term. For example, City of Onkaparinga is currently running an in-house operation to collect 'red-bin' waste but could, in the future, choose to outsource. East Waste advised that the councils that procure services from it have tested the market at various stages.<sup>128</sup> Some councils are more imminently and/or readily contestable than others.

218. As noted, East Waste serves seven councils and the other councils are served by just three firms: Cleanaway (servicing one council, applicant Port Adelaide Enfield), Solo (eight councils, including three of the four Participating Councils) and Suez (three councils, through NAWMA).

219. As noted by Council Solutions, the result of the proposed joint procurement process is that one provider will service all four Councils, which is not substantially different to the current situation where Solo services three of the four Councils.

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<sup>128</sup> East Waste submission, dated 25 September 2018, p. 2, available: [ACCC Public Register](#).

220. However, the relevant question for the ACCC to consider is what impact the four Councils' waste collection services contracts being jointly awarded to a single tenderer would have on the ability of other suppliers to compete to supply these services to the Participating Councils and other councils in the future.
221. In this respect, as discussed at paragraph 109, municipal waste collection contracts of the size that each of the Participating Councils would individually tender for already tend to be awarded to national and multinational, long-standing collections services providers: Cleanaway, Veolia, Suez, JJ Richards, Remondis and Solo. This is likely to remain the case with or without the Proposed Conduct. Therefore the ACCC does not consider that the Proposed Conduct significantly impacts the ability of other smaller suppliers to compete to supply these services to municipal councils. However, the Proposed Conduct may have some impact at the margin by removing four opportunities for a supplier seeking to expand to do so incrementally, one council at a time.
222. The ACCC also considers that the duration of the contract Council Solutions proposes to offer, being seven years with options to extend for three, appears to be standard for, and accepted in, the industry. For example, it is calibrated to the likely reasonable economic life of the principal capital assets needed to perform the service, the collection trucks.
223. Accordingly, the ACCC has focused on the likely impact of the Proposed Conduct on the ability of the other providers who generally compete for these contracts who are unsuccessful, and potential new entrants, to compete to supply services to the Participating Councils and other councils in the future.
224. As noted, the ACCC considers that all the Adelaide councils are likely to be contestable over the longer term (some are more imminently and/or readily contestable than others). The four Councils represent a significant part of, but ultimately only a subset of, opportunities in the wider area of competition. In this context, the ACCC has considered the likelihood of firms generally entering, expanding in and exiting the area of competition over the longer term.
225. Firms have proven they can enter and expand in waste services markets in Australia, including in kerbside collections in Adelaide. Challenges to such establishment and growth appear surmountable. Examples include:
- Solo moving beyond its base in the Tweed region of NSW to win work elsewhere in NSW and in Victoria, SA and, most recently, Western Australia (WA).
  - Within Adelaide, Solo has expanded from its first contract, won in the mid-1990s with the City of Marion, to take on contracts including the collection of organics and recycling for the largest council in Adelaide, City of Onkaparinga (about 75,000 to 80,000 rateable properties or households) and emptying all three kerbside bins for three of the four Participating Councils.
  - Suez winning the NAWMA collections work, covering about 107,000 rateable properties.
226. The ACCC notes the challenges firms face in lining up finance to win a collections contract and that these challenges may be greater the larger the contract and the smaller the bidder. However, the principal new investment needed, buying the

collection trucks, only occurs if and after the bidder wins the work and related income stream.

