



**Metropolitan Waste and Resource Recovery Group & Ors –  
Application for revocation of authorisation AA1000451 and  
substitution with authorisation AA1000581  
Interim authorisation decision  
10 November 2021**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation AA1000451 and grant interim authorisation in substitution for the suspended authorisation. The interim authorisation is in respect of application for re-authorisation AA1000581, lodged by the Melbourne Waste and Resource Recovery Group (**MWRRG**), on behalf of itself and a group of 27 metropolitan Melbourne councils and 8 regional Victorian councils (together, the **Participating Councils**), and 3 other regional waste and resource recovery groups (**regional WRRGs**), on 8 October 2021.
2. Interim authorisation is granted to enable MWRRG, the Participating Councils and regional WRRGs to commence a tender process for the collective procurement of sorting services for commingled, kerbside recyclable material. Interim authorisation is granted only for the commencement of the tender process, and not the execution of any binding contracts.
3. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

**The application for re-authorisation**

4. On 14 February 2020, the ACCC granted authorisation [AA1000451](#) to enable MWRRG and 30 metropolitan Melbourne councils to conduct a collaborative tender process to procure sorting services for recyclable waste collected from kerbsides. The ACCC granted authorisation until 7 March 2041 which comprised 12 months to conduct the tender process and negotiate and enter into contracts, and 20 years to give effect to the contracts.
5. On 11 October 2021, MWRRG lodged an application for revocation of authorisation AA1000451 and substitution for a new authorisation AA1000581 (**re-authorisation**), due to:
  - changes in Commonwealth and Victorian government policies which necessitate a new approach to the procurement of recycling sorting services,<sup>1</sup> and
  - changes in the make-up of participating councils – 4 of the original metropolitan Melbourne councils<sup>2</sup> no longer wish to participant in joint procurement. However, 1

<sup>1</sup> In particular, the Victorian Government has updated its policy in relation to recycling, requiring segregation of glass collection by 2027 and diversion of 80% of waste from landfill by 2030.

<sup>2</sup> City of Darebin, Hume City Council, City of Maroondah and City of Melbourne.

new metropolitan Melbourne council,<sup>3</sup> 8 regional Victorian councils and 3 regional waste and resource recovery groups wish to participate in the proposed conduct.

6. Authorisation AA1000581 is sought to cover:

- MWRRG – a Victorian statutory body responsible for the strategic planning of waste management and resource recovery across metropolitan Melbourne
- the following councils in metropolitan Melbourne: Banyule City Council, City of Bayside, City of Boroondara, Brimbank City Council, Cardinia Shire, City of Casey, City of Frankston, the City of Greater Dandenong, City of Glen Eira, Hobsons Bay City Council, City of Kingston, City of Knox, City of Manningham, Maribyrnong City Council, City of Melton, Moreland City Council, City of Monash, Moonee Valley City Council, Mornington Peninsula Shire, Nillumbik Shire Council, City of Port Phillip, City of Stonnington, City of Whitehorse, City of Whittlesea, Wyndham City Council, Yarra City Council, Shire of Yarra Ranges
- the following councils in regional Victoria: Borough of Queenscliff, City of Greater Geelong Council, Colac Otway Shire Council, Corangamite Shire, Golden Plains Shire Council, Mildura Rural City Council, Southern Grampians Shire Council, Surf Coast Shire Council
- the following regional WRRGs: Barwon South West, Loddon Mallee and Grampians Central West Regional Waste and Resource Recovery Groups, and
- any new waste authority or other successor entity appointed for MWRRG and the 3 regional WRRGs.

7. MWRRG seeks re-authorisation to:

- conduct a tender process to procure recycling sorting services, evaluate responses from suppliers and negotiate contracts, on behalf of the Participating Councils and with support from the regional WRRGs
- establish a panel for suppliers to provide standing offers to supply recycling sorting services to the Participating Councils, at prices that will be maintained for the duration of the panel
- manage a ‘common gate fee’ mechanism between participating councils. This means, each supplier would continue to be paid the prices agreed with MWRRG under the contracts, however payments by the councils would be adjusted by MWRRG so that councils pay a more consistent price as between themselves when accessing suppliers with different rates,<sup>4</sup> and
- provide ongoing administration and management of the resulting contracts.

(the **Proposed Conduct**).

