

Supplementary Submissions by Marine Stores

These submissions are supplementary to the submissions lodged by Marine Stores Pty Ltd (Marine Stores) with the Australian Competition and Consumer Commission (ACCC) on 17 April 2018 and are in response to the Supplementary Submissions lodged by Recyclers SA (RSA) with ACCC on 1 May 2018, the Further Supplementary Submissions lodged by RSA with ACCC on 7 May 2018 and to the responses to questions lodged with ACCC by RSA on 5 June 2018.

Marine Stores Responses to RSA Supplementary Submissions 1 May 2018

RSA Submission 1(g)

Recyclers SA is not, and has never been, in a position to bind any of its members to any commercial arrangements. It has previously provided advocacy services to individual members upon their request. Pursuant to the proposed conduct, Recyclers SA would conduct negotiations on behalf of its Participating Members and provide collective advice, it would remain unable to bind any of its members, including the Participating Members to any commercial arrangement. Furthermore, Participating Members would be able to withdraw as Participating Members if they wished.

Marine Stores Response **EXCLUDED FROM
PUBLIC REGISTER**

RSA Submission 1(h)

Recyclers SA is not aware of any proposal to 'bulk' (that is, not sort by brand) aluminium containers being put to it or any of its members by Marine Stores. In South Australia, 'bulking' requires agreement between super collectors to accept an industry return rate and as to which super collector will receive, audit, make payments to collection depots and charge the other super collectors for their proportion of returned containers. 'Bulking' of all containers is prescribed in the container deposit legislation in all jurisdictions other than in South Australia. Recyclers SA furthermore understands that at least one super collector had previously considered that its aluminium containers were returned to the system in lower volumes than those of another and was therefore unwilling to pursue a combined handling fee.

Marine Stores Response

In 2004, Marine Stores put forward a proposal to bulk containers in return for a lower handling fee commensurate with the decrease in collectors' costs involved with bulking. The members of the RSA would not agree to lower the handling fee in return for bulking unless the handling fee remained the same. As this would mean no benefit to the CDS, Marine Stores did not proceed with the proposal.

RSA Submission 2(c)(ii)

The collection depot located in [*] South Australia, was transferred to control of the local council. The former operator informed Recyclers SA that the reason for doing this was lack of profitability as a result of underpayment from super collectors.

Marine Stores Response

RSA can apparently only quote two examples out of more than 100 collectors which it claims have faced financial difficulties forcing them out of the collection business. Marine Stores believes that the depot being referred to in submission 2(c)(iii) got into financial difficulties because the local council set up its own waste transfer station, and diverted a significant number of containers away from the recycler by retaining kerbside collections, rather than because of handling fees.

RSA Submission 3(c))

As a result, and in addition to the public benefits outlined in the Application, Recyclers SA submits that the proposed conduct will improve the accuracy of reporting to the Authority, thereby better facilitating regulation of the scheme. This in turn supports an efficient scheme.

Marine Stores Response

A recent objection by a depot owner (linked to the current President of the RSA) has been made against Marine Stores in relation to the aluminium audit process. The claim is requesting the audit sample of cans on which the calculation of weight, count and payment is made, should be made up of pristine cans, that are completely free of any contamination and dried. This is not at all representative of how the cans are received by Marine Stores and presented for weighing. What is being requested would result in an overstatement of the quantity being received. This would have two impacts, the figures reported to the EPA being over stated, and the depots being paid for more cans than they actually had processed. Given the costs of the scheme are passed through to the manufacturers, it is reasonable to assume this could relate in an increase cost to the public. This is an example of why Marine Stores believes that reform of audit procedures resulting in reducing the costs in the CDL industry is less likely if RSA is granted an authorisation for collective bargaining.

RSA Submission 3(f)

The quantum of the refund amount and handling fee paid to a collection depot for a delivery is a function of the number of containers received by the collection depot and supplied to the super collector. The proposed conduct expressly excludes any negotiation as to the quantum of the handling fee applicable per container. The proposed conduct seeks to improve the accuracy of the average containers per tonne figure determined by audit. To the extent that Recyclers SA and its members are misconceived in their concerns as to accuracy, Recyclers SA submits that the proposed conduct will have little to no effect on the determination of the number of containers delivered to its Participating Members.