227. For established waste service providers, the amount of resources and investment needed to service a new collections contract appear relatively 'scalable' to the work won, as opposed to having to make large, upfront and perhaps largely fixed-cost investments to operate in the market even on a small scale. For example, the provider buys the number of trucks needed to match the volume of work won.
228. Examples of South Australian councils switching providers include:
- Solo displacing Suez as the supplier to Barossa Council (under a joint procurement run by BRPG) and to Mt Barker and Murray Bridge Councils (under a joint procurement run by Adelaide Hills Region Waste Management Authority)
  - in Adelaide in 2017, East Waste winning the work of small council Prospect, from Solo, and
  - City of Marion proposing to participate in the Proposed Conduct and so leave its partnership relationship with the cities of Holdfast Bay and West Torrens.
229. Cleanaway, Veolia, Suez, JJ Richards, Remondis and Solo all retain municipal collections contracts either elsewhere in SA or in Australia. For example, Solo and Veolia have waste services contracts in regional and rural SA and elsewhere in Australia, while Remondis has municipal contracts outside SA. Further, they all have alternative opportunities in other waste services streams, supplying both municipal councils and the private sector.
230. In this respect, barriers to expanding into new geographic areas for medium to large, established operators do not appear to be high. As noted, Solo has moved beyond its base in the Tweed region of NSW to win work elsewhere in NSW and in Victoria, SA and, most recently, WA.
231. In short, the ACCC considers that if these suppliers did not win the work of the Participating Councils, they would have other work to 'fall back on' and can remain active in waste services in SA or elsewhere in Australia. In this respect, the scope of the operations of Veolia, Suez, JJ Richards, Remondis, and their capacity to compete for further work, would be the same as it is currently. They will exercise their commercial judgment on the attractiveness of any subsequent work offered by the Participating Councils or any work offered by non-participating councils in Adelaide. There is no credible evidence suggesting that if the Proposed Conduct goes ahead, any of the operations of the existing major suppliers would become unsustainable.
232. The ACCC notes that the Participating Councils intend to evaluate tender responses for the provision of waste processing services and ancillary services at the same time as they evaluate responses to the kerbside collections RFT. Council Solutions submits that while each tender will have a different service scope, its own evaluation criteria and will be assessed separately, running them concurrently allows tenderers to assess the whole opportunity.<sup>129</sup>

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<sup>129</sup> Council Solutions submission, dated 12 September 2018, p. 7, available: [ACCC Public Register](#).

233. Accordingly, the ACCC has considered the possibility that the Participating Councils may appoint a single supplier to provide services across multiple service streams. In this respect, the ACCC notes that it is not uncommon for councils to tender for the provision of services across multiple services streams at the same time, either through a single tender process covering multiple service streams, or separate tender processes run concurrently. Further, running the three RFT processes at different times would not preclude a supplier ultimately being awarded contracts for more than one service stream.
234. As noted above, the ACCC does not consider that the Participating Councils awarding a single contract for the supply of kerbside collections services will materially affect the ability of other suppliers to compete for other contracts. Whether or not the appointed kerbside collections contractor is also the successful tenderer for other waste streams offered by the Participating Councils does not materially affect this assessment. The ACCC considers that if a single supplier was appointed across multiple waste streams it would remain the case that suppliers of kerbside collections services who did not win the work of the Participating Councils would have sufficient other work and future opportunities to fall back on to remain viable.
235. For these reasons the ACCC considers that the Participating Councils awarding a single contract for the supply of kerbside collection services for up to 10 years is unlikely to result in public detriment from reducing competition for the supply of waste collection services to the Participating Councils or other councils in Adelaide in the longer term.

## **Competition for the supply of mobile garbage bins**

### ***Applicants' and interested parties' submissions***

236. Trident Plastics, Mastec Australia and Sulo MGB Australia, three national moulded plastic products manufacturers who currently manufacture and supply bulk mobile garbage bins to councils around Australia, including to Adelaide councils, submit that the Proposed Conduct would lessen competition for the supply of mobile garbage bins.<sup>130</sup>
237. Trident Plastics and Mastec Australia submit that if each Participating Council separately acquired mobile garbage bins, each supplier would have the opportunity to win work more frequently and for smaller, more manageable volumes. Trident Plastics further submits that the proposal for the Participating Councils to jointly procure mobile garbage bins inherently favours larger manufacturers enjoying easier access to capital.<sup>131</sup>
238. Trident submits that:
- The Proposed Conduct would lock away over a quarter of the Adelaide metropolitan market to bin manufacturers for seven to 10 years.

