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Dear Ms Hanrahan

Authorisation AA1000409 submitted by Tyre Stewardship Australia (TSA) – Information Request

We refer to your letter dated 9 March 2018 and the request for information contained in Attachment A of that letter (**Request**). Our client's response to that Request is outlined below. For convenience, we have responded in accordance with the numbering contained in the Request.

Clarification of conduct for which authorisation is sought

1 Amendments to Guidelines

- 1.1 We enclose a marked up copy of the original Scheme, which reflects the amendments contained in the amended Guidelines submitted to the ACCC. We also enclose the summary provided in TSA's submissions dated 5 December 2017 (**Submissions**) regarding the changes to those Guidelines.

2 Recyclers and collectors

- 2.1 TSA confirms that the figures in respect of 'collector/recyclers' referred to on page 5 of the Submissions relate to participants who perform recycling activities, most of whom are vertically integrated recyclers and collectors.
- 2.2 The number of collectors/recyclers on page 5 of the Submissions is clarified in the table below (noting that since the date of the Submissions TSA has accredited an additional 'collector/recycler').

Collectors and recyclers	Recyclers	Producer of (tyre-derived) end products (Recyclers)
18	1	2

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- 2.3 TSA notes that there is often some confusion regarding the role and activities engaged in by Recyclers as compared to Collectors. Generally, tyre Recyclers in Australia process end-of-life tyres (**EOLTs**) through compression, shredding, crumbing and similar activities. This material is often then provided to another party (a producer of an end product) who creates or manufactures new products with the processed EOLT material, such as asphalt for roads or matting.
- 2.4 Nearly all Recyclers have a network of vehicles that collect tyres for their facility, so in this sense provide vertically-integrated services. All TSA accredited Recyclers own some form of processing equipment/infrastructure on-site. Only one Recycler, Chip Tyre, does not collect EOLTs themselves and only reprocesses tyres.
- 2.5 Collectors generally supply Recyclers with EOLTs or sub-contract on their behalf. Some collectors provide casings or tyre product to the second-hand tyre market, meaning the tyre is not yet technically at the 'end-of-life stage'.

3 Exclusive dealing

- 3.1 Pursuant to the Scheme, certain conduct of accredited Retailers may constitute exclusive dealing under section 47 of the Act. Specifically, accredited Retailers are obliged to deal only with accredited Collectors and/or Recyclers or to enter into contractual arrangements with non-accredited collectors which require all EOLTs to be provided **only** to accredited Recyclers. These contractual agreements may fall within the ambit of section 47 of the Act in circumstances where accredited Retailers are supplying EOLTs to (non-accredited) collectors on the condition that those collectors will not re-supply those EOLTs to a particular class of persons, namely non-accredited recyclers.
- 3.2 TSA seeks authorisation of any such exclusive dealing to the extent that the conduct may be regarded as being for the purpose, or having the likely effect, of substantially lessening competition in a market.

4 Mining operations

- 4.1 Extending the practical scope of the Scheme's operations to include the mining industry is likely to be a major undertaking and will require significant resourcing. In particular this is because it is presently legal for off-the-road (**OTR**) tyres used in mining operations to be put to landfill or stockpiled in a registered waste area at the mining site.
- 4.2 Many mining projects currently generating end of life OTR tyres are located in remote areas. Accordingly, accredited participants would likely be assuming extremely high costs in ensuring their EOLTs are provided to accredited Recyclers. In addition, these costs may have detrimental flow on effects to remote and regional communities, including indigenous communities proximate to these mining operations; noting that some indigenous land rights agreements are commonly predicated on the sharing of net profits generate by the mining industry.
- 4.3 However, TSA has reserved funds which, subject to receipt of re-authorisation, will be allocated to feasibility studies in relation to the inclusion of OTR tyres in the Scheme's practical operations.

5 Destination of exported EOLTs

(a) Percentage of exported tyres

- 5.1 The figure of 38.7% on page 6 of the Submissions is taken from TSA's FY2017 Annual Report. This figure includes all EOLTs exported via TSA Recycler/Collectors. Casings are not exported as tyre-derived fuel (**TDF**) as they are provided to the second-hand tyre market (often for re-use through re-treading and other similar processing) which is considered to be a more environmentally sound use

than recycling (including the production of crumb into other products, shredded TDF, and baled). In this regard, TSA refers to the waste hierarchy set out in section 2.3 of the Guidelines.

