



AUSTRALIAN  
COMPETITION  
& CONSUMER  
COMMISSION

# Conference record

Application for authorisation AA1000587

Lodged by Eastern Metropolitan Regional Council, the City of Bayswater, the Town of Bassendean, and the Shire of Mundaring

**12:00PM AEDT**

**25 March 2022**

**Microsoft Teams**

The information and submissions contained in this conference record are not intended to be a verbatim record of the conference, but a summary of the matters raised.
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## Attendees

### Australian Competition & Consumer Commission (ACCC)

- Mick Keogh, Commissioner (Chair of Conference)
- Lyn Camilleri, General Manager – Competition Exemptions
- Miriam Kolacz, Acting Assistant Director – Competition Exemptions
- Elizabeth Batten, Senior Project Officer – Competition Exemptions
- Alex Cicchini, Analyst – Competition Exemptions
- Andrew Ng, Analyst – Competition Exemptions
- Rajat Sood, Principal Economist
- Alison Hill, Senior Lawyer
- Lucy Cameron, Senior Lawyer
- Ron Neilan, Office & Administration Manager
- Rani Parsons, Administrative Assistant

## The Applicants

### Eastern Metropolitan Regional Council (EMRC)

- Marcus Geisler, CEO
- Brad Lacey, Chief Operating Officer
- Douglas Bruce, Chief Project Officer
- Stephen Fitzpatrick, Waste & Resources Recovery Specialist

### Talis Consultants (assisting EMRC)

- Jennifer Wroe

### Consultant (assisting EMRC)

- Colin Pumphrey

### Town of Bassendean

- Brice Campbell, Manager Recycling and Waste

## Parties requesting the PDC

### Waste and Recycling Industry Association of WA (WRIWA)

- Michael Bobrowicz, Executive Officer

### Cleanaway Pty Ltd

- Brad Gornall

### J.J. Richards and Sons Pty Ltd (J.J. Richards)

- Andrew Tolj
- Richard Taylor, Business Development Manager

### **National Waste and Recycling Industry Council (NWRIC)**

- Rick Ralph, Chief Executive Officer

### **Remondis Australia Pty Ltd**

- Chris Gusenzow

### **Solo Resource Recovery**

- Chas Hewson

### **SUEZ Recycling & Resource Recovery Pty Ltd (SUEZ)**

- Craig Barker, Vice President Infrastructure
- Rebecca Goodwin, Residential Contracts Manager
- Caitlin Dugan, Senior Legal Counsel

### **Tellus Holdings**

- Slade Greenaway

## **Other interested parties**

### **City of Swan**

- Ian Lynch, Manager Fleet and Waste

### **Mindarie Regional Council**

- Aaron Griffiths, Manager Projects and Procurement

### **Western Metropolitan Regional Council**

- Stefan Frodsham, Chief Executive Officer
- Ravi Gudi, Finance and Governance Manager

### **Town of Cambridge**

- Carey Wright, Waste Minimisation Officer
- Roger Lee, Coordination Asset Management

# Conference summary

## Conference Chair's introduction

**Deputy Chair Mick Keogh** introduced himself and the ACCC staff present, welcomed everyone to the conference and declared the conference open. He provided information on the purpose of the conference and the procedures that would be followed.

## Opening statements from parties requesting the conference

**Michael Bobrowicz** (WRIWA, Executive Officer) said that:

- WRIWA represents private sector owners and operators of waste and recycling infrastructure in WA. This issue has attracted interest from around the country.
- WRIWA has two goals: (1) to achieve best practice environmental outcomes from collection processing, recycling, and disposing of waste; and (2) to ensure that markets are fair and transparent.
- WRIWA is concerned that the proposal will:
  - exclude their members from competing for work or exclude them from work they are currently performing, and
  - prevent member councils from negotiating with the market, which will have the effect of excluding their members from tendering for that work.
- Whilst the ACCC has come to the view that overall the proposed conduct would not have public detriment, this is not the view of industry. Whenever the private sector waste industry are precluded from being included in tender processes and open competition, then there will be a detriment to industry.
- In 2002, he was hired by Brisbane City Council to determine whether their contracts were fair value compared to private industry. It was determined that Brisbane City Council could only be competitive with the market if they breached competitive neutrality by avoiding full cost pricing.