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<sup>130</sup> Trident Plastics submission, dated 18 April 2018, p.5, Sulo MGB Australia submission, dated 24 August 2018, Mastec Australia submission, dated 20 August 2018, p.1, available: [ACCC Public Register](#).

<sup>131</sup> Trident Plastics submission, dated 18 April 2018, p.5, available: [ACCC Public Register](#).

- Smaller to medium sized bin manufacturers may not participate in the proposed joint procurement as they may not have the production capacity to service a contract of the proposed size.<sup>132</sup>
239. Mastec Australia submits that the preferred tender size is medium sized contracts as they allow for suitable planning for production. Medium sized contracts not only enable a supply of bins to the council or contractor in the timeframe between awarding of the tender and the contract start up, but additionally allow for the handling of multiple contracts at once as well as day-to-day requests from councils and the waste industry for bin parts and accessories. Mastec Australia submits that scaling up for a one-off large production of an amalgamated group of metropolitan councils of the size proposed by Council Solutions would place untoward pressure on resources, timeframes and supply to other councils and the industry.<sup>133</sup>
240. In response, Council Solutions notes that the procurement of mobile garbage bins will be at the discretion of the supplier appointed to provide kerbside waste collection services and will be a matter of negotiation between the successful tenderer and mobile garbage bin manufacturers.<sup>134</sup>
241. With respect to the number of bins required, Council Solutions submits that a full roll-out of new bins for any of the collection service streams is not required and does not form part of the Proposed Conduct. The replacement and/or maintenance of existing bins and supply of bins to new premises however are included. Council Solutions states that this will amount to some thousands of bins not hundreds of thousand or even tens of thousands.<sup>135</sup>
242. Council Solutions submits that one of the reasons for including the supply of mobile garbage bins in the contract is so the collection contractor will have some accountability for the handling of bins to ensure damage is minimised. Council Solutions considers the Proposed Conduct will provide an incentive for the kerbside collector to use its influence on the manufacturer to ensure bins are strongly constructed so that the working life of a bin is maximised, without the need for periodical replacement of parts.<sup>136</sup>

### **ACCC view**

243. The ACCC notes that the Participating Councils are not proposing to directly procure mobile garbage bins. Rather, they are proposing to appoint a single supplier to provide kerbside waste collection services, including the supply of mobile garbage bins to new premises and the maintenance of existing mobile garbage bins. The successful tenderer will then be responsible for supplying mobile garbage bins and will make decisions about how these bins are acquired. This includes, for example, whether to manufacture the bins themselves or subcontract to a single supplier or multiple suppliers; and whether to enter into long term arrangements with subcontractors or offer opportunities to the market more regularly.

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<sup>132</sup> Trident Plastics submission, dated 18 April 2018, p.5, available: [ACCC Public Register](#).

<sup>133</sup> Mastec Australia submission, dated 20 August 2018, p.1, available: [ACCC Public Register](#).

<sup>134</sup> Council Solutions further submission, dated 14 May 2018, p 13, available: [ACCC Public Register](#).

<sup>135</sup> Council Solutions further submission, dated 12 September 2018, p 16, available: [ACCC Public Register](#).

<sup>136</sup> Council Solutions response to submission from WRASA on 24 August 2018, dated 20 September 2018, p.5, available: [ACCC Public Register](#).

