



Australian
Competition &
Consumer
Commission

Draft Determination

Application for authorisation A91504

lodged by

The Australian Paint Manufacturers'
Federation on behalf of itself, Paint
Stewardship Limited and certain paint
manufacturers and importers

in respect of

a proposed National Paint Product
Stewardship Scheme which introduces a 15
cents per litre levy on Architectural and
Decorative Paint

Date: 10 September 2015

Authorisation number: A91504

Commissioners:
Sims
Rickard
Court
Featherston
Schaper
Walker

Summary

The ACCC proposes to grant authorisation to enable paint manufacturers and importers to agree to impose a 15 cents per litre (plus GST) levy on Architectural and Decorative paint. The levy is part of a National Paint Product Stewardship Scheme overseen by the Australian Paint Manufacturers' Federation to increase the proper collection and disposal of unused A&D paints.

The ACCC proposes to grant authorisation until 1 June 2021 and will seek submissions in relation to this draft determination before making its final decision.

The Australian Paint Manufacturers' Federation seeks authorisation on behalf of itself, Paint Stewardship Limited and certain paint manufacturers/importers (together, **the Applicants**) to impose a levy of up to 15 cents per litre (plus GST) on the supply of certain architectural and decorative paint and woodcare products (together, **A&D paints**). The levy is part of a National Paint Product Stewardship Scheme (**the Scheme**), which will provide a nationally co-ordinated approach to the collection and proper disposal of A&D paints.

The Federation was previously granted authorisation to conduct a trial Paint Product Stewardship Scheme in Victoria. The authorisation covered the imposition of a national levy on A&D paints. However, due to difficulties in applying a national levy to support a regional trial, the levy was never imposed. The Federation did participate in a waste A&D paint disposal trial in Victoria in 2013. The current application draws upon the experience gained from that trial.

Participating paint manufacturers and importers will include the levy in the wholesale price of A&D paint they supply. This supply occurs on a wholesale basis to retailers (who re-supply to domestic and trade customers) and, through manufacturer-owned trade centres, on a retail basis directly to trade customers. The Applicants expect that the cost of the levy will be passed on by retailers to domestic and trade consumers.

The funds collected by the levy will be received by Paint Stewardship Limited to fund the Scheme. One of the main components of the Scheme will be to contract with state, territory and local governments and waste service providers for the collection and safe disposal of waste A&D paint.

By ensuring that most consumers pay closer to the full cost of the affected products to society, the levy should result in a more efficient allocation of resources throughout the economy, with the funds collected through the levy allocated to the safe disposal of A&D paints. A&D paints contain a number of environmentally harmful substances and can pose an environmental hazard if disposed of improperly. The ACCC considers that the introduction of the Scheme as funded through the levy is thereby likely to produce environmental benefits by increasing the collection of waste A&D paint in Australia and reducing its improper disposal. There are also likely to be cost efficiencies from decreasing the cost of disposal of waste A&D paint in Australia.

The ACCC considers that the waste paint collection scheme is unlikely to produce significant public detriment. The imposition of a uniform levy on the wholesale supply of A&D paint is unlikely to significantly impact competition at either the wholesale or retail levels of the supply chain. The ACCC notes that the size of the levy is small relative to the cost of A&D paints.

The ACCC considers that the likely significant public benefits of the Scheme outweigh the likely public detriments and proposes to grant authorisation until 1 June 2021. The ACCC will seek submissions on its draft determination before making its final decision.

The application for authorisation

1. On 29 June 2015, the Australian Paint Manufacturers' Federation (**APMF**), on behalf of itself, Paint Stewardship Limited (**PSL**) and certain paint manufacturers/importers (together, the **Applicants**) lodged an application for authorisation¹ (A91504) with the ACCC. The Applicants are seeking authorisation until 1 June 2021 to introduce a 15 cents per litre (plus GST) levy (**the Levy**) on Architectural and Decorative paint (**A&D Paint**) sales. The levy is part of a National Paint Product Stewardship Scheme (**the Scheme**).