**Richard Taylor** (J.J. Richards, Business Development Manager) said that:

- J.J. Richards concurs with the comments from Michael Bobrowicz.
- J.J. Richards has entered the market in WA specifically to compete for municipal contracts amongst other things. To date, J.J. Richards has invested \$25 million and has recently moved into a new depot in the City of Bayswater.
- J.J. Richards makes the following comments on the ACCC's draft determination:
  - Regarding paragraph 3.73, J.J. Richards seeks clarity over the statement: 'by sponsoring a new entrant, the proposed conduct is likely to result in an increase in competition'. J.J. Richards does not understand how that is derived.
  - Regarding paragraph 3.75, the 'mitigating circumstances' that may offset any potential detriment are ambiguous and potentially intangible.
  - Regarding the paragraphs stating that the participating councils represent 7% of Perth households and that not being significant, J.J. Richards disagrees and posits that it is significant.

- As a principle, granting this authorisation may not appear to have a significant impact on the market itself, but what about future authorisations involving similar conduct? What proportion of the market would conduct have to represent for it to be considered to have a significant impact?

**Craig Barker** (SUEZ, Vice President Infrastructure) said that:

- SUEZ believes the proposed conduct, as described in the application, would lead to significant public detriment because it involves a 10-year exclusive contract being awarded to a relatively untested government body. In the absence of a fair tender process, it will exclude private operators, like SUEZ, who have a proven track record of delivering services.
- SUEZ believes there will be three key consequences of the proposed conduct:
  - There will be increased prices for collection services because: (1) while the EMRC's collection service is being established they will need to pass on the full costs of its services; and (2) the EMRC is unlikely to be more efficient than a private operator, with purported price savings due to optimised routes or lighter bins being unlikely.
  - The level of service provided by the EMRC will not be as good as private operators as there is no competitive tender process to encourage the EMRC to innovate or improve its service offerings.
  - There will be a meaningful reduction in competition as there will be no competition to award the contract to the EMRC and no competition to provide services to the participating councils for 10 years, which may lead smaller operators who currently service the participating councils to exit the market.
- SUEZ believes the public benefits claimed are so marginal and theoretical, they are unlikely to be realised.
- SUEZ makes the following comments on the two key claimed public benefits:
  - SUEZ does not believe the education services proposed will be any better than what is currently in place. It is not clear how the proposed education services will be better than, or different to, the services already provided to participating councils.
  - SUEZ accepts that in theory the proposed conduct could result in transaction cost savings. However, in practice this is unlikely to materialise as the WALGA Preferred Supplier Panel already exists to reduce transaction costs. Transaction costs may increase for participating councils as jointly negotiating and administering the agreements may add administrative burden.
- SUEZ is unable to substantively respond at the conference to the EMRC's submissions dated 23 March 2022 and 24 March 2022 given the limited time provided to prepare a response.
- Regarding the EMRC's comments in its submission (dated 24 March 2022) that SUEZ's claims are subjective and unsupported, SUEZ notes that the ACCC has asked for the views of market participants on the application, which is what was provided.

**Deputy Chair Keogh** noted that there is a continuing submission process until 8 April 2022 to enable interested parties to respond to submissions or make further comments which they may not be in a position to provide at this conference.

**Rick Ralph** (NWRIC, CEO) said that:

- NWRIC observes an emerging trend across Australia where local governments are disrupting the waste industry on the basis that they believe they can do better.
- Local governments continually receive subsidies from governments at all levels and therefore have a different operating environment. This includes a lack of GST, government funding, lower loan rates and a lack of transparency. In his belief, local governments may also be excluded from competition issues by the Competition and Consumer Act.
- For the past 15 years the waste industry has actively engaged with the ACCC on matters and industry feedback in submissions is continually being dismissed by the ACCC. NWRIC seeks to understand what the ACCC is looking for in submissions to enable industry to better prepare responses in the future.

**Deputy Chair Keogh** noted that he took this as a future request, and the ACCC team would be willing to discuss the issue raised by Rick Ralph in the future, but that the issue would not be further addressed at the conference.

## Opening statements from EMRC & Ors

**Marcus Geisler** (EMRC, CEO) said that:

- The proposed conduct aims to achieve:
  - regional efficiencies and potential cost savings through centralised waste collection services
  - greater economies of scale in regard to education and community engagement to drive higher quality of source separation of waste, and
  - environmental benefits from reduction of waste to landfill, increased waste recovery and reduction in transport distances for collection vehicles.
- Potential suppliers of waste collection services have access to other opportunities as the proposal only represents 7% of the municipal solid waste market. The expansion of Food Organics and Garden Organics services by councils will likely increase the size of the residential waste collection market for suppliers.
- The EMRC makes the following comments on waste collection services in the Perth metropolitan region:
  - 24% of councils operate a completely 'in-house' service.
  - 36% of councils have a combined service, where core business is provided by in-house services, with ancillary services contracted to private operators.
  - 32% of councils are completely serviced by the commercial sector.
- The EMRC is expanding its core activities to enable a vertically integrated network of community-owned waste and resource recovery assets to maximise community engagement.
- The EMRC is not subsidised by charges through rates and ratepayers. The EMRC is a standalone business which happens to be owned by local government entities. The EMRC is part of the industry and is required to compete in a similar way to industry.
- About 56% of the EMRC's income is generated from member councils, and 44% is generated through services to commercial operators.
- From a transparency point of view, the EMRC is required to publicly advertise fees and charges, and its financials and expenditures.

