

From: [Stephen Fitzpatrick](#)
To: [Kolacz, Miriam](#)
Cc: [Black, Susie](#); [Cameron, Lucy](#); [Hill, Alison](#); [Ng, Andrew](#); [Sood, Rajat](#); [Staltari, Danielle](#)
Subject: RE: ACCC - request for further information [SEC=OFFICIAL] [ACCC-ACCCANDAER.FID3007910]
Date: Friday, 22 April 2022 10:31:40 AM

Hi Miriam

I can confirm that the EMRC considers that its decision to adopt a full cost attribution model and cost reflective pricing for its services, as described in paragraph 24 of our letter of 14 April 2022 , would 'neutralise' all of the potential competitive advantages identified at paragraph 23 of the same letter.

Regards

Steve



Stephen Fitzpatrick | Waste & Resources Recovery Specialist

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From: Kolacz, Miriam <miriam.kolacz@accc.gov.au>
Sent: Thursday, April 21, 2022 2:44 PM
To: Stephen Fitzpatrick [REDACTED]
Cc: Black, Susie <Susie.Black@accc.gov.au>; Cameron, Lucy <Lucy.Cameron@accc.gov.au>; Hill,

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Subject: RE: ACCC - request for further information [SEC=OFFICIAL] [ACCC-ACCCANDAER.FID3007910]

OFFICIAL

Hi Stephen

Thank you for your response to our request for further information.

There was one point we wanted to follow up in relation to paragraph 24 of your response. We note that the EMRC's submission of [6 December 2021](#) (pg. 8) states:

The requirement under the NCP is that the local government must neutralise the net competitive advantage it has as a result of government ownership. This is done through appropriate cost and pricing strategies etc.

Please confirm whether the EMRC considers that its decision to adopt a full cost attribution model and cost reflective pricing for its services, as described in paragraph 24, would 'neutralise' all of the potential competitive advantages identified at paragraph 23.

Kind regards

Miriam

Miriam Kolacz

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The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

14 April 2022

Ms Miriam Kolacz
Acting Assistant Director
Competition Exemptions/Mergers, Exemptions and Digital
Australian Competition & Consumer Commission

By Email: adjudication@accc.gov.au

Dear Ms Kolacz

Application for Authorisation of an Exclusive Dealing Arrangement for Waste Collection Services

Thank you for your email of 1 April 2022 with additional questions. Our response is set out below.

General

As discussed in our call this morning, the EMRC's response to WRIWA's submission (23 March 2023) (page 2) states that: 'The Proposed Conduct clearly fails this definition of Cartel Conduct as none of these forms of anti-competitive conduct is proposed or even possible.' In its Amended Application (15 November 2021), the Applicants sought authorisation in respect of cartel conduct (citing section 45AD, which is contained in Division 1 of Part IV), in addition to sections 45 and 47 of the Competition and Consumer Act 2010 (Cth) (the Act). Please clarify whether the Applicants are still seeking authorisation in respect of the cartel conduct provisions in the Act.

EMRC Response

1. The EMRC sought the advice of its legal advisor in its response to the ACCC on this question. The EMRC will still seek authorisation in respect of the cartel conduct provisions (s.45AD) of the Act.
2. Background and other information relevant on this question is:
 - (a) The submission by the Waste and Recycling Industry of Western Australia to the ACCC stated (amongst other things) that under the Proposed Conduct the EMRC and other participating parties will exclude competition from the market and negotiations will no longer be transparent, and that this constitutes cartel conduct under s.45 AD.
 - (b) Under s.88 of the Act the ACCC may grant an authorisation to give protection from legal action for conduct that might otherwise breach the Act (including 'cartel' conduct). In circumstances where the public benefit from the conduct would outweigh any public detriment the ACCC, upon a formal application, can authorise cartel conduct that relates to:
 - (i) price fixing;
 - (ii) restricting outputs;
 - (iii) allocating customers, suppliers or territories; and
 - (iv) bid rigging.