Marine Stores Response

The RSA has had 20 years to suggest a better method of container auditing but has failed to do so.

Marine Stores Response to RSA Further Supplementary Submissions lodged with ACCC on 7 May 2018**RSA Submission 1(b)**

Recyclers SA intends, through the proposed conduct, for any collective bargaining to produce robust and meaningful negotiations with each of the super collectors. As stated in the Application, the industry tends to long-term contractual arrangements. Recyclers SA is aware of very few negotiations between individual Members and any of the super collectors that have sought to substantively vary the agreements. Many of the express terms in the schedule to the contracts with the relevant super collectors have expired and Recyclers SA is not aware of any approaches to established Members by Statewide (as opposed to collection depots entering into the market) to negotiate new contracts with those Members.

Marine Stores Response

Marine Stores is not aware of the intentions of Statewide, however it is the intention of Marine Stores to propose a new form of contract to the collectors in the near future, notwithstanding the failed attempts on trying to introduce a new contract to RSA members in 2004, 2009 and 2012. In the opinion of Marine Stores the inability to introduce such new contracts was largely a result of the advocacy of the RSA against such contracts.

Marine Stores Response to RSA Responses to Questions lodged with the ACCC on 5 June 2018**RSA Answer 2(iii)**

Flagcan Distributors Pty Ltd has arrangements in place with Statewide to handle its customer's containers to avoid sorting by brand.

Marine Stores Response

Flagcan does not have a processing facility.

RSA Answer 3(a)(ii)

Recyclers SA does not believe that its negotiation with the super collectors on behalf of its members will compromise any efficiencies in the system given that the fundamental requirements to manage the CDL system in SA is common to all CDS systems around the world. Specifically, there is a requirement to authenticate the number of containers returned and ensure that these containers are not returned to the system but are recycled or reused.

Marine Stores Response

As stated above in these submissions, RSA has had 20 years to suggest a more efficient method of auditing but has failed to do so. Marine Stores is concerned that if the collective bargaining authorisation is granted to RSA this will reduce the likelihood of efficiencies being introduced into the CDL industry in South Australia, given the reluctance of members of the RSA to pass on the benefit of efficiencies by a reduction in handling fees. An example of such potential efficiencies are more accurate methods of checking that the amount of deposit reimbursement paid to the collectors by the super collectors does not exceed the deposit refunds paid out by the collectors.

RSA Answer 3(a)(iv)

This does not mean that audit and payment systems cannot be varied to accommodate all depots located around the State. Also, it is not in Recyclers SA's member's interests to compromise the CDL industry in South Australia or not have regard to cost effective mechanisms to achieve a fair outcome for all parties that operate in this industry.

Marine Stores Response

In the opinion of Marine Stores RSA regards efficiencies as a means of increasing profits to its members rather than allowing these to be passed on to consumers by the Introduction of low handling fees to reflect the lower costs to collectors if such efficiencies are introduced.

RSA Answer 6(a)(II)

Reference is made to 58,684,688 returns. The EPA website refers to 586.8m returns.

RSA Answer 6(c)

6(c) Please also explain how handling fees are negotiated between collection depots and super collectors and the basis on which handling fees may vary between collection Depots.

6(c)(I) Recyclers SA is not a party to the negotiation of the handling fee between its members and the super collectors. Its observation, from anecdotal evidence from its members is that the members have limited scope to engage in commercial negotiations due to the difference in the bargaining power between each of the individual members and the super collectors.

Marine Stores Responses

Marine Stores has negotiated different terms with non members including provision of different services such as blocking/bailing for other depots.

RSA Answer 7(1)(ii)

The members are likely to seek a term to the agreements to permit certainty of the operation of their businesses. This is particularly the case for the smaller operators who require longer period between negotiation and renegotiation of their agreements so as not to increase the frequency of distraction from their main business.

Marine Stores Responses

Marine Stores has not been able to negotiate another version of the collection agreement with RSA members since the 2000 agreement despite a number of attempts to do so.