

<p>Motion</p>	<p>That this National General Assembly calls on the Commonwealth Government to amend the <i>Competition and Consumer Act 2010</i> (Cth) to reduce barriers to local governments jointly tendering for recyclables processing and innovative resource recovery services by exploring options to amend:</p> <ul style="list-style-type: none"> • Sections 2BA or 2C to reduce the application of Part IV - for example, by removing recyclables processing or innovative resource recovery services, for which tenders are sought, from the definition of “business”; or • Section 51 of the <i>Competition and Consumer Act 2010</i> (Cth) to introduce exceptions to Part IV in circumstances where local governments: <ul style="list-style-type: none"> ○ undertake joint tendering exercises for recyclables processing and/or innovative resource recovery services; and ○ hold collaborative forums to discuss waste diversion, resource recovery and recyclables processing procurement strategy and initiatives.
<p>National Objective</p>	<p>Why is this a national issue?</p> <p><i>Australian Government & ALGA Strategic Priorities</i> The Australian Government National Waste Policy 2018 outlines five key principles which include to “avoid waste” and “improve resource recovery”. The Policy recognises that “by working together to improve waste management, we can create opportunities for jobs, protect the environment and better manage valuable and finite resources”. The Australian Local Government Association Strategic Plan 2020-2023 also highlights Waste Reduction and Recycling as a key objective and therefore the proposed motion complements ALGA advocacy.</p> <p><i>Legislative limitations</i> Local governments are considered to be each others’ competitors for the purposes of the <i>Competition and Consumer Act 2010</i> (Cth). Without ACCC authorisation, local governments who jointly procure recyclables processing and resource recovery services are in breach of the <i>Competition and Consumer Act 2010</i> (Cth), in particular:</p> <ul style="list-style-type: none"> • Sections 45AF, 45AG, 45AJ and 45AK in relation to cartels; • Sections 45(1)(a) and (b) in relation to anticompetitive agreements; and • Section 45(1)(c) in relation to concerted practices. <p><i>Impact on regional local government collaboration</i> The ACCC Authorisation process takes six (6) months and significant local government resourcing. An analysis of applications for ACCC authorisation accessible via the ACCC Public Register shows that in 2021, applications were made for or on behalf of 95 local governments located across Victoria, Tasmania, New South Wales and Queensland seeking ACCC authorisation to jointly procure recyclables processing or innovative resource recovery services.</p>

<p>Summary of Key Arguments</p>	<p>Regional aggregation of waste volumes has increased the options for recovery and more efficient disposal, supported investment in new infrastructure, and attracted greater competition and industry interest (Arcadis, Queensland Waste and Resource Recovery Infrastructure Report, February 2017).</p> <p>Procurement within the recyclables processing and broader resource recovery spaces have presented some challenges for regional councils due to remoteness, low populations and volumes of material resulting in poor economies of scale, lack of viable end markets and processing opportunities. However, there is also potential to create new opportunities for councils working together on a regional scale to achieve necessary economies of scale, transport efficiencies and/or infrastructure investment attraction. Such opportunities for collaboration are presently being stymied by current <i>Competition and Consumer Act</i> requirements, which require local governments, as each others' competitors, to seek ACCC authorisation to engage in collaborative joint tender exercises in the recyclables processing and resource recovery spaces to avoid breach of the <i>Competition and Consumer Act 2010</i> (Cth). Whilst Gladstone Regional Council has had a positive experience with the ACCC, the Competition & Consumer Act requirements have meant that Councils have needed to factor in an additional six (6) months into strategic procurement plans, together with the resources required to achieve a favourable ACCC determination. When local governments are already grappling with different contract expiry dates for individually procured services, the additional <i>Competition and Consumer Act 2010</i> (Cth) hurdle may significantly impede local government collaboration and ultimately reduce resource recovery.</p> <p>The motion has been deliberately restricted to procurement involving a tender process to give the Australian Government confidence that there are sufficient safeguards in place under the sound contracting provisions of each State's Local Government legislation to ensure healthy market competition.</p>
<p>Declaration</p>	<p>Authorised by Council on <input checked="" type="checkbox"/> – Motion No: <input checked="" type="checkbox"/></p>