- (c) Cartel conduct constitutes a per se breach of the Act. The EMRC does not seek to unfairly compete in the market with price fixing, restricting outputs, or bid rigging. However, the EMRC and participating councils will in some regards be acting together instead of competing with one another and the conduct may limit market competitors in some regards, and it will not be the view of the EMRC that is determinative if a court is to determine if the EMRC and the participating councils have engaged in cartel conduct.
- (d) The ACCC may only authorise conduct for which an application has been made. If the EMRC does not seek authorisation for 'cartel' conduct then the EMRC will be open to risk from a challenge (from the WRIWA, ACCC or otherwise) that the proposed conduct has breached the cartel provision of the Act, which may attract considerable penalties if upheld. The WRIWA is already of this view.
- (e) EMRC also takes note of Determination AA1000419 Council Solutions & Ors (23 November 2018) where the proposed conduct was a joint procurement process to appoint suppliers to the participating councils for the receiving and processing of waste service streams for the receiving and processing of recyclables and organics, and the receiving and processing or disposal of residual waste. Council Solutions sought (and was granted) 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 s.45 of the Act. While the proposed conduct in this case was not exactly the same as the current EMRC proposed conduct, there are some similar aspects.
- (f) The ACCC, in Draft Determination AA1000587 EMRC & Ors took account of the cartel conduct issue when making the draft determination, being 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 from the conduct.

Please provide further information to address the issues raised by SUEZ at paragraph 4.10 of its submission (dated 9 March 2022). In particular, how does the EMRC define "rateable properties and schools" (at 2.1 of its application for authorisation), and does the phrase encompass services beyond the services outlined in the seven bulleted points at 2.1 of the application?

EMRC Response

- 3. The proposed conduct as described in 2.1 of the Application and 1.0 of the Draft Determination, will "provide incidental commercial waste collection services to small business with the equivalent of domestic kerbside collection services", this includes local small businesses that are entitled to receive a standard domestic collection service, and non-rateable properties such as libraries and council buildings within the catchment of the three councils, that receive the equivalent of a domestic kerbside collection service. The phrase "rateable properties" refers to rateable properties that receive the equivalent of a domestic collection service and does not encompass services beyond the services outlined in the seven bulleted points at 2.1 of the application.
- 4. The reference to schools is to be removed as there is a State Government supply agreement for schools, so para 5 in section 2.1 of the Proposed Conduct should read:

"The intention is for the EMRC to provide a full service to Participating Councils for rateable properties in their Councils on a standard contractual arrangement."

In section 2.1 of the EMRC's application for authorisation, it states that:

The EMRC may allow Participating Councils to acquire some waste services from alternative suppliers but this would only be by exception and require the EMRC's approval. For example, the EMRC may allow Participating Councils to acquire bulk verge collections for green waste or bulk waste or specialist services like mattresses or household hazardous waste from alternative suppliers. Factors to be considered in determining whether to grant a Councils request to acquire some services from alternative suppliers would include the timing of the request, the effect of such a request on the EMRC's collection service in terms of disruption to the service, fleet utilisation and financial impact and whether that service is linked to a specialist processor of that waste stream.

Does this statement mean that a Participating Council could request to continue acquiring (or tender anew for) a specific waste stream service from a private provider? For example, if the Shire of Mundaring requested to continue acquiring the

specific waste services that it currently receives from Volich or Steann (i.e. general waste collection services and street litter services from Volich; and bulk verge services from Steann), would the EMRC be likely to approve such a request? And why or why not?

EMRC Response

5. Following EMRC approval, Participating Councils would be allowed to continue acquiring, or tender anew, for vergeside bulk waste collection (mixed bulk general waste and greenwaste) or specialist collection of specific items such as mattresses, whitegoods or hazardous waste, should EMRC be unable to provide that service.

*In respect of Schedule 1 of SUEZ's submission (dated 9 March 2022), please confirm whether you disagree with how SUEZ has categorised any of the Perth metropolitan councils as either councils who (a) retain **all** services in-house; (b) retain **some** collection services in-house; or (3) have **no** collection services in-house. Please provide an alternative categorisation and supporting details, if relevant. You do not need to specify whether you disagree with the other figures in SUEZ's analysis unless you wish to.*

EMRC Response

6. The EMRC does not disagree with Schedule 1 of Suez's response on 9 March 2022 as a representation of the current market share of services undertaken by private industry. However, we disagree with their conclusions.
7. In 4.4 of SUEZ's submission (dated 9 March 2022) they put forward that "there are only 14 councils remaining in Perth which are fully contestable". The 5 councils that "currently retain all collection services in-house..." and the 7 councils that retain some collections services in-house..." are not restricted from going to market for collection services should they wish to do so and therefore should not be "excluded" as suggested in by Suez in 4.4. This would give a total of 26 councils across the Perth and Peel region for operators to tender their work.

Public Benefits

Regarding transaction costs: We refer to your response to question (b) of the RFI dated 25 January 2022, where you stated, as a comparison to the current estimated cost of using private sector providers, set out in response 2(b) in the table of comparative service costs provided on 19 January 2022 ('current figure'), the EMRC "expect that initially the costs [of managing and monitoring the EMRC service] will be similar to [current expenditure]...however they should not require the same level of contract management as private sector contracts and their costs should reduce as the contracts proceed and confidence grows in the EMRC service delivery and reporting."

- (a) *Please confirm that the current figure was based on the costs of using the WALGA Preferred Supplier Panel. If not, please provide an estimate of the costs (in time and/or monetary value where possible) that would be incurred by the Participating Councils if they were to use the WALGA Preferred Supplier Panel to purchase waste collection services.*
- (b) *Please provide an estimate of the expected reduction in transaction costs for the Proposed Conduct (in time and/or monetary value, where possible), and explain the basis on which the estimate has been made. Please also estimate the time period in which the reduction is expected to occur.*

EMRC Response

8. The figures used in the table of comparative service costs provided on 19 January 2022 ('current figure'), were current service costs provided by the Participating Councils based on their contracts procured through the WALGA Preferred Supplier Panel. The WALGA Preferred Supplier Panel is a mechanism for councils to use to simplify and standardise their tender processes. The WALGA Preferred Supplier Panel does not set the costs of the contracted services. The successful bidder pays to WALGA an annual management cost of 0.75% quarterly for the term of the contract. There would be no difference in offered service costs put forward by tenderers whether they bid through the WALGA Preferred Supplier Panel or an open tender.
9. In "the table of comparative service costs provided on 19 January 2022 ('current figure') it is estimated that the time required to establish, manage and monitor a collection contract with a contractor would be the equivalent of [REDACTED] per annum in staff hours, across a number of staff positions, for each Participating Council. This includes, setting up administration/invoicing systems, monitoring performance, attending monthly performance meetings, monitoring data, contract budget management, etc. Participating Councils will still need to manage the service in the same way with the EMRC service, however it is expected that as EMRC's reporting will be tailored to and agreed to by the Participating Councils this would alleviate the number of hours of staff involvement with monitoring of the service. The costs are likely to be similar for the first year of the contract, however it is expected when administration and reporting systems are established and the Participating Councils are confident that the services provided and the reporting is being delivered as expected, that savings would eventuate after the 2nd year of service. The savings would be seen in the number of hours across multiple Participating Council staff that need to be involved in management of the service and this cannot be predicted.

