

Supplementary submissions

Recyclers SA

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Supplementary submissions

These submissions supplement the Application of Recyclers SA dated 7 March 2018 and should be read in conjunction with that document.

These submissions address certain issues raised by Marine Stores, Coopers Brewery Limited, the Brewers Association of Australia and Lion Pty Ltd.

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

1 Recyclers SA

- (a) Recyclers SA has an executive comprised of eight members elected pursuant to its constitution, with each holding a single vote and decisions being made by simple majority.
- (b) The current members of Recyclers SA's executive are:
 - (i) Warren Stone, the General Manager of the Scouts Association of Australia (South Australia Branch), which operates nine depots;
 - (ii) Tony Taylor, the Chief Executive Officer of the Royal Life Saving Society SA, which operates one depot;
 - (iii) Peter Fell, the operator of Bordertown Recycling Depot;
 - (iv) Carrie Harris, the operator of Pooraka Bottle & Can Recycling Depot;
 - (v) Terry Lucas, the operator of Wingfield Recyclers, Prospect Bottle & Can Depot and Western Region Recyclers;
 - (vi) Mike Flett, the depot manager of Durable Resource Pty Ltd trading as Hackham Recyclers;
 - (vii) Neville Rawlings; and
 - (viii) Philip Martin.
- (c) Trevor Hockley is a consultant to Recyclers SA and is not a member of its executive and accordingly has no voting power in the executive of Recyclers SA.
- (d) John Lester is the Chief Executive of Recyclers SA and is not a member of its executive. John Lester does not have any voting power in the executive of Recyclers SA.
- (e) The members of Recyclers SA's executive are aware of their duties as executives and the directors of Recyclers SA are aware of their duties as directors. It goes without saying that the members of Recyclers SA's executive and Recyclers SA's

directors will comply with their respective duties, including by recusing themselves from any discussions, negotiations or advice in which they are conflicted.

- (f) As to the following companies:
- (i) Central Recyclers (Aust) Pty Ltd is the holding company of Flagcan. Recyclers SA estimates that Flagcan currently has approximately 5 per cent of the market share, with Marine Stores and Statewide holding the remainder.
 - (ii) Flaglass Pty Ltd operates solely in South Australia. It is a purchaser of glass cullet to those depots in the South Australian scheme that choose to contract with it. Within the scheme, glass containers obtained by depots are owned by those depots, not Flaglass. Depots are then free to sell glass containers to whichever entity it chooses for processing.
 - (iii) Southern Recyclers (SA) Pty Ltd does not have any shareholding in Container Deposit Systems. Southern Recyclers' sole asset is a block of land located in the South of Adelaide and it does not currently operate any business.
 - (iv) Auto Sort Technology Australia Pty Ltd holds 50 per cent of the shares in NT Coordinators Pty Ltd, a coordinator in the Northern Territory container deposit scheme. Flagcan holds the other 50 per cent of shares. NT Coordinators Pty Ltd does not have any operations in South Australia.
 - (v) Container Deposit Systems is not a joint venture between Southern Recyclers (SA) Pty Ltd and Auto Sort Technology Australia Pty Ltd.
- (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.
- (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.

2 The market

- (a) As stated in the Application, the Authority lists 132 approved collection depots operating in South Australia. Recyclers SA's current 84 Members operate 111 collection depots. Recyclers SA understands that each collection depot operated by a Member separately contracts with each of the relevant super collectors for the supply of CDL containers.
- (b) This system has developed as collection depots located in different areas tend to obtain different types of containers reflecting the purchasing and consumption habits of that area. This in turn has a differentiating effect on the average number of containers per tonne between collection depots.
- (c) Recyclers SA does not consider the industry is currently in good health. Recyclers SA is aware of several recent examples of its Members struggling in the current market conditions:
 - (i) the collection depot located in [REDACTED] South Australia, closed, citing underpayment from super collectors. This collection depot reopened after the relevant super collector increased the depot's average containers per tonne without conducting an audit and applied the new figures to that collection depot's deliveries;
 - (ii) the collection depot located in [REDACTED] South Australia, was transferred to the 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;
 - (iii) 18 Members have obtained independent legal advice and made claims against Marine Stores for breach of contract and losses arising from the lack or low frequency of audits conducted at their depots. Recyclers SA understands that none of these claims have been resolved, and that a complicating factor in the disputes is Marine Stores' position as to the expiry of the express terms of those contracts.
- (d) Recyclers SA considers that the current market conditions disproportionately affect those collection depots located in remote locations and those that process smaller volumes. This is compounded as smaller Members are unable to readily afford independent legal advice.

3 Public benefit and public detriment

- (a) Section 69A(1) of the Act provides that approved collection depots and super collectors must lodge an annual return with the Authority.¹ This return, for super collectors, must include the following details:²
- (i) total number of containers sold for each material type;
 - (ii) total number of containers returned for each material type;
 - (iii) total weight of containers returned for each material type; and
 - (iv) rate of return in percentage for each material type.
- (b) One rationale for the proposed conduct is to negotiate an auditing system that is statistically accurate to assess the number of containers by weight.
- (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.
- (d) The negotiation of streamlined and transparent processes, including the auditing process, does not affect the number of containers supplied under the scheme, to which the handling fee and refund applies. To the extent that a Member uses innovative measures or efficiencies in its collection depot, those measures may reduce that Member's costs or overheads, but will have little to no effect on the number of containers it receives and then delivers to super collectors.
- (e) The negotiation of streamlined and transparent processes including audit processes as part of the proposed conduct would however facilitate efficiencies on an industry-wide basis, rather than on an ad-hoc basis, as is necessarily the case in the absence of authorisation. To the extent that super collectors wish to address other aspects of the scheme in contractual negotiations, the proposed conduct similarly facilitates an industry-wide approach. Recyclers SA submits that this would result in similar public benefits to those outlined in the Application.
- (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

¹ *Environment Protection Act 1993 (SA)*, section 69A.

² South Australia, *The South Australian Government Gazette*, No 28, 17 April 2014, 1500; South Australia, *The South Australian Government Gazette*, No 73, 11 December 2008, 5457.

proposed conduct will have little to no effect on the determination of the number of containers delivered to its Participating Members.

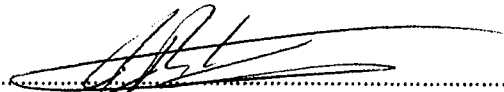
- (g) In any event, and as stated in the Application, the intent of the scheme is to reduce waste and litter in South Australia through the return of containers, and regulatory changes have occurred in order to increase the number of containers returned to the scheme (e.g., the increase in the refund from 5 cents to 10 cents). The South Australian legislature has determined that the public benefit of high rates of recycling outweighs any public detriment associated with the cost of implementing the scheme.
- (h) As to any risk of increased transparency between super collectors, the proposed conduct does not contemplate the super collectors negotiating as a group with the Participating Members. Recyclers SA and its Participating Members will not share details of the negotiations with one super collector with another. The proposed conduct will affect all super collectors and therefore Recyclers SA submits that any effect to competition as between the super collectors would be minimal.

Declaration by Applicant

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



John Lester
Chief Executive
Recyclers of South Australia Inc.

This day of May 2018