

TALKING TO YOUR WASTE PROVIDER: FACT SHEET

Prepared by WCRA for the Bin Trim Business Grants Workshop

Waste and Recycling Service Agreements (Waste Contracts)

Choosing a waste provider

Choosing the right waste and recycling service provider is an essential first step to the waste generator achieving their waste management goals.

The waste generator should be confident that the waste service provider:

- Comprehends the needs of the waste generator
- Understands the regulations which apply to storage, collection, transport, disposal and recycling of waste
- Properly explains the terms and conditions of the service agreement
- Charges a reasonable price for the services offered
- Employs qualified, responsible, law-abiding staff to perform the services
- Utilizes properly maintained equipment which is adequate to perform the services
- Is a reliable service provider

A waste and recycling service provider should be able to supply the following information when a customer requests details about a disposal facility that their waste is being transported to –:

- Name of the waste facility
- Address of the waste facility
- ABN
- Contact person (name & phone number)
- Environment protection license number (if required); and
- Details about the development consent (if required)

What is a contract?

A commercial contract is a binding agreement between two or more people or companies which sets out what the parties must or must not do. Virtually all transactions and commercial relationships that parties enter into are regulated by a contract and they usually bind them to honour the terms and conditions of the contract.

Contracts usually have three fundamental components:

- An offer which has been accepted
- Each party must contribute something of value – a consideration
- A legally binding agreement must be entered into willingly

The need for contracts

Written contracts enable all parties to have a record of what their obligations are and what has been agreed to – they can also provide a basis for providing a variation of the service without seeking new quotations.

Terms & conditions usually contained in a waste contract

Waste contracts define the service to be provided - including the volume & type of waste, the size & type of bins, the collection location, the frequency of collection, the cost and the terms of payment. Waste contracts also typically contain:

- A list of definitions or interpretations of terminology used in the agreement.

- A notice of the circumstances in which fees and charges can be increased by the service provider.
- Restrictions on the type and weight of waste which will be collected.
- Supply, ownership, use, care and maintenance of bins and other waste management equipment delivered to the waste generator's site.
- Limitations on liability and indemnity - for actions, loss, & claims, caused to persons or property in connection with the service provision.
- The term of the exclusive right to provide waste services – typically 3 to 5 years
- Automatic renewal of the contract term without re-signing
- The terms under which the waste generator may change or terminate the contract – often only in writing - during a limited window of time, close to the expiry/renewal date of the original contract.
- The right of the service provider to respond to any competing or similar service offer received by the waste generator.

Waste contracts may also contain a variety of other terms and conditions which limit the rights and actions allowed by the waste generator. It should be noted that the waste service provider has incurred significant costs in preparing and making the service available to the waste generator and the repayment of these costs can usually only be achieved over a relatively long period of time. It should also be noted that parties entering into a contract agree to its terms and are bound to honour its terms. Waste generators should always read and seek advice if required on all the terms and conditions of a contract before signing it.

Supplying a service to someone who already has a contract with a waste company

- The first service provider that should be asked to supply a waste or recycling service would be the service provider already supplying services to the waste generator. It is almost certain they will have a depot, vehicles, equipment and truck routes currently available in the local area and the existing service agreement may provide a means of economically determining the cost of the new service.
- Should the existing service provider not be able to provide the specific service required, it may be possible for them to engage a sub-contractor to provide the service within the existing service agreement or as an extension of such service
- If the existing service provider is unable or unwilling to provide the required new service either in-house or via a subcontractor, then it may be possible for the waste generator to negotiate a variation of the existing service agreement to allow the engagement of another service provider for those services which the existing provider is unable or unwilling to provide.
- In the case where such negotiation fails, the waste generator has the option of either terminating the existing contract in accordance with its terms and conditions or seeking legal advice as to other means by which to terminate the contract.
- Most reasonable waste service providers will be more interested in negotiating an equitable change to an existing contract than enforcing its terms and conditions and refusing to address the requirements of their customer.

NSW Department of Fair Trading

Contracts: Unfair contract terms www.fairtrading.nsw.gov.au

ACCC

Contracts & Agreements: Unfair Contract Terms www.accc.gov.au

Advertising & Promoting Your Business: False or Misleading Claims www.accc.gov.au

NSW Small Business Commissioner

Dispute Resolution www.smallbusiness.nsw.gov.au

Queensland Department of Environment and Resource Management

A Guide to Reviewing Waste and Recycling Contracts and Service Agreements 2011

<http://www.ehp.qld.gov.au/waste/pdf/guide-to-reviewing-waste-contracts.pdf>