**Brice Campbell** (Town of Bassendean, Manager Recycling and Waste) said that:

- Town of Bassendean supports the EMRC's proposal.

**Deputy Chair Keogh** offered an opportunity for other interested parties to make opening statements, before opening the floor for general discussion.

## General discussion

**Marcus Geisler** (EMRC, CEO) said that:

- The EMRC does not have any rate payers, so does not have the opportunity to pass on costs directly to households. The EMRC must set a rate before commencing the service and must ensure all service costs are covered by that rate.
- There is no opportunity for the EMRC to ask councils to increase prices after the rate has been set, nor would councils be obliged to accept such a request.

**Deputy Chair Keogh** asked Marcus Geisler to clarify whether the arrangement will consist of a contract between the EMRC and the councils at a locked-in rate and there will be a set revenue from that.

**Marcus Geisler** (EMRC, CEO) confirmed that this was the case, that is, contract negotiation will be transparent with agreed margins and agreed costings.

**Rick Ralph** (NWRIC, CEO) said that:

- The terms of the EMRC's financing arrangements and the way the EMRC functions as a business will be fundamentally different to how industry operates. For example, councils have different arrangements for obtaining approvals in planning for transfer stations and other activities. NWRIC appreciates that the EMRC has set margins, but the margins the EMRC has to set are different to private operators.
- If the EMRC does continue to pursue this arrangement, they must be measured on a like for like basis.

**Craig Barker** (SUEZ, Vice President Infrastructure) said that:

- Given the EMRC's pricing with participating councils is transparent, SUEZ seeks clarity as to why the EMRC is not prepared to compete for the services through an open tender, in competition with private industry.
- SUEZ is not averse to the EMRC providing the services. However, SUEZ would prefer the EMRC to be included in an open tender process to ensure the terms and pricing they provide are on a level playing field with industry.

**Michael Bobrowicz** (WRIWA, Executive Officer) said that:

- The underlying issue is about competitive neutrality and how the ACCC is assessing competitive neutrality.
- His experience with Brisbane City Council perfectly reflects the situation in the current matter with the EMRC. [**Deputy Chair Keogh** asked for clarification on the number of local governments in Brisbane. **Michael Bobrowicz** accepted that Brisbane differs from Perth in that Brisbane City Council covers all the metropolitan area and has a larger budget and resources.] Brisbane City Council was a government business immune from regulatory requirements in many respects – for example, it was exempt from corporations tax and GST, it was exempt from

corporations law reporting requirements, it had explicit and implicit guarantees on debts, it could purchase inputs from other government businesses at concessional prices, and it was free from the threat of takeovers. When these factors were accounted for, Brisbane City Council was found not to be as competitive as private industry.

- WRIWA queries whether the EMRC is actually costing at full cost, or whether it is subsidising using benefits conferred on local governments. If the EMRC is subsidising its costing, the arrangement will be anti-competitive.

**Marcus Geisler** (EMRC, CEO) said that:

- The EMRC is not exempt from GST, as it both charges GST and pays GST.
- The EMRC is completely self-funded and cannot borrow money from the WA Treasury in its own right. The EMRC's balance sheet shows \$200 million of equity, with no debt, which it uses to fund expansion opportunities like the waste collection service.
- The EMRC is fully costing and it is run like a normal business.

**Richard Taylor** (J.J. Richards, Business Development Manager) asked whether the ACCC could elaborate further on the queries he raised in his opening statement regarding the draft determination, in particular paragraph 3.73.

**Deputy Chair Keogh** referred to the wording of paragraph 3.73 of the draft determination, and noted that the ACCC will take Richard Taylor's queries on that paragraph as a comment. The ACCC will consider and seek to clarify any relevant points in the final determination.

## Conference Chair's closing

**Deputy Chair Keogh** thanked everyone for attending and advised that:

- The ACCC will accept further written submissions in relation to the draft determination if they come in on or before Friday 8<sup>th</sup> April 2022.
- The ACCC will prepare a summary of today's proceedings and everyone in attendance will receive a copy of that summary.
- Once the Commission has considered all issues raised at this conference and any further written submissions, the ACCC will determine whether to grant the authorisation and on what terms.

**Deputy Chair Keogh** terminated the conference.

The conference concluded at 12:54PM AEDT.