



20 October 2017

Senator Janet Rice
Committee Chair
Senate Standing Committee on Environment and Communications
P.O. Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Senator Rice,

RE: WASTE AND RECYCLING INDUSTRY IN AUSTRALIA

Thank you for the opportunity to submit comments to the Inquiry into the 'Waste and Recycling Industry in Australia'.

The role of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) is to advocate for small business and family enterprise, assist with alternative dispute resolution and provide a voice to government for small business and family enterprise.

In performing the advocacy function, we review key policies and laws which impact on small business in the waste and recycling industry. We are seeking to submit for the Committee's consideration a series of issues which highlight concerns raised with our Office by small business and family enterprise.

Our submission contains topics that touch on the following Terms of Reference:

- e. the role of different incentives and collection methods in determining the quality and quantity of material collected for recycling;
- f. the destination of material collected for recycling, including the extent of material reprocessing and the stockpiling of collected material;
- g. the current economic conditions in the industry, including the market for material collected for recycling;
- h. the transportation of solid waste across state boundaries; and
- i. the role of the Australian Government in providing a coherent, efficient and environmentally responsible approach to solid waste management, including by facilitating a federal approach.

The impact and cost of recycling schemes can be unfairly borne by small business and family enterprises

One of the challenges in implementing schemes to incentives waste reduction and recycling is ensuring the burden of such schemes does not disproportionately affect industry participants, such as small businesses and family enterprises. Earlier this year, a concern was raised with our office on New South Wales' (NSW) proposed container deposit scheme (CDS) which is scheduled for introduction in December 2017. Similar schemes already operate in South Australia and the Northern Territory and are being examined or introduced in Queensland and the Australian Capital Territory. These schemes are designed to reduce litter, reduce the volume of containers going to landfill and promote recycling. According to the NSW EPA website, the CDS requires that "beverage suppliers (manufacturers, importers, wholesalers or retailers) that bring eligible containers into NSW will be responsible for funding the refund [of the scheme] as well as associated costs."

The issue for the small business in question related to the cost of the scheme for small business manufacturers. The concerns also reflected the cost of administration of the scheme which large manufacturers can easily absorb or pass on through the supply chain. While large operators like Lion Co, Asahi and Coca-Cola Amatil will be able to absorb the initial set-up costs and transition phases, small business manufacturers and beverage suppliers may not be able to pass the costs on to consumers. For a small manufacturer, passing on the costs (either direct or administrative) is more difficult, particularly when negotiating with a large retail buyer or wholesale company. However, passing through the costs to consumers is often used as justification in supporting the scheme to government decision makers. However, on closer inspection this is not always a certainty. Indeed, the cost benefit analysis undertaken as part of the regulatory impact statement for the NSW scheme suggests that these costs may not be passed on.¹

Apart from reducing litter, an issue for the beverage industry is the recycling of waste (including glass bottles) that was raised in the Four Corners program of 7 August (*'Trashed: The dirty truth about your rubbish'*). It has both a state and national dimension. According to the report, differences in the waste levies in NSW and Queensland have incentivised the movement of waste from NSW to Queensland. It was also a problem identified in the NSW Parliament's Inquiry into 'Energy from Waste technology' earlier this year. It is a complex area and there is a range of options – including harmonising State waste levies – that the Committee will need to explore to address the interstate 'trade' in waste.

The Four Corners program also identified a problem with the recycling of glass bottles, since there appears to be no market for recycled glass at present, despite the introduction of a CDS in NSW that aims to encourage recycling.

¹ Consultation Regulation Impact Statement New South Wales Container Deposit Scheme 'Limitations' pg 19.
http://ris.pmc.gov.au/sites/default/files/posts/2017/06/ris_for_consultation_for_nsw_container_deposit_scheme.pdf

Local councils decisions on waste collection and recycling can impact small business and family enterprise

Around Australia, local government has responsibility for waste management in local communities. Decisions made by these councils can impact on small business and family enterprises in the waste collection and recycling industry, as well as small businesses using waste collection and recycling services. ASBFEO has received representations from small businesses and family enterprises concerning action by a number of local councils, including attempts to consolidate waste collection services which would lockdown local markets to one provider for periods of up to ten years or more. In addition, our office received notice of the actions of some local councils trying to force commercial ratepayers and other businesses to utilise council controlled waste and recycling services to the exclusion of other service providers. In this situation, businesses have to pay the council a waste management fee irrespective of whether they intend to outsource their waste management services to a private contractor.

We understand when this particular matter was referred to the Australian Competition and Consumer Commission (ACCC), it determined it did not have the power to intervene due to local government exclusions within the relevant sections of the *Competition and Consumer Act 2010*. We observe that such requirements can hurt other small business waste management operators and result in less competitive and less efficient markets which ultimately result in higher prices to small business and consumers.

Unfair contract terms used by large waste management companies to limit competition and lock up consumers

The final matter we would bring to the Committee's attention is the use of unfair contract terms by large companies in the industrial waste collection market. A matter brought to our office by a small business waste management company which had won the business of a firm that saved it a significant amount of money on its waste collection costs. A large competitor then threatened legal action for damages for breach of contract because it claimed that the client was in the middle of a roll-over term. It also lowered its price to match that of the small business operator and offered not to pursue legal action if the client signed for a further 3-year term during which time, we are advised, it was still able to raise prices. The client, who did not want to involve itself in potential legal costs, therefore cancelled the agreement with the small business operator, even though it included a fixed price and no roll-over clause. We understand that these contract terms and practices are still used by these large companies despite there being almost 12 months since the unfair contract terms legislation was brought in.

The use of such terms would appear to breach the unfair contract terms legislation under Australian Consumer Law as it applies for small business. We note the recent success the ACCC has had in taking a large waste management company to the Federal Court alleging numerous clauses in the company's standard contract, breach the new law.² According to the ACCC, this is the first time it has taken court action to

² <https://www.accc.gov.au/media-release/jj-richards-contract-terms-declared-unfair-and-void>

enforce the new laws that protect small businesses from unfair contract terms. It may take some time for the effect of the ACCC's success to permeate through the industry and in the interim, small business competitors are suffering.

We hope these comments assist the Committee's deliberations. Please feel free to contact either myself or Mr James Strachan, by telephone or email

Yours sincerely,

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman