

PUBLIC VERSION

Application for revocation and substitution of authorisation

Metropolitan Waste and Resource Recovery Group on behalf
of itself and the local councils of Bayside, Cardinia, Casey,
Dandenong, Frankston, Glen Eira, Kingston, Monash, and
Mornington Peninsula Shire

7 November 2019

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1 Applicants for authorisation

1.1 Contact details

Name Metropolitan Waste and Resource Recovery Group (**MWRRG**) (ABN 64 480 279 309) on behalf of itself and the Victorian local councils of Bayside City, Cardinia Shire, Casey City, Greater Dandenong, Frankston City, Glen Eira City, Kingston City, Monash City, and Mornington Peninsula Shire (together, the **Applicants**).

Address MWRRG
Level 4, Tower 4
World Trade Centre
18/38 Siddeley Street
Southbank VIC 3005

Telephone (03) 8698 9800

1.2 Contact person

Name Alistair Newton

Position Partner, Corrs Chambers Westgarth

Telephone [REDACTED]

Email [REDACTED]

1.3 Description of business activities

MWRRG is a Victorian statutory body established under section 50 of the *Environment Protection Act 1970* (Vic) (**EP Act**). MWRRG works with Melbourne's local metropolitan councils consistently with its objectives set out in section 50AC of the EP Act, which include:

- planning for waste and resource recovery infrastructure in the Melbourne metropolitan region, including while minimising the environmental and health impacts of that infrastructure;
- co-ordinating and facilitating efficient procurement of waste and resource recovery infrastructure and services, including through joint procurement; and
- educating businesses and communities within the Melbourne metropolitan region to reduce waste going to landfill by using efficient means of waste and resource recovery.

MWRRG is specifically empowered, under section 50AD of the EP Act, to facilitate contracts for the joint procurement of waste and resource recovery services, and to manage those contracts, within the Melbourne metropolitan region.

The relevant local councils are statutory local government authorities established under the *Local Government Act 1989 (Vic)* (**LG Act**). The Participating Councils' functions include:

- planning for and providing services to the local community;
- providing and maintaining community infrastructure in their respective municipal districts;
- exercising, performing and discharging the duties, functions and powers of councils under legislation; and
- any other function relating to the peace, order and good government of the municipal district.

In this context, each of the relevant local councils is responsible for providing organics collection and processing services within the boundaries of its respective municipality.

1.4 Email address for service

Alistair.Newton@corrs.com.au

1.5 Contact details for participating councils

Bayside City Council (ABN 65 486 719 651)

Address 76 Royal Avenue
SANDRINGHAM VIC 3191

Telephone (03) 9599 4444

Contact Mick Cummings
Chief Executive Officer
+61 3 9599 4444



Cardinia Shire Council (ABN 32 210 906 807)

Address 20 Siding Avenue
OFFICER VIC 3809

Telephone 1300 787 624

Contact Carol Jeffs
Chief Executive Officer



Casey City Council (ABN 43 320 295 742)

Address 2 Patrick Northeast Drive
NARRE WARREN VIC 3805

Telephone (03) 9705 5200

Contact Glenn Patterson
Chief Executive Officer

+61 3 9705 5200
[REDACTED]

City of Greater Dandenong Council (ABN 41 205 538 060)

Address 225 Lonsdale Street
DANDENONG VIC 3175

Telephone (03) 8571 1000

Contact John Bennie
Chief Executive Officer
+61 3 8571 1000
[REDACTED]

Frankston City Council (ABN 49 454 768 065)

Address 30 Davey Street
FRANKSTON VIC 3199

Telephone (03) 9784 1888

Contact Dennis Hovenden
Chief Executive Officer
+ 61 3 9784 1888
correspondence@frankston.vic.gov.au

Glen Eira City Council (ABN 65 952 882 314)

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CAULFIELD SOUTH VIC 3162

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+61 3 9524 3333
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Kingston City Council (ABN 80 640 377 247)

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CHELTENHAM VIC 3192

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[REDACTED]
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Monash City Council (ABN 23 118 071 457)

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GLEN WAVERLEY VIC 3150

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[REDACTED]

Mornington Peninsula Shire Council (ABN 53 159 890 143)

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ROSEBUD VIC 3939

Telephone 1300 850 600

Contact John Baker
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[REDACTED]
[REDACTED]

2 Authorisation to be revoked

2.1 Registration number and date

Authorisations A91414 and 91415 dated 18 June 2014 in relation to the joint procurement of organic waste processing services (the **existing authorisations**).

2.2 Parties to the authorisation to be revoked

MWRRG and the Victorian local councils of Bayside City, Cardinia Shire, Casey City, Greater Dandenong, Frankston City, Glen Eira City, Kingston City, and Monash City (together, the **South Eastern Organics Group**).

2.3 Basis for seeking revocation

The existing authorisations are sought to be revoked and substituted for a new authorisation that will include Mornington Peninsula Shire Council in the joint arrangements currently engaged in pursuant to the existing authorisations.

3 Authorisation to be substituted

3.1 Contact details

The parties that propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought are the Applicants.

Contact details for MWRRG are set out in section 1.1 above.

Contact details for each of the participating councils are set out in section 1.5 above.

3.2 Contact person

Contact details are set out in section 1.2 above.

3.3 Description of business activities

A description of the business activities of MWRRG and each of the participating councils is set out in section 1.3 above.

4 Details of the proposed conduct

4.1 Description

Overview

On 18 June 2014, the ACCC granted the existing authorisations to the South Eastern Organics Group to:

- jointly procure organic waste processing services (as further described in section 6.1 below); and
- make certain joint decisions regarding the management of ongoing contracts for those organic waste processing services.

Pursuant to those authorisations, the South Eastern Organics Group conducted a joint tender process that resulted in the appointment of Cleanaway Pty Ltd (**Cleanaway**), Veolia Environmental Services (Aust) Pty Ltd (**Veolia**) and Sacyr Environment Australia Pty Ltd (**Sacyr**) to provide organics processing services to the participating councils. The appointment of each service provider is governed by certain joint agreements between MWRRG, the service providers, and each of the participating councils.

The initial application for authorisation dated 7 March 2014 (**initial application**) did not include Mornington Peninsula Shire Council. At that time, Mornington Peninsula Shire Council opted not to participate in the joint arrangements as it sought to continue its pre-existing organics waste service agreement with Enviromix Pty Ltd (**Enviromix**).

An overview of the relevant conduct, and the proposed changes to include Mornington Peninsula Shire Council, is set out below.

Joint arrangements in the South Eastern Organics Group

The existing authorisations cover the following joint conduct between MWRRG and the South Eastern Organics Group.

- **(Joint tenders)** Joint competitive tenders for the appointment of providers of organic waste processing services, at the end of existing agreements with the current service providers, or for further service needs, as required. These tenders would be conducted and evaluated by a panel of representatives from MWRRG and each of the participating councils in the South Eastern Organics Group.
- **(Negotiation of terms)** MWRRG and the South Eastern Organics Group may jointly negotiate with prospective, or existing, service provider(s) regarding the terms of further supply of organic waste processing services. This includes negotiation in respect of payment rates (per unit of organic waste material), charges to local councils relating to potential contamination of organic waste materials, and requirements for the use of resource recovery facilities.
- **(Variation of contracts)** Representatives of MWRRG and the South Eastern Organics Group have formed a user group for the purpose of jointly considering, and deciding, variations to their arrangements with the appointed service provider(s), including in respect of payment rates, or the allocation of particular volumes of organic waste materials from one service provider to another.

The nature of the conduct that is the subject of the existing authorisations is set out more fully in the initial application.

The joint conduct under the existing authorisations is voluntary for the councils participating in the South Eastern Organics Group. As set out in the initial application, each participating council submits its individual requirements for organic waste processing requirements to MWRRG, and these are kept

confidential between it and MWRRG during the joint decision-making processes outlined above. In addition, the participation of each council in the South Eastern Organics Group, and their respective decisions to enter into any agreements with service providers, remains independent from MWRRG and the other participating councils. The independent and voluntary nature of each council's participation in these joint arrangements will not change under the proposed revocation and substitution of the existing authorisations.

Proposed inclusion of Mornington Peninsula Shire Council

Mornington Peninsula Shire Council's participation in those joint arrangements is proposed via the following documents:

- a bi-lateral deed between Mornington Peninsula Shire Council and each service provider (**Direct Deed**); and
- an agreement to be entered into between MWRRG and Mornington Peninsula Shire Council (**Participation Agreement**), which will facilitate the joint arrangements between MWRRG, Mornington Peninsula Shire Council, and the other participating councils.

Further deeds are already in place between MWRRG and each of the service providers, setting out the key terms under which the service providers provide their services to the local councils in the South Eastern Organics Group (**Organics Processing Deeds**).

Mornington Peninsula Shire Council's participation in any joint decision-making by the South Eastern Organics Group (such as, for example, joint decisions regarding the procurement of services, allocation of volumes, or administration of service contracts), is subject to the execution of the Participation Agreement by both Mornington Peninsula Shire Council and MWRRG. The Participation Agreement is not proposed to be executed by MWRRG unless the ACCC grants a revocation and substitution of the existing authorisations.

4.2 Changes between the existing authorisation and the new authorisation

Under the substituted authorisation, Mornington Peninsula Shire proposes to be included in the South Eastern Organics Group, and to participate in the joint arrangements conducted under the existing authorisations.

The proposed substitution does not involve any other material changes to the existing authorisations, for reasons including the following.

- (**Relevant volumes are insubstantial**) The volumes of organic waste currently collected for processing from the Mornington Peninsula Shire are only a small proportion of organics volumes collected for the metropolitan Melbourne region. They also represent only an incremental addition to the volumes of organic waste collected for processing from the local councils in the South Eastern Organics Group. As is outlined in **Table 1** in section 6.5 below, only approximately 25,000 tonnes of organic waste are collected in the

Mornington Peninsula Shire municipality annually. This comprises only 7% of the approximately 363,000 tonnes of organic waste collected in the wider metropolitan Melbourne region annually, and only 16% of the approximately 157,243 tonnes collected annually for the municipalities in the enlarged South Eastern Organics Group.¹

- **(Expected growth is relatively low)** The population of the Mornington Peninsula Shire is expected to grow at a substantially lower rate than those of the other councils in the South Eastern Organics Group. The Mornington Peninsula Shire's population is currently growing at 1.2% annually.² The other councils in the South Eastern Organics Group are experiencing population increases of 4.6% (Cardinia Shire), 4.2% (Casey), 1.6% (Greater Dandenong), 1.6% (Monash), 1.5% (Kingston), 1.4% (Bayside), 1.0% (Glen Eira), and 0.8% (Frankston).³ As a result, the inclusion of Mornington Peninsula Shire under the existing authorisations is expected to have no significant impact on future demand for the relevant services in the region.
- **(No change to services or infrastructure)** The substituted authorisation will not result in any material change to the services currently provided to either Mornington Peninsula Shire Council, or the other local councils in the South Eastern Organics Group. The three service providers will continue to provide the same services, and utilise the same facilities and infrastructure, as they currently do for each of the local councils currently participating in the South Eastern Organics Group. However, by revoking the existing authorisations and substituting them for authorisations that include the Mornington Peninsula Shire Council, that council will participate in the public benefits (outlined in section 7 below) that arise from the existing authorisations. This includes benefitting from lower service charges associated with the aggregation of organic waste volumes, and the opportunity to leverage the collective experience and expertise of the South Eastern Organics Group and MWRRG.
- **(No change to authorised conduct)** The proposed inclusion of Mornington Peninsula Shire in the South Eastern Organics Group will not change the way that the relevant local councils procure organics services, or manage their ongoing contracts with Cleanaway, Veolia or Sacyr. Those joint activities are governed by existing agreements that are not proposed to be changed as a result of Mornington Peninsula Shire's inclusion in the joint conduct. Indeed, the Direct

¹ These figures are based on internal MWRRG estimates, based on data collected from relevant local councils and service providers.

² See ABS 3218.0 Regional Population Growth, Australia released 27 March 2019
<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3218.02017-18?OpenDocument>.

³ See ABS 3218.0 Regional Population Growth, Australia released 27 March 2019
<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3218.02017-18?OpenDocument>.

Deed, Organics Processing Deed and the Participation Agreement that are proposed to apply to Mornington Peninsula Shire's participation in the authorised conduct are in the same form as the existing agreements that apply to the local councils currently participating in the South Eastern Organics Group.

4.3 Relevant provisions of the *Competition and Consumer Act 2010* (Cth)

The relevant provisions of the *Competition and Consumer Act 2010* (Cth) which could or might apply to the substituted authorisation are:

- sections 45AF, 45AG, 45AJ and 45AK in relation to cartels;
- sections 45(1)(a) and (b) in relation to anti-competitive agreements; and
- section 45(1)(c) in relation to concerted practices.

4.4 Rationale

As noted in section 4.1 above, the Mornington Peninsula Shire Council opted not to participate in the joint arrangements at the time of the initial application. Mornington Peninsula Shire Council's pre-existing organics waste service agreement with Enviromix expired in May 2019 due to the closing of the Enviromix facility at Dingley. As a result, Mornington Peninsula Shire Council now seeks to participate in the authorised conduct.

In the meantime, Mornington Peninsula Shire Council has bi-laterally agreed interim processing arrangements with Cleanaway.

4.5 Term

Under the existing authorisations, MWRRG and the South Eastern Organics Group have been granted authorisation for the joint arrangements for 15 years, from 1 March 2017.

No change to that authorisation period is proposed. Under the substituted authorisation, it is simply proposed that the Mornington Peninsula Shire Council will join the existing arrangements between participating councils in the South Eastern Organics Group and existing service providers. Accordingly, this application seeks a substituted authorisation that ends on the same date as the existing authorisations.

5 Persons who may be impacted

Only service providers are likely to be directly impacted by the proposed conduct. However, for the reasons outlined in section 10 of the initial application, the proposed conduct will not result in any significant public detriment and any detriment would be outweighed by the substantial public benefits outlined in section 9 of the initial application and in section 7 below.

6 Market information and concentration

6.1 Services

This application relates to organic waste processing services for the following two main forms of organic waste:

- green (garden) waste (e.g., grass clippings and tree prunings); and
- food waste (e.g., fruit and vegetables, scraps and meat).

Organic waste processing services involve the following activities:

- receiving organic waste at a transfer or receipt facility;
- de-contaminating and sorting organic waste – this involves manually or mechanically sorting organic material to remove contaminants. Examples of mechanical sorting include the use of sifters, filters or electro-magnetic equipment to separate material to be sent for composting;
- composting organic waste by applying aerated pressure. In order for compost to mature properly, the facility must maintain suitable temperatures and moisture levels, sound aeration systems and mechanisms to capture and treat emissions. Maturing composts require adequate storage at the facility or transfer to another site for maturation. Once mature, the compost may be shredded or blended to the desired consistency before being delivered to market;
- producing an end product from the organic waste, such as renewable energy, organic fertilisers, soil conditioners, mulches and crop treatments; and
- marketing and selling the organic waste.

Typically, service providers charge a fee per tonne of organic material received for processing, which is subject to an adjustment for the contamination levels in the material.

Under the current proposal, organic waste will continue to be collected as part of the participating councils' kerbside collection services.

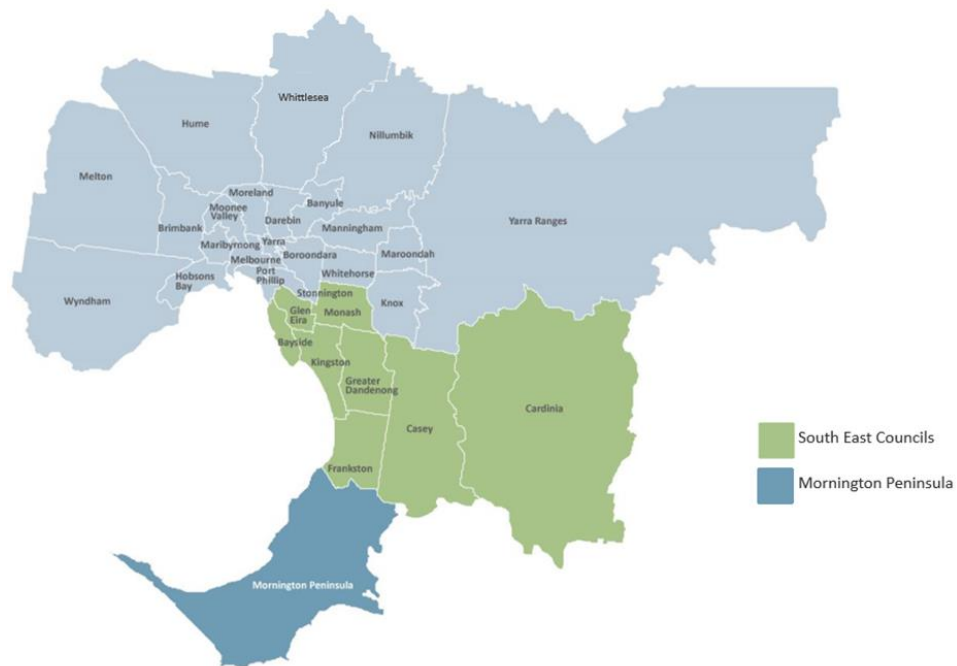
6.2 Geographic areas

MWRRG notes that, in previous determinations regarding authorisation applications for joint procurement of waste and resource recovery services by municipal councils, the ACCC has not considered it necessary to precisely define the relevant geographic market. However, MWRRG considers that the relevant area of competition is at least as large as the market for the supply of organic waste processing services in the metropolitan Melbourne area.

The metropolitan Melbourne area comprises 31 local councils, with a population of approximately 4.5 million people.⁴ The population of metropolitan Melbourne (and as a result, the number of dwellings and associated volumes of organic materials) is also projected to grow substantially over the coming years. The Victorian Government estimates that the population of metropolitan Melbourne is expected to grow to approximately 6 million people by 2031.⁵

The metropolitan Melbourne area and the location of each of the relevant local council municipalities are depicted in **Figure 1** below.

Figure 1: Map of metropolitan Melbourne



6.3 Overlaps

The participating councils relevantly overlap in the acquisition of waste and resource recovery services in the metropolitan Melbourne region.

6.4 Industry

The relevant industry is the organic waste and resource recovery industry in the metropolitan Melbourne region. Broadly, that industry involves the following supply chain.

- **(Collection)** Local councils collect organic waste (as well as residual waste and recyclables) from households as part of their kerbside collection services.

⁴ Victorian State Government, Department of Environment, Land, Water and Planning, *Plan Melbourne 2017–2050, Metropolitan Planning Strategy*, page 128.

⁵ Victorian State Government, Department of Environment, Land, Water and Planning, *Plan Melbourne 2017–2050, Metropolitan Planning Strategy*, page 128.

- **(Transport)** Service providers transport the collected waste materials to processing facilities, such as organics processing facilities which separate and consolidate materials for further processing.
- **(Receiving, sorting and processing)** Service providers receive organic waste at their facilities and may sort and/or process that waste (e.g., by re-processing organic waste into compost, or producing an end product such as renewable energy).

6.5 Market shares

Table 1 below shows the approximate annual volumes of domestic organic waste collected for processing by the councils already participating in the South Eastern Organics Group and the addition of Mornington Peninsula Shire.

Table 1 – Annual organic waste volumes of each relevant council

Council	Organics (tonnes per annum)
Bayside City	9,827
Cardinia Shire	7,611
Casey City	35,336
Greater Dandenong City	12,791
Frankston City	18,529
Glen Eira City	11,793
Kingston City	14,397
Monash City	21,959
Mornington Peninsula Shire	25,000
Total	157,243

Source: MWRRG. Figures are approximate.

6.6 Competitive constraints

The following forms of competition serve to limit or prevent the Applicants from engaging in any anti-competitive conduct.

- **(Existing competitors)** The relevant local councils, as well as other local councils adjacent to metropolitan Melbourne, may be considered to be competitors in the procurement of the relevant services in the metropolitan Melbourne region. The 31 local councils in the metropolitan Melbourne region currently generate overall volumes of approximately 363,000 tonnes of organic waste materials annually, of which the total volumes collected across the Applicants' municipalities (outlined in Table 1 above) constitute approximately 23%. In that

context, the Applicants will continue to be competitively constrained by the remaining metropolitan Melbourne councils, particularly those in the Eastern and South Eastern regions of Melbourne that are adjacent to the Applicants' municipalities.

- **(Service providers)** The existing service providers are able to exercise countervailing power when negotiating with local councils in terms of both service delivery and pricing. As local governments, the participating councils are responsible for the delivery of essential waste and resource recovery services in their respective municipalities, which members of the public expect. Councils must engage service providers to delivery those services and must also ensure their continuity (e.g., in the case of service disruptions). Further, other types of waste collection and resource recovery services (e.g., in respect of residual waste) are not able to be easily, quickly or economically modified to provide organic waste processing services (due to the specialised processes and equipment required for de-contaminating, treating and composting organic waste material).