Regarding environmental benefits (education services): To the extent not already addressed in your response submission of 24 March 2022, please provide additional factual information responding to the following points raised in paragraph 3.1(a)-(b) of the SUEZ submission (dated 9 March 2022):

- (a) *the nature and scope of the education services currently provided by the WA Waste Authority through the WasteSorted and Better Bins Programs.*
- (b) *the nature and scope of the education services the EMRC currently provides to member councils as part of its 'Stakeholder Waste Education' program.*
- (c) *with reference to the education services that are currently provided by the WA Waste Authority and the EMRC, further detail about how the Proposed Conduct will result in the EMRC providing comparatively better education services to Participating Councils and give rise to related environmental benefits. For example, please explain how consistent branding of bins and collection vehicles will contribute to the claimed benefits.*

EMRC Response

10. The nature and scope of the education services currently provided by the WA Waste Authority through the WasteSorted and Better Bins Programs:
11. The Suez statement in 3.1(a) of their 9 March 2022 submission is incorrect. Please note that the WA Waste Authority doesn't provide education services directly. It funds a range of programs to support the Waste Strategy 2030, examples of which are WasteSorted, FOGO implementation, Household Hazardous Waste (HHW) collection, illegal dumping taskforce, etc. The WasteSorted program has grants for infrastructure and community education to help community groups, commercial operations and Local Governments fund projects that support the Waste Strategy. The WasteSorted Program also has a toolkit which it developed with assistance from the EMRC and many other LG's but EMRC was one of the first to assist.
12. The WasteSorted Better Bins Plus: GO FOGO program offers funding to Local Governments to support implementing a FOGO service. Some LG's elected to run the Bin tagging program for its residents via funding from the Better Bin's Plus program under Complementary Measures.

13. Before Better Bins Plus funding, WALGA received annual funding from the Waste Authority to partially cover the cost of Bin Tagging to a number of LG's. Councils were selected by registering an interest with WALGA who then determined the dispersion of funds depending on the funds available. Over the last two years, LGs can select Bin Tagging via Better Bins Plus, either through Complementary Measures or funded directly by the Council from surplus funds left after their FOGO rollout.
14. WALGA provides a forum for ensuring consistent messaging through its Consistent Communication Collective (CCC) Forums. This is a working group of WALGA and they also provide the bin tagging materials for use in the bin tagging program.
15. The nature and scope of the education services the EMRC currently provides to member councils as part of its 'Stakeholder Waste Education' program is set out below.
16. The EMRC's Sustainability Team provide holistic services in the area of waste education and waste service and urban environment programs and services. The EMRC's Waste Education Team provides a wide range of services that are not exclusively for the benefit of member Councils and the Team is also doing fee for service work for other Councils. Services and programs being provided include:
 - (a) A State Government trial with a range of schools that align with the Education Department's new Sustainability Strategy is underway and being run by the EMRC. The schools in the trial are being assessed as to their undertaking of their 'bin configurations', their understanding of the various Common Use Agreements that are in place; the composition of the waste being collected in the schools; and audit of this waste; and instilling an understanding of how FOGO could work in schools and how that could translate to the home.
 - (b) Ongoing liaison with the Department of Communities about how best to deal with waste contamination in social housing precincts. The learnings and associated actions as a result of discussion will become 'best practice' across the state.
 - (c) A focus on textiles, (keeping textiles in circulation for as long as possible) and running workshops across the region on how to maximise textiles in circulation and therefore minimise waste.
 - (d) A focus on a series of webinars throughout 2022 (nine in total) are being delivered to audiences across WA and interstate on various topics that link to waste services, including:
 - What is a Circular Economy? Case Study on how to achieve Net Zero.
 - How to Accelerate Circularity in Local Governments.
 - Plastic Ban Best Practice and CE.
 - Re-Thinking Textiles to Embrace Circularity.
 - Circular Economy Helping to Reduce Biodiversity Loss.
 - Enabling Circular Economy to Reduce Food Waste.
 - How to Embrace Circularity in Your Home.
 - Procurement in a Circular Economy for Local Government.
 - Paving the Way Toward Net Zero Emissions: Decarbonated Alternative Raw Materials.
 - (e) Tours of the Red Hill Waste Management Facility to schools, interested groups and other Councils.
 - (f) Education sessions are held at our Waste Education Centre, situated at the Red Hill Waste Management Facility.
 - (g) Organised tours of the MRF's outside our region to interested persons.
 - (h) Running Earth Carer's programs.
 - (i) Producing Waste Guides for Member Councils.
 - (j) Sharing waste education information on social media platforms including LinkedIn and Facebook to ensure maximum reach.
 - (k) Assisting our member Councils and other Councils with development of their Waste Plans.
 - (l) Undertaking comprehensive bin tagging for member Councils utilising a skilled and dedicated bin tagging team.