Background

2. Product stewardship involves the acknowledgement that all those involved in the production, retailing, use and disposal of products have a shared responsibility to manage the environmental impacts of those products.
3. Federal, state and territory governments have been working with the A&D paint industry to establish product stewardship arrangements for a number of years. In April 2013 waste A&D paint was placed on the 2013/2014 Council of Australian Governments work plan for environmental project priorities.
4. The APMF was granted authorisation in 2011 to impose a levy on wholesale sales of A&D paint. The funds which would have been raised by that levy would have funded a 12 month waste paint collection scheme trial in Victoria. However, due to difficulties in imposing a national levy to fund a regional trial the levy was never collected. The APMF did participate in a waste paint collection trial in Victoria in 2013. The APMF's current application for authorisation has been informed by its experience in this trial, including valuable data gained on waste paint collection volumes and practical steps to improving waste paint collection.
5. The Applicants submit that significant volumes of waste A&D paint are currently stored or disposed of improperly, including that:²
 - on average, 7.2 per cent (by weight) of A&D paint sold in Australia becomes waste
 - around half of waste A&D paint is disposed of improperly by being turned into landfill.
6. The primary consumers of paint in Australia can be divided between trade and domestic consumers. Trade painters provide commercial painting services, whereas domestic consumers use paint as a part of ordinary household activities, such as renovations. The disposal options for each of these consumer groups are different. There are currently, to varying degrees, state, territory and local government funded programs which can collect domestic waste A&D paint. Most of these programs do not accept trade waste A&D paint. The Applicants submit that where trade waste A&D paint is accepted under these schemes, a fee is usually charged which creates a disincentive for trade users, resulting in significant, unsafe, stockpiles of trade

¹ Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the Competition and Consumer Act 2010 (the CCA). Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the CCA but nonetheless consider there is an offsetting public benefit from the conduct. Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at www.accc.gov.au/publications/authorisation-guidelines-2013

² See Applicants' submission page 3

waste A&D paint with intermittent disposals to landfill. The Applicants say that as around half of waste paint in Australia is disposed of improperly, there is good reason to believe there is a need for more extensive and more widely used disposal options for waste paint.

The Scheme

7. The Applicants will introduce the Scheme, which is intended to reduce the environmental harms created by the improper storage and disposal of A&D paints from both trade and domestic users. The Scheme will be created by way of a Waste Paint Collection and Treatment Scheme Agreement (**the Waste Paint Agreement**) which sets out the rights and responsibilities of Scheme participants.
8. The Scheme's elements will be comprised of:
 - creating a special purpose corporate entity, PSL, to carry out activities under the Scheme
 - PSL contracting with state, territory and local governments and waste service providers for the collection and safe disposal of waste A&D paint (**the waste paint collection program**), including using and expanding existing disposal facilities
 - charging the Levy on all sales of A&D paint by scheme members to any consumer, whether trade or retail, and remitting the Levy to PSL
 - undertaking education, awareness and information activities to promote the waste collection operations
 - monitoring, auditing and reporting on the development of the Scheme
 - administering a program of research into new end-of-life uses for waste A&D paint and collection processes, including establishing an independent Research Advisory Committee to advise PSL's board on priority areas, undertake robust assessments of any proposals and provide expert advice.

Scheme membership

9. Any paint manufacturer or importer can be a member of the Scheme by signing the Waste Paint Agreement. The following APMF members will be signatories to the Waste Paint Agreement at its launch:
 - DuluxGroup (Australia) Pty Ltd
 - Valspar Paint (Australia) Pty Ltd
 - PPG Industries Australia Pty Ltd
 - Henry Haymes Pty Ltd
 - Resene Paints (Australia) Ltd.
10. These initial participants account for approximately 90 per cent (by volume) of all A&D paint supplied in Australia.
11. It is not necessary for a paint manufacturer or importer to be a member of APMF to sign the Waste Paint Agreement and participate in the Scheme.

12. The Waste Paint Agreement establishes a number of obligations on Scheme members, including:

- imposing and collecting the Levy
- remitting the levy to PSL in set periods
- confidentially providing detailed information to PSL about sales, including the net volume of A&D paint sold, the amount of levy contributed and the total GST applicable to the levy remittance
- paying interest on any levy remittance not paid within the required period
- identifying on customer invoices those products that incur the levy and the total amount of levy payable. This obligation will not apply if a Scheme member's IT and invoicing systems are not sophisticated enough to undertake this process, however a Scheme member will only be exempted from this obligation after applying to PSL.

The Levy – the proposed conduct

13. As noted above, the Levy, the proposed conduct under the application, will be charged at a rate of up to 15 cents per litre of paint sold (plus GST) by Scheme members and remitted to PSL. The Levy will fund the activities of PSL in carrying out the waste paint collection program. In the event of the closure of the Scheme and the winding up of PSL, no property, including excess Levy collected will be returned to the members of PSL. Instead the Waste Paint Agreement requires the funds to be spent on projects similar to the waste paint collection program.