244. In this respect, the ACCC notes that the concerns raised by interested parties are predicated, at least in part, on the assumption that a full replacement of all residents' mobile garbage bins (540,000 bins) will be required and that this replacement will need to occur over a relatively short timeframe. Council Solutions has confirmed that this is not the case.
245. The ACCC expects that all tenderers for the supply of kerbside waste collection services to the Participating Councils will seek to adopt arrangements for the supply of mobile garbage bins that maximise competition for the provision of the bins. Any potential tenderer who did not do so would be at a disadvantage to other suppliers in competing for the kerbside waste collection services contract.
246. In addition, with respect to competition to supply mobile garbage bins to Adelaide councils in the longer term, the ACCC considers that supply of mobile garbage bins to all Adelaide councils is likely to be contestable over the longer term. In this respect, the Proposed Conduct is a significant part of, but ultimately only a subset of, opportunities in the wider area of competition. The ACCC notes the alternative opportunities for suppliers both in Adelaide and elsewhere.
247. Accordingly, the ACCC considers that the Proposed Conduct is unlikely to result in a public detriment in the form of reducing competition for the supply of mobile garbage bins to the Participating Councils or other councils in Adelaide.

### **ACCC conclusion on public detriments**

248. The ACCC considers that the Proposed Conduct, whereby the Participating Councils award a single contract for the supply of kerbside collection services for up to 10 years is unlikely to result in public detriment from reducing competition for the supply of waste collection services, or mobile garbage bins, to the Participating Councils or other councils in Adelaide.

### **Balance of public benefit and detriment**

249. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.
250. The ACCC considers that the joint procurement process is likely to result in a public benefit by stimulating additional competition to provide kerbside waste collection for the Participating Councils. The ACCC considers that the proposed joint tender is likely to increase the purchasing power of the Participating Councils in contracting for the supply of kerbside collection services. This increased purchasing power is likely to be reflected in the negotiated terms and conditions of agreements, resulting in lower prices and/or better quality of waste management services delivered to the Participating Councils' ratepayers.
251. In particular, the Proposed Conduct is likely to offer potential suppliers some transaction cost savings and other efficiency gains that could be passed on in lower costs or improved services. Further, a guaranteed contract of around 180,000 rateable properties for at least seven years is likely to provide greater incentives for these suppliers to compete for the tender.

252. The ACCC also considers that the Proposed Conduct is likely to generate public benefits in the form of transaction cost savings for the Participating Councils compared with each Participating Council conducting its own procurement process.
253. The ACCC also considers that the Proposed Conduct is likely to generate public benefits through small improvements in:
- efficiency in managing the kerbside waste collection contract
  - efficiency in the supply of kerbside waste collection services
  - environmental outcomes.
254. The ACCC considers that the Proposed Conduct is unlikely to result in a public detriment by reducing competition to supply collection services to the Participating Councils and other councils in Adelaide in the longer term. For example, the ACCC has considered concerns that unsuccessful tenderers would permanently leave the market, leaving a more concentrated and less competitive set of firms to compete for future contracts. However, the ACCC considers this concern is unlikely to be realised.
255. Neither of the two companies which currently hold contracts to supply kerbside collection services to the Participating Councils were originally based in South Australia, and both have extensive operations around Australia. The ACCC considers that there will be sufficient opportunities for those suppliers who do not win the contract with the Participating Councils to remain active in waste services in SA and elsewhere in Australia. Most suppliers also have municipal collection contracts in SA or elsewhere in Australia and barriers to expanding into new geographic areas for medium to large, established operators do not appear to be high.
256. The ACCC is also satisfied that the Proposed Conduct is unlikely to result in public detriment because it is unlikely to reduce competition for the supply of mobile garbage bins to the Participating Councils or other councils in Adelaide in the longer term.
257. Therefore, for the reasons outlined in this final determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit that would outweigh the likely public detriment, including the detriment constituted by any lessening of competition that would be likely to result.
258. Accordingly, the ACCC proposes to grant authorisation.

## **Length of authorisation**

259. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>137</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

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<sup>137</sup> Subsection 91(1).