- (m) Undertaking a very successful battery collection program with schools and public places throughout our region. This also includes CFL collections.
 - (n) Designing new repositories for problematic wastes including batteries, aerosols, plastics etc.
 - (o) Providing a polystyrene compactor solution for disposal and compaction of polystyrene to keep it out of landfill.
 - (p) Hosting a Waste Education Community Reference Group and educating them to become advocates throughout the region on all aspects of waste avoidance, best practice waste management and resource recovery solutions. This is a two-way exchange of information and ideas.
 - (q) Hosting a Regional Waste Education Officers' Group to ensure best practice, again with a two-way exchange of ideas and information.
 - (r) Providing education support to our four Community Recycling Centres including education on household hazardous wastes'.
 - (s) Promoting the use of the soil conditioner being made from our processed FOGO, which is being bagged and provided back to residents for their own gardens.
 - (t) Undertaking research on waste management, resource recovery, and waste avoidance opportunities and sharing this with relevant Councils.
 - (u) Assisting member Councils with their roll out of the three-bin system and their transition to FOGO.
 - (v) Working with DWER to ensure all Waste Sorted materials are fit for purpose and adaptable for all local governments.
 - (w) Provision of general waste education for all three bins.
17. The EMRC's Waste Education Team is also a member of the Consistent Communication Collective (CCC) which is overseen by WALGA. We are a very active member to ensure consistent communication is the key to best waste management practices and messaging. This type of consistent messaging is also being conveyed to schools in our Region. The EMRC has a dedicated team of 6 educators who are being sought out by other Councils, due to the quality of service we provide.
18. With reference to the education services that are currently provided by the WA Waste Authority and the EMRC, further detail about how the Proposed Conduct will result in the EMRC providing comparatively better education services to Participating Councils and give rise to related environmental benefits. For example, please explain how consistent branding of bins and collection vehicles will contribute to the claimed benefits.
19. Consistent branding of bins and collection vehicles will mean that the residents in these three Council areas will get the same messaging about the different bin systems, recycling, resource recovery and how to do the right thing that will drive higher quality source separation of wastes and lower contamination in the different bins, and deliver environmental benefits from the reduction in waste going to landfill. At present, there are three different collection contractors, three lots of branding and potentially three lots of waste education messaging.

Public Detriments

In the EMRC's response (24 March 2022) to paragraph 4.2 of SUEZ's submission (9 March 2022), the EMRC states at paragraph 21 that it "rejects the comments and opinion of SUEZ. These are not new issues...". Please provide further information regarding the reasons why the Applicants reject SUEZ's comments, which we do understand to raise some new issues, including information on: (a) why the absence of bundled prices will not lead to higher prices; and (b) whether the EMRC has additional evidence to substantiate its claims about cost savings from route optimisation, including any estimate the EMRC has of the likely magnitude of these savings.