8. Under the Proposed Conduct, there would be no guarantee of volumes from councils to any supplier,<sup>5</sup> and councils would be free to decide whether to order any service from the suppliers.

---

<sup>3</sup> Wynham City Council.

<sup>4</sup> For instance, if the first council accessed less expensive processing from a supplier and exhausted the tonnage capacity available from that supplier, such that the second council then had to resort to a supplier with available capacity but a higher price, the amount paid by the two councils would be averaged via MWRRG effectively pooling their orders across the two suppliers.

<sup>5</sup> However, as MWRRG submits, ultimately councils have an ongoing obligation to deal with municipal waste, and so suppliers have some comfort as to total potential volumes.

## The authorisation process

9. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010 (Cth)* (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

## Interim authorisation

10. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
11. The MWRRG requested interim authorisation on the basis that:
  - most of the Participating Councils' existing contracts for recycling sorting services are due to expire in or around June 2021
  - the extensive time required to progress the overall tender process necessitates the commencement of the tender process as soon as possible, and
  - no binding contract will be entered into, unless and until the ACCC grants a final determination granting authorisation.

## Consultation

12. The ACCC invited submissions from a range of potentially interested parties including waste management companies, industry associations and government bodies. Five submissions from interested parties were received.
13. Moonee Valley City Council and Environment Protection Authority Victoria submit that they have no comment on the application.
14. Great Southern Waste Technology (**GSWT**), Cleanaway and SUEZ Recycling and Recovery (**SUEZ**) provided submissions opposing the request for interim authorisation. Cleanaway disagrees with the urgency of the interim authorisation request and raises concerns regarding the burden on suppliers in responding to a tender. It also submits that the lack of guaranteed volumes and reduction in contract duration (compared to the proposed arrangement in authorisation AA1000451) will reduce suppliers' willingness to invest in sorting technology. Suez also expresses concern that the proposed contract term is too short, which will prevent it from making the necessary investment to enter the market. GSWT submits the proposed procurement will give councils too much market power. It considers it is inappropriate to allow MWRRG to make decisions involving public expenditure, given the likelihood that MWRRG will be replaced by a new Victorian waste authority. It also considers that MWRRG acting as a 'middle-man' will increase councils' costs. It objects to the 'common gate fee' because it considers the mechanism is likely to negatively affect suppliers. It also submits that the length of the tender process is too long, which will allow for potential collusion and unfair tendering practices to occur.
15. In response, MWRRG emphasises that the timeliness of the tender process and the subsequent contracting stages will avoid disruption to the provision of waste services to the councils' residents. MWRRG indicates that long term contracts are no longer appropriate given the recent changes in government policy, and that the Proposed Conduct will enable Participating Councils to put in place an efficient procurement process and give suppliers a greater capacity to plan for the medium term, while important policy reforms are being implemented. It considers the existing incumbent

suppliers have market power and potential new suppliers are well resourced. It explains that the proposed restructuring to a new waste authority is a normal transition process for government agencies. It submits that the 'common gate fee' arrangement (if used) will only apply to the Participating Councils and not affect suppliers as they will receive the same pricing as agreed under the contracts, and any fees charged by MWRRG for managing the mechanism will be minimal. It further submits that the tender process duration is appropriate (given the scale and complexity of the procurement), and that probity advisors will oversee the tender process to prevent any potential collusion between bidders.

16. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, can be obtained from the ACCC's [public register](#).

### **Reasons for decision**

17. The ACCC has decided to grant interim authorisation under section 91(2) of the Act. In granting interim authorisation, the ACCC considers that:

- due to the expiration of existing recycling sorting contracts and the time required to conduct the procurement process, there is some urgency regarding the request for interim authorisation
- it is unlikely that interim authorisation will materially alter the competitive dynamics in any market. Interim authorisation is granted only for the commencement of the tender process, and not the execution of any binding contracts. If the ACCC ultimately does not grant authorisation the market would be able to return to its current state, and
- participation in the Proposed Conduct is voluntary for any Participating Councils and any existing or potential new suppliers of recycling sorting services. Any supplier may offer to supply sorting services to the Participating Councils through the tender process. Suppliers are not restricted from supplying recycling sorting services to other non-Participating Councils.

### **Reconsideration of interim authorisation**

18. The ACCC may review interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.