260. In this instance, the Applicants seek authorisation for around 13 years (until 30 June 2031) to allow for the tender process, purchasing and commissioning of new trucks by the successful tenderer, contract commencement in May 2020, with a rolling start as existing contracts expire, and a contract length of up to 10 years (seven years with the option of a three year extension).<sup>138</sup>
261. Business SA submits that its consultation supports the contention that a 10 year contract period is generally accepted for waste services contracts.<sup>139</sup>
262. The SA Small Business Commissioner submits that the proposed contract term of 10 years is a significant and unreasonable period of time given that the landscape of the waste management market can change dramatically and unexpectedly during that time.<sup>140</sup>
263. The ACCC considers that the proposed contract term of up to 10 years accords with generally accepted contract terms in the industry. In particular, contracts of this duration accord with the likely reasonable economic life of the principal capital assets needed to perform the service, the collection trucks. Having regard to the capital expenditure required to service the proposed contract, a contract of a shorter duration would be likely to attract less competitive bids from suppliers.
264. Accordingly, the ACCC grants authorisation until 30 June 2031.

## Determination

### The application

265. On 14 March 2018, Council Solutions Regional Authority (Council Solutions), on behalf of itself, the Corporation of the City of Adelaide and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the **Participating Councils**) (together, the **Applicants**) lodged application for authorisation AA1000414 with the ACCC. The application was made under subsection 88(1) of the Act.
266. The Applicants seek authorisation for:
- Council Solutions, on behalf of the Participating Councils, to conduct a collaborative competitive tender process for Waste Collection Services, to evaluate the responses in collaboration with the Participating Councils and to negotiate on behalf of the Participating Councils the contractual framework
  - the Participating Councils to individually enter into a contract on a joint and not several basis with the successful supplier for a period of seven years with the option of an extension for a further three years, and
  - ongoing administration and management of the resultant contract to be undertaken jointly by Council Solutions and the Participating Councils.<sup>141</sup>

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<sup>138</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 12, available: [ACCC Public Register](#).

<sup>139</sup> Business SA submission, dated April 2019, p 5, available: [ACCC Public Register](#).

<sup>140</sup> Small Business Commissioner of SA submission dated 26 April 2018, p 2, [ACCC Public Register](#).

<sup>141</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 1, available: [ACCC Public Register](#).

267. The Waste Collection Services the subject of this application involve the collection of domestic waste, recyclables and organics in each of the Participating Council areas through use of the 3-Bin System, including the supply and maintenance of the mobile garbage bins.<sup>142</sup> Waste Collection Services, for the purpose of the current application, does not include Bulk Bins, Hard Waste and Street Litter Bins.<sup>143</sup>

## **The net public benefit test**

268. For the reasons outlined in this determination, the ACCC is satisfied, pursuant to subsections 90(7) and 90(8) of the Act, that in all the circumstances the Proposed Conduct for which authorisation is sought would result or be likely to result in a public benefit that would outweigh any detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.<sup>144</sup>

## **Conduct which the ACCC authorises**

269. The ACCC grants authorisation AA1000414 to the Applicants for the Proposed Conduct outlined at paragraphs 266 and 267 of this Determination, which may contain a cartel provision within the meaning of Division 1 of Part IV of the Act or may substantially lessen competition within the meaning of section 45 of the Act.

270. The ACCC has decided to grant authorisation until 30 June 2031.

## **Date authorisation comes into effect**

271. This determination is made on 12 October 2018. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 3 November 2018.

## **Interim authorisation**

272. On 20 July 2018, interim authorisation was granted under subsection 91(2) of the Act.<sup>145</sup> Interim authorisation will remain in place until the date the ACCC's determination comes into effect or until the ACCC decides to revoke interim authorisation.

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<sup>142</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

<sup>143</sup> Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

<sup>144</sup> As the Applicants have sought authorisation for conduct which may include cartel conduct, section 90(8) requires the ACCC to be satisfied under the net public benefit test in section 90(7)(b) when making its determination.

<sup>145</sup> See ACCC draft determination dated 20 July 2018.