EMRC Response

20. Suez has already raised many of the public detriment issues in its initial submission to the ACCC. Suez has not seen the EMRC confidential price modelling (provided to the ACCC) and the Suez view that the Proposed Conduct may lead to higher prices for residents of Participating Councils is not based on Suez analysis of the confidential price modelling, but is largely based on its own observations, views and suppositions with limited independent supporting evidence.
21. In regards to the new issues raised by Suez:
- (a) The three participating Councils potentially receive bundled pricing for the collection and processing of the recycling bin for their current kerbside collection service from SUEZ and Cleanaway. The EMRC currently provides general waste landfill disposal and FOGO processing for the Participating Councils at a member Council rate at its Red Hill Waste Management Facility, in addition to waste education, resource recovery at its Hazelmere Resource Recovery Park, environmental management and regional development services. The EMRC believes that the economies of scale from a joint approach to market for recycling bins to be processed at the one material recovery centre by the participating Councils would deliver similar cost savings as a bundled recycling collection and processing cost.
 - (b) Note that the EMRC will be passing on the full cost base as the services are being established, contrary to Suez's claim in paragraph 4.2 (a) of their submission (9 March 2022).
 - (c) Suez have also referenced section 3.24 of the ACCC Draft Determination which noted that the City of Swan was going to provide the initial base fleet and support services to transition the Proposed Conduct. This statement was made in the EMRC's letter of 6 December 2021 (Ref: D2021/24943) but is incorrect and we apologise. It was considered back in 2007 that either the EMRC or the City of Swan could provide an in-house regional waste collection service but not that the City of Swan could provide the initial base fleet and support services to enable the EMRC to transition into such a collection service.
 - (d) Regarding additional evidence to substantiate its claims about cost savings from route optimisation, including any estimate the EMRC has of the likely magnitude of these savings. The EMRC has no additional evidence at this stage. This assertion is based on the experience of one of our consultants who was the City of Swan's Fleet and Waste Manager for 15 years until retiring in 2020.

Competitive Neutrality

Please explain the extent to which the EMRC is likely to have competitive advantages or disadvantages in undertaking the Proposed Conduct, as compared to a private operator providing those services. To the extent possible, please do this with reference to the 'potential competitive advantages' and 'potential competitive disadvantages' outlined in the WA Policy on Competitive Neutrality and/or the Local Government Statement.

EMRC Response

22. We consider it is clearer and more useful to refer to the WA Policy Statement rather than the Local Government Statement. The issue is whether the proposed regional waste collection service has a competitive advantage over potential competitors as a result of its ownership by EMRC. Clause 3(1) of the Competition Principles Agreement (11 April 1995 as amended to 2007) (CPA) requires that government businesses should not enjoy any net advantages simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, and not to its non-business activities.