7 Public benefits

Under the substituted authorisation, Mornington Peninsula Shire Council will be able to participate in the benefits that are provided by the existing authorisations. More specifically, the proposed conduct will provide further benefits by reducing the transaction and service delivery costs for the Mornington Peninsula Shire Council as a result of the collective bargaining of MWRRG and the South Eastern Organics Group.

The public benefits flowing from the existing authorisations are well established and will continue under the substituted authorisation. They include the following.

- **(Investment in improved technologies)** The aggregation of the South Eastern Organics Group's demand for organic waste processing services supports long term investment in these services. Compared to each local council acting individually, the existing arrangements reduce the risks related to making long term investments in the area by providing greater certainty regarding organic waste volumes. Indeed, the current service providers to the South Eastern Organics Group have made substantial investments in new facilities and technologies under the existing authorisations. This includes investment in constructing receipt and decontamination facilities at Cleanaway's and Veolia's sites in Dandenong South, and investment by Sacyr in a new state of the art processing facility at Dandenong South. This investment has provided additional

processing capacity and improved the safety and efficiency of organic waste processing in the region.

- **(Transaction cost savings)** The joint procurement and management of the South Eastern Organics Group has achieved transaction cost savings relative to each relevant council acting alone. Under the existing authorisations, participating councils have been able to share legal and administration costs, reducing their respective outlays when compared to procuring these services alone. Under the substituted authorisation, Mornington Peninsula Shire Council will be able to share in those transaction cost savings.
- **(Improvement contract management)** The existing authorisations have improved the participating councils' management of their organics processing service contracts. Under the existing authorisations, participating councils are able to utilise MWRRG's experience and expertise, as well as their shared collective experience when acting as a group. This includes assistance in negotiating with service providers, obtaining specialist waste and resource recovery advice, and strategic planning for various risks. MWRRG submits that in both instances, the participating councils' ability to address challenges collectively, and also draw on the assistance of MWRRG, have provided improved outcomes for their organic waste arrangements, which Mornington Peninsula Shire Council will be able to share in under the substituted authorisation.
- **(Economic efficiencies)** The existing authorisations have provided greater efficiencies and economies of scale in delivering organic waste processing services. This includes lower costs per unit of waste that are incurred by the relevant local councils when organic waste is processed.
- **(Environmental and health benefits)** The existing authorisations have resulted in improved environmental and health outcomes for residents of the relevant municipalities. Under the existing authorisations, additional planning has gone into selecting safer locations for newly constructed resource recovery facilities (including those at Dandenong South, as noted above). These new facilities are strategically located to reduce the environmental risks to residential areas from the accumulation of waste volumes (such as pollution, fire, or pests), and to improve access for the delivery of organic waste.

8 Public detriment

Consistent with the ACCC's determination in respect of the existing authorisations, MWRRG submits that the substituted authorisation will not result in any discernible public detriments.

The existing authorisations have been in place for over five years and, during that period, no material public detriments have been identified in relation to the relevant conduct.

9 Contact details of relevant market participants

9.1 Service providers

Cleanaway

Melinda Lizza
Business Development Manager
Cleanaway Pty Ltd
349 Perry Road
Dandenong South VIC 3175
[REDACTED]

Veolia

Mick Beljac
State Manager, Resource Recovery, Victoria
Veolia Environmental Services (Aust) Pty Ltd
Level 5, 324 St Kilda Road
Southbank VIC 3006
[REDACTED]

Sacyr

Carlos Gros
Director
Sacyr Environment Australia Pty Ltd
42-46 Villas Road
Dandenong South VIC 3175
[REDACTED]

9.2 Industry groups and Government departments

Department of Environment, Land, Water and Planning

Sebastian Chapman (Executive Director – Waste and Recycling)
8 Nicholson Street
East Melbourne VIC 3002
136 186
customer.service@delwp.vic.gov.au

Environment Protection Authority

Cathy Wilkinson (CEO)
200 Victoria Street

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Carlton VIC 3053
1300 372 842
contact@epa.vic.gov.au

Sustainability Victoria

Matt Genever (Director Resource Recovery)
Level 28, 50 Lonsdale Street
Melbourne VIC 3000
(03) 8626 8700
info@sustainability.vic.gov.au

Declaration by Applicant(s)

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 that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

Solicitor on behalf of MWRRG

(Office held)

Alistair Newton

(Name of authorised person)

This 7th day of November 2019.

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.