The waste collection program

14. PSL will administer the waste paint collection program. It will contract with state, territory and local governments and relevant waste service providers for the collection of waste A&D paint. The waste paint collection program will be rolled out by region.

15. The Applicants expect the waste paint collection program to commence in May 2016 and be implemented in three stages:

- Stage one, which will occur in the Scheme's first 12 months, will involve rolling out new arrangements in capital cities, through a combination of existing permanent sites and mobile collection services. This will include PSL commencing to fund the collection and disposal of waste A&D paint that is currently funded by state, territory and local government.
- Stage two, occurring in years two and three, will extend the waste paint collection program to key regional cities and rural locations, with the aim of having 75 per cent of Australia's population within either 20 km of a metro collection site or 40 km of a regional site.
- Stage three, occurring in years four and five, will further extend the scheme with the aim of having 85 per cent of Australia's population within either 20 km of a metro collection site or 40 km of a regional site.

16. The Scheme will cover the products listed in the table below, subject to the exclusions listed.

A&D Paint product covered by Scheme	Product not covered by Scheme
<ul style="list-style-type: none"> • Interior and exterior architectural paint • Deck coatings and floor paints • Primers, undercoats and sealers • Stains and shellacs • Varnishes and urethanes (single component) • Wood coatings 	<ul style="list-style-type: none"> • Industrial maintenance coatings • Original equipment manufacturer (eg car manufacturing) and industrial surface coating (shop application) paints and finishes • Aerosol paints • Automotive paints • Anti-fouling coatings • Melamine, metal and rest preventative • Caulking compounds, epoxies, glues or adhesives • Colorants and tints • Resins • Paint thinners, mineral spirits or solvents • Paint additives • Roof patch or repair • Tar-based or bitumen-based solvents • 2-component coatings • Traffic paints • Texture coatings • Bagged renders • Isocyanates • Metal Coatings • Paint Washings

17. Over the period of the authorisation, the Applicants estimate that the following tonnages of waste A&D paint are likely to be collected:³

Estimated Tonnages			
Period	Retail	Trade	Total
End Year 1 (June 2017)	4,209	2,736	6,945
End Year 2 (June 2018)	6,013	3,608	9,621

³ Applicants' submission, page 7, Table 3.

End Year 3 (June 2019)	6,405	3,202	9,607
End Year 4 (June 2020)	6,822	2,729	9,550
End Year 5 (June 2021)	7,265	2,180	9,445

18. These estimates are based on confidential modelling prepared by the Applicants. These estimates indicate that, based on the Nolan Consulting report prepared by the applicants, over 75 per cent of total waste paint generated each year is expected to be collected by Year 5 of the Scheme
19. The collection program will involve both trade and retail paint users delivering waste A&D paint and waste A&D paint containers to fixed and mobile collection centres. Waste paint will then either be repurposed or recycled where possible. Where this is not possible it will be safely disposed of in landfill after being subject to specialist treatment to remove the dangers of hazardous chemicals.

Consultation

20. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
21. The ACCC invited submissions from a range of potentially interested parties including major competitors, suppliers, customers, relevant industry associations or peak bodies, consumer groups, state, territory and federal government and relevant regulatory bodies.⁴ All of the submissions received were supportive of the application.

ACCC assessment

22. The ACCC's assessment of the proposed conduct is carried out in accordance with the relevant net public benefit tests⁵ contained in the *Competition and Consumer Act 2010* (Cth) (the **CCA**). In broad terms, the ACCC may grant authorisation if it is satisfied that the likely benefit to the public from the proposed conduct would outweigh the likely detriment to the public, including from any lessening of competition.

Relevant areas of competition

23. The ACCC notes that the conduct involves the imposition of a levy by participating paint manufacturers and importers on the wholesale supply of A&D paint, as well as on the retail supply of A&D paint through manufacturer-owned trade centres. It is expected that the full cost of the levy will be passed on to end consumers. Therefore the ACCC considers that the areas of competition which are most relevant to the application are the wholesale and retail supply of A&D paint in Australia.

⁴ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

⁵ Subsections 90(5A), 90(5B), 90(6) and 90(7).