23. In an analysis of competition neutrality issues for the Proposed Conduct by EMRC's legal advisers the following potential competitive advantages for EMRC (as compared with a commercial firm) were identified:
 - (a) There could be reduced direct costs of operating the business on the part of the EMRC because we will be using our own land. A commercial business either renting or owning its own premises will have to allow either for the cost of rent or for a realistic rate of return on the capital value of its land, including recovery of rates.
 - (b) There could be an indirect subsidy in the form of the sharing of costs, since the EMRC would be making available significant existing infrastructure and staff which it might not attribute any costs recovery to the business. This would not apply to staff (such as manager for waste collection services, workshop coordinator, fitters, truck drivers, and administrative staff), but would apply generally to facilities made available for other Local Government purposes, if provided to the business enterprise without recovery of costs and overheads.
 - (c) EMRC would be able to operate without the pressure of business risk.
 - (d) EMRC could potentially have access to cheaper finance, if we could obtain Treasury funding at a less than commercial rate.
 - (e) EMRC would not have a comparable requirement to earn a rate of return on capital to a commercial business.
24. The EMRC has elected to adopt a full cost attribution model to ensure that it complies with its competitive neutrality obligations (pursuant to clause 3(4) of the Competition Principles Agreement (11 April 1995 as amended in 2007)) (see <http://ncp.ncc.gov.au/docs/Competition%20Principles%20Agreement,%2011%20April%201995%20as%20amended%202007.pdf>) and will price the waste services on a commercial basis and adopt cost reflective pricing to reflect full cost attribution. The EMRC is also not able to borrow funds from Treasury without the approval of the member Councils, which approval is highly unlikely. The EMRC does operate as a business and therefore faces standard business risks. In relation to the requirement to earn a rate of return on capital, while the EMRC is not a public company with shareholder, it still faces the same pressure as privately owned waste operators to obtain a commercial return on capital expenditure.
25. EMRC has identified the following potential competitive disadvantages that EMRC may face (as a government business) that are not faced by private sector competitors:
 - (a) Government businesses may be subject to a range of whole of government policy and reporting requirements not applicable to the private sector (which may involve administrative or commercial costs) including:
 - (i) administrative law requires (FOI, equal employment opportunity, government purchasing practices, borrowing limits);
 - (ii) centralised superannuation, insurance and borrowing arrangements;
 - (iii) constraints on capital funding;
 - (iv) duplication of accounting and banking systems as a result of government businesses running commercial systems within the Budget sector; and
 - (v) industrial relations policies.
 - (b) Government businesses may be subject to varying degrees of Ministerial intervention.
 - (i) with potential delays in decision making or making of decisions on non-commercial grounds.
 - (ii) government businesses can also be subject to Ministerial requests for advice and draft correspondence;
 - (iii) the Minister has the power to close down the EMRC waste service contracts if the waste collection service is not up to scratch for local governments. This power has never been used, but is still available to the Minister.
 - (c) Government business may be subject to employment terms and conditions which are more expensive and less flexible than those available in the private sector. Examples include superannuation, service wide pay and conditions, permanency, recruitment process, redundancy processes and costs, and access to part-time casual and contract labour.

- (d) Government businesses may be subject to Parliamentary scrutiny, which may be more onerous than shareholder accountability in the private sector (or none for a private company). There may be potential for commercial confidentiality to be overridden by public scrutiny requirements.

We note the EMRC's previous statement in its submissions of 6 December 2021 and 24 March 2022 that the EMRC is satisfied that the requirements of the National Competition Policy have been met with regard to the Proposed Conduct. Please explain whether the EMRC reports to another external body on its compliance with the National Competition Policy or related principles of competitive neutrality. If so, please provide any such reports relating to the Proposed Conduct if applicable, or alternatively the most recent version of such an external report regarding the EMRC's other activities. Please also provide the most recent assessment from an external monitoring body (if any) in relation to whether the EMRC has complied with principles of competitive neutrality.


EMRC Response

26. The EMRC does not report to any outside body with regards to compliance to the National Competition Policy. Compliance with the NCP is more in the nature of self-governance as it is with a lot of matters relating to good governance and adherence to relevant legislation.
27. Relevant Commonwealth and WA statutory instruments dealing with governance and enforcement of competitive neutrality provisions by local governments in WA are as follows:
28. Clause 3(8) of the Competition Principles Agreement (11 April 1995 as amended to 2007) requires each state and territory to establish a complaints mechanism to oversee the application of competitive neutrality principles. For public sector agencies in WA such complaints are lodged with, and investigated by, the Public Sector Management Sub-Committee of Cabinet. Local governments are not a public sector agency, and have their own complaint process.
29. Complaints against local governments in Western Australian fall under Principle CN.9 in the Western Australian Local Government Clause 7 Competition Policy Statement (adapted from cl 3(8) of the CPA), which provides that:
- "Where a private business that is in competition (or potential competition) with a local government entity to which the competitive neutrality principles apply, believes that the entity is not complying with this statement, it may make a written submission to the Department of Local Government setting out the allegations of non-compliance with the principles."*
30. Principle CN9 will apply to the EMRC, as a regional local government.

We trust the above responses satisfy the further questions from the ACCC. We consent to the response being published on the public register.

Please do not hesitate to contact me if there are any queries or if you require any further information.

Your sincerely



Marcus Geisler
Chief Executive Officer