

Response to submissions on Draft Determination

Recyclers SA

Responses to questions

This document contains responses to the matters raised by Marine Stores and Statewide Recycling in response to the ACCC's Draft Determination dated 22 June 2018 ('**Draft Determination**') proposing to authorise the conduct the subject of Recyclers SA's Application dated 16 February 2018 ('**Application**').

This response supplements the Application, Supplementary Submissions and Further Supplementary Submissions, the responses to previous questions from the ACCC and should be read in conjunction with those documents.

Capitalised terms not defined in this document bear the same meaning as in the Application.

1 Draft Determination

- (a) Recyclers SA accepts and agrees with the Draft Determination. Recyclers SA submits that the Final Determination should be in the same form as the Draft Determination.
- (b) Recyclers SA agrees that the authorisation of its Application will result in the following public benefits:
 - (i) transaction cost savings; and
 - (ii) more effective input for collection depots into negotiations with super collectors.
- (c) Recyclers SA agrees that the authorisation of the Application will not result in significant public detriment.

2 Conditions

- (a) In response to the submission made by Marine Stores, and on behalf of Statewide Recycling, Recyclers SA submits that the imposition of conditions on the authorisation proposed in the Draft Determination are not necessary or warranted to increase the likelihood of the benefits or reduce the likelihood of any detriments arising from the proposed conduct.
- (b) Recyclers SA has acknowledged the questions raised by the ACCC and concerns expressed in the responding submissions to the Application and has outlined proposed measures in its submission dated 12 June 2018 to address those concerns ('**Proposed Measures**').
- (c) Recyclers SA submit that in the context of the Proposed Measures, the authorisation test will be met over the period of the authorisation. The imposition of conditions on the authorisation is not necessary to ensure that the test is met now or throughout the authorisation period.

- (d) Recyclers SA is mindful of its obligations, and that of its members, to comply with the *Competition and Consumer Act 2010* and has demonstrated this understanding by seeking appropriate advice and making the Application. Recyclers SA has been active in seeking advice to ensure compliance with the *Competition and Consumer Act 2010* and will continue to do so throughout the period of authorisation, if authorisation is granted.
- (e) Contrary to the submissions made by Marine Stores and Statewide Recycling, ACCC has no reason to believe that the Proposed Measures will not be implemented by Recyclers SA and maintained throughout the authorisation period. Recyclers SA and its members have invested significantly in time and funds to apply for and secure an authorisation for the benefit of all of its members. This significant investment demonstrates the seriousness with which Recyclers SA and its members will conduct the negotiations and meet their obligations under any authorisation.
- (f) If authorisation is granted Recyclers SA will understand clearly the circumstances in which that authorisation is granted and will ensure that the Proposed Measures are implemented and remain in place. To the extent required, Recyclers SA will continue to seek legal advice in relation to the compliance with the authorisation and its ongoing obligations.
- (g) Given the willingness of Recyclers SA to implement the Proposed Measures, and its understanding of the impact of non-compliance on the authorisation, Recyclers SA submits that there is no need for conditions to be imposed on any authorisation.
- (h) Recyclers SA submits that the concerns raised by Marine Stores and Statewide Recycling will be addressed by the Proposed Measures and makes the following specific observations in response to those submissions:
 - (i) Participation in the collective bargaining arrangements are voluntary, as is the entry into an agreement with any of the super collectors. Each depot, from large to small will have the opportunity to determine whether or not it wishes to participate in the collective bargaining and ultimately whether it wishes to enter into a negotiated agreement. All members, and particularly smaller members will benefit from the increased bargaining power which comes from the collective bargaining but some may still elect not to participate.
 - (ii) Recyclers SA is aware of the steps required to ensure implementation with the Proposed Measures and will seek legal and other advice where necessary to ensure compliance throughout the term of the authorisation. The Proposed Measures are clearly and simply expressed in Recyclers SA's submission dated 12 June 2018. Given the significant investment required to secure an authorisation, compliance is a focus to ensure the authorisation is maintained.
 - (iii) The ACCC is charged with ensuring compliance with an authorisation. Conditions should not be imposed to enable third parties to 'monitor compliance' or 'gather evidence of non-compliance' with the authorisation.

- (iv) The Proposed Measures will address the conflict concerns raised in previous submissions and repeated in the submissions from Marine Stores and Statewide Recycling in response to the Draft Determination.
 - (v) The Marine Stores submission raises a number of concerns regarding handling fees. The Application does not seek authorisation to collectively bargain or otherwise engage in discussions in relation to handling fees. Recyclers SA does not propose to become involved in the negotiation of handling fees. This will remain a matter which will be negotiated separately by each of the members with the super collectors. As the authorisation does not contemplate the negotiation of the handling fee, no conditions are required to address matters which relate to those negotiations.
- (i) If the ACCC consider that the imposition of conditions on an authorisation is appropriate, Recyclers SA seek the opportunity to comment on the form of any proposed conditions.