Future with and without

24. To assist in its assessment of the proposed conduct against the authorisation tests, the ACCC compares the benefits and detriments likely to arise in the future with the conduct for which authorisation is sought against those in the future without the conduct the subject of the authorisation.
25. The ACCC considers it unlikely that individual paint manufacturers or importers will unilaterally impose a levy to fund the disposal of waste A&D paint and paint containers, as they may lose customers to a competitor who does not impose a levy. Further, if manufacturers unilaterally implement waste paint collection schemes, such schemes may be limited to the products of that manufacturer, as it is unlikely that an individual manufacturer would bear the cost of disposing of waste paint and waste paint containers produced by their competitors.
26. Therefore the ACCC considers that without the conduct there will be no nationally co-ordinated waste A&D paint disposal or stewardship scheme and the need for expanded waste paint disposal services will continue.

Public benefit

27. The CCA does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Tribunal which has stated that the term should be given its widest possible meaning, and includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.⁶

28. Having regard to the submissions of the Applicants and interested parties, the ACCC's assessment of the likely public benefits from the proposed conduct is as follows.

Pricing to reflect the externalities in paint supply

29. The Applicants submit that a market failure exists in the market for A&D paint because, absent the levy, the price of paint fails to take into account the full social cost associated with the improper disposal of paint products.
30. In general, competition can be relied on to deliver the most efficient market outcomes. However, in circumstances where there is market failure (for example, from information asymmetries or externalities) the competitive outcome of the market is not the most efficient.
31. In relation to A&D paint, the ACCC notes that externalities exist in wholesale and retail supply of A&D paint in Australia. In particular, the ACCC considers that the following issues are relevant:
 - the benefits from the proper disposal of waste A&D paint, as well as the costs of improper disposal, accrue primarily to external parties; that is, the public at large through the protection of health and safety as well as the environment, rather than to paint manufacturers or users

⁶ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

- neither the operation of a competitive market, nor any legislative obligation imposed on paint manufacturers or users currently provide sufficient incentives to ensure the proper disposal of waste A&D paint.
32. Hence, an efficient method for the disposal of waste paint requires collective agreement by paint manufacturers, rather than action by individuals, to fund a waste paint collection scheme. This is because unilateral imposition of a levy would likely put that party at a competitive disadvantage.
33. The ACCC considers that introducing the levy is likely to lead to greater allocative efficiency as consumers will pay closer to the full social cost of A&D paint and hence more resources will be allocated to its safe disposal. An increase in the price of paint to internalise the social cost of improper disposal may also slightly reduce the amount of paint used (and hence produced); however, given the size of the levy, this is unlikely to be significant.

Environmental benefits

34. As noted above, the Applicants submit that half of both consumer and trade waste A&D paint is currently disposed of in landfill, rather than through a proper hazardous chemical disposal service, or is stockpiled. Both of these situations can be hazardous. Waste A&D paint can contain dangerous chemicals, such as hexamethylene diisocyanate which can be harmful to the environment and to health, for example by exacerbating respiratory conditions.
35. Absent an industry stewardship arrangement there is potential for significant volumes of waste A&D paint in Australia to continue to be improperly disposed of with the resulting damage to the environment from seepage into soil and water systems of heavy metals, dyes, acids, alkalis and other contaminants.
36. The Applicant advises that approximately 152.7 million litres of water and solvent based A&D paint is sold each year in Australia.⁷ The Applicants submit that significant volumes are improperly disposed of through general waste that ends up in landfill, or is stockpiled.
37. The Applicants submit that the Scheme will produce environmental benefits through:
- increasing the volume of A&D paint that is properly recycled or disposed of and reducing the volume of paint and paint containers sent to general landfill
 - educating and encouraging retail and trade paint users to return waste A&D paint for collection and proper disposal
 - funding new investments in research to identify more efficient and effective methods for safely disposing of waste A&D paint and containers.
38. The Applicants predict that over the course of the Scheme there will be 45,168 tonnes of paint collected and safely disposed of or reused.
39. The benefits of the scheme are likely more pronounced for trade painters. At present there is no consistent national scheme for the collection or treatment of trade waste paint. At present, unused paint is either stockpiled at businesses' premises, left for storage by the householder, disposed of through a commercial

⁷ Applicants' submission, Attachment 1, page ii

waste provider at a cost to the painter, or disposed of improperly. The Applicants claim that few trade contractors have a disposal practice and, of those who do, it largely consists of stockpiling waste paint with intermittent disposals to landfill.

40. The ACCC considers that the provision of conveniently located collection facilities for trade waste paint and free disposal at those facilities, will make it easier and cheaper for trade painters to dispose of waste paint and containers properly. This should increase the amount of A&D paint that is properly disposed of which should in turn result in benefits to the environment. The ACCC notes the support of the Master Painters Association of Australia, a representative body for the trade of painters, for the waste paint collection scheme as a method for increasing the collection of waste A&D paint.
41. The ACCC considers that, for the environmental benefits to be realised it is essential to increase awareness among consumers of the environmental harm caused by improper disposal of waste A&D paint and of the availability of facilities to properly dispose of waste paint under the waste paint collection scheme. The ACCC notes that PSL will promote the existence of the new scheme for trade paints, which is likely to educate and encourage trade painters to return waste A&D paint for proper disposal, free of charge. The Applicants have provided detailed plans on the type of promotional activities that PSL will undertake (using in excess of 15 per cent of PSL's budget), including through: establishing a strong brand; trade and mainstream media advertising; and point of sale materials. The ACCC considers that these activities will likely increase participation in the scheme which should make it more likely that the environmental benefits will be realised.

Cost efficiencies

42. The Applicants claim that the proposed waste paint collection scheme will, by increasing scale and allowing for economies of scale, improve the efficiency of the management and collection of post-consumer A&D paint, which is currently operated by state, territory and local governments. In particular, the Applicants argue that substantial public benefits can be generated if the current taxpayer funded programs are supported and expanded under the Scheme, as funded through the levy.
43. The ACCC considers there are likely to be improved cost efficiencies from the proposed industry Scheme for the management and collection of post-consumer A&D paint relative to the current arrangements. This is particularly likely considering the promotional activities that PSL will undertake, as set out above. Increasing both the volume of paint collected and treated through the acceptance of trade waste paint as well as expanding paint collection facilities, is likely to provide economies of scale and thereby reduce the per-unit cost of treating and disposing of waste A&D paint.
44. The ACCC notes that as the waste paint collection Scheme is likely to result in an increase in the total volume of waste A&D paint collected, it may make available more efficient methods of recycling, which are uneconomical with smaller volumes of waste paint. This may also lead to the greater availability of cheaper recycled paint products.

ACCC conclusion on public benefits

45. The ACCC considers that the introduction of the Scheme is likely to result in public benefits in the form of greater allocative efficiency as consumers will pay closer to

the full social cost of A&D paint and hence more resources will be allocated to its safe disposal. The provision of conveniently located collection facilities and free disposal at those facilities should also increase the amount of waste A&D paint that is properly disposed of, with resulting environmental benefits in the form of reduced landfill disposal or stockpiling of waste A&D paint. In addition, there are likely to be cost efficiencies from decreasing the marginal cost of disposal of waste A&D paint through cooperative arrangements.

Public detriment

46. The CCA does not define what constitutes a public detriment and the ACCC considers its meaning as essentially the opposite of public benefit. In this regard the Tribunal has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principle elements the achievement of the goal of economic efficiency.⁸

47. Having regard to the submissions of Applicants, interested parties and information available to the ACCC, the ACCC has considered the claimed public detriments below of the proposed conduct.

Effect on competition

48. In general terms, an agreement among competitors in relation to price is likely to lessen competition relative to a situation where each business individually makes its own pricing decisions.

49. The ACCC considers that paint manufacturers do not have an incentive to act unilaterally to fund the collection of waste paint. Therefore, to achieve the public benefits identified above manufacturers need to reach an agreement to collectively fund programs like the Scheme.

50. The ACCC does not consider that agreement to impose the Levy increases the likelihood of co-ordination among wholesalers or retailers on price and other areas in which they currently compete. In particular, the Levy will be set by Paint Stewardship Limited so as to ensure cost recovery of the Scheme, rather than impacting wholesale or retail profits. The ACCC notes that each participating paint manufacturer individually sets its own prices and then applies the Levy. Similarly, it is up to retailers to set their prices individually and decide whether to pass through all or some of the Levy to consumers. As such, the Levy is unlikely to meaningfully impact competition at either the wholesale or retail levels of the supply chain, either by increasing the likelihood of co-ordination or otherwise.

Waste paint recycling providers and other waste paint collection schemes

51. The ACCC notes that consumers seeking to properly dispose of waste A&D paint outside the Scheme would nonetheless be required to pay the levy. Such consumers would therefore pay for the Scheme despite not actually making use of the Scheme themselves. The ACCC notes that this issue would decrease over time as the Applicants aim to have 85 per cent of Australia's population within reasonable distance of a Scheme related disposal point.

⁸ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

52. To the extent that the Scheme bundles the cost of disposal with the purchase of A&D paint, this may constitute a barrier to entry to alternative waste paint disposal providers, including those that may be capable of disposing of waste A&D paint more efficiently than under the Scheme.
53. However, the Scheme will operate on a contract basis where PSL will be incentivised to seek out the most cost-effective means of disposing of waste paint. Accordingly appropriate incentives will still exist for waste disposal methods to develop, although this competition will occur in the context of seeking funding raised by the Levy. Therefore there may be some slight reduction in the possibility of alternatives to the Scheme being established. As noted above, the ACCC also considers that such unilateral competition is unlikely and accordingly any reduction in competition is not likely to be significant.

Increased prices for A&D paint

54. The ACCC considers that the Levy is likely to be passed on by retailers to consumers. As such the end price for A&D paint in Australia is likely to increase as a result of the Scheme's introduction. However the ACCC notes that the potential price increase that may result from the levy is small. The Applicants advise that the typical wholesale price of a standard four litre container of A&D paint is in the range of \$20 to \$80. The Applicants submit that the Levy will increase wholesale A&D paint prices by as little as 0.75 per cent and likely no more than 3 per cent. The end use price of paint will rise proportionally less than this amount.
55. To the extent that consumers pay closer to the full social cost of A&D paint, the price increase that may occur due to the levy is likely to signal a more efficient allocation of resources in the economy. In particular, the levy internalises the social cost associated with the improper disposal of A&D paint. The ACCC also considers that the potential increase in the price of A&D paint can be offset, to some extent, by the savings that may accrue to taxpayers, given that the waste paint collection scheme provides for the transfer of funding responsibility for the disposal of waste paint and containers from taxpayers to paint users.

ACCC conclusion on public detriments

56. The ACCC considers that the imposition of the Levy on the supply of A&D paint is unlikely to significantly impact competition at either the wholesale or retail levels of the supply chain. The Levy is likely to increase the price of paint; however, the ACCC does not consider that this price increase would produce significant public detriment and is in fact important to the realisation of the public benefits.

Balance of public benefit and detriment

57. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.
58. The ACCC is satisfied that the Scheme is likely to result in significant public benefits. These are associated with greater allocative efficiency and more resources being allocated to safe disposal of waste A&D paint, leading to environmental benefits in the form of reduced landfill disposal or stockpiling of waste A&D paint. In addition, there are likely to be cost efficiencies from the cooperative arrangements.

59. While the imposition of the Levy may result in an increase in the price of A&D paint in Australia at both the wholesale and retail level, the ACCC notes that the price increase due to the Levy is likely to be small compared to the total price of A&D paint and will assist in the capturing of the full social cost of A&D paint. Further, the Levy is otherwise unlikely to significantly impact competition for the sale of A&D paint at either the wholesale or retail levels.
60. The ACCC considers the significant public benefit that is likely to result from the waste paint collection scheme will outweigh the likely public detriment. The ACCC is therefore satisfied that the relevant tests are met and the ACCC proposes to grant authorisation.

Length of authorisation

61. The CCA allows the ACCC to grant authorisation for a limited period of time.⁹ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
62. In this instance, the Applicants seek, and the ACCC proposes to grant, authorisation until 1 June 2021.

Draft determination

The application

63. Application A91504 was made using a Form B, under subsection 88(1 and 1A) of the CCA. Authorisation is sought to make and give effect to the implementation of a levy of up to 15 cents per litre of the wholesale supply of A&D paint as part of a National Paint Product Steward Scheme.
64. Authorisation is sought as the proposed conduct may contain a cartel provision or may have the purpose or effect of substantially lessening competition or be a cartel provision within the meaning of the CCA.
65. Subsection 90A(1) of the CCA requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

66. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to sections 90(5A), 90(5B), 90(6) and 90(7) of the CCA, that in all the circumstances the conduct for which authorisation is sought is likely to result in a public benefit that would outweigh any likely detriment to the public constituted by any lessening of competition arising from the proposed conduct.

Conduct which the ACCC proposes to authorise

67. The ACCC proposes to grant authorisation A91504 to the Australian Paint Manufacturers' Federation, Paint Stewardship Limited and paint manufacturers or

⁹ Subsection 91(1).

importers who sign the Waste Paint Collection and Treatment Scheme Agreement to impose a levy of up to 15 cents (plus GST) per litre on all sales of architectural and decorative paint.

68. The ACCC proposes to grant authorisation A91504 until 1 June 2021.

69. Under section 88(10) of the CCA, the ACCC proposes to extend the authorisation to future parties to the proposed conduct.

70. This draft determination is made on 10 September 2015.

Next steps

71. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the CCA, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.