- 5.2 TSA confirms that TSA's reporting on the volume of tyre-derived products sold or otherwise provided for environmentally sound use by TSA Recyclers/Collectors as stated in its annual report included the following:
- (a) local material reuse and recycling (local – within Australia) at 7.4%;
 - (b) civil applications (local – within Australia) at 0.4%; and
 - (c) exported (TDF, baled and casings) at 38.7%.

5.3 'Baling' refers to the practice of compressing groups of similar sized EOLTs into a rough cube shape bound by steel wire for the purposes of facilitating transport and storage. TSA acknowledges that there have been some concerns regarding a correlation between tyre baling and the spread of dengue fever. However, recent reports of dengue fever by the Federal Department of Health have been made primarily in respect of areas in far north Queensland; and TSA notes that no accredited participants in the Scheme currently undertake baling activities in this area of Australia.

5.4 TSA would prefer EOLTs collected by Scheme participants to be recycled in Australia to generate tyre-derived product for domestic consumption, given this practice supports local manufacturing markets and provides greater certainty surrounding the final destination of the tyre-derived product. However, EOLTs exported for reprocessing, re-use, re-treading or use as TDF (through shredding or baling) are currently considered to be acceptable environmentally sound uses for EOLTs in circumstances where domestic recyclers do not have the capacity to process all EOLTs generated in Australia. Indeed, based on current domestic capabilities and demand for tyre-derived products, the standard industry practice for EOLTs on passenger vehicles is to provide EOLTs and/or tyre-derived product (such as shredded tyres) to an energy recovery process by exporting them overseas. For example, the majority of ATRA members export shredded tyre material processed in Australia to overseas energy recovery facilities.

5.5 TSA is in the process of finalising a Recycler Hierarchy that will rank the processes and outcomes of accredited TSA Recycler/Collectors so that this is made transparent to the public.

(b) TSA's monitoring of the destination of baled tyres leaving Australia

5.6 TSA is currently in the process of developing a downstream verification system for the purposes of verifying the final destinations of all EOLT tyres exported by TSA accredited Recyclers/Collectors. This includes enhanced reporting requirements, with Recyclers and Collectors obliged to report on the fate and destinations of their exported tyres and other measures that TSA considers appropriate and realistic in the circumstances. To-date TSA's resources have been focused primarily on:

- (a) understanding the Australian markets; and
- (b) encouraging Scheme participation of Recyclers and Collectors.

However, TSA's intention is to enhance its focus on compliance and verification processes and practices, particularly in relation to downstream verification.

5.7 TSA presently monitors those EOLTs (whether whole, shredded or baled) leaving Australia through its accredited participants by requiring Collectors/Recyclers to report on the volume of shredded, baled and whole tyres exported. TSA is also in the process of requesting these participants to begin to provide bills of lading to verify export destinations of EOLTs where possible.

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- 5.8 TSA does not presently allow the export of whole tyres to those countries prohibited by the Basel Convention and the Organisation for Economic Cooperation and Development (OECD).
- 5.9 Presently, TSA's ability to verify the fate of exported tyres is constrained by the following market and industry factors:
- (a) Exporters of EOLTs (who do not fall within the ambit of the Scheme) typically enter into separate commercial contracts with the end-user of the exported tyres. Accordingly, most Recyclers (with few exceptions) have a limited capacity to dictate the destination of the EOLTs provided for export.
 - (b) The destination of EOLTs is often driven by demand, which fluctuates between destination locations.
 - (c) Exporters are also reticent to provide details regarding the destination of the EOLTs they export as they consider this to be commercially sensitive information.

Issues raised by interested party submissions

6 Adequate recycling experience on the Board

- 6.1 Upon completing a Board skills matrix, the TSA Board determined the need to engage an additional director with tyre recycling experience. It was concurrently determined that the current Board director with Tyre Recycling experience, Peter Kreitals (former CEO of Australian Tyre Recycling Australia (ATRA)) would assume the position of an Independent Director. TSA then engaged in an extensive recruitment process which included:
- (a) advertising nationally through the industry, the Australian Institute of Company Directors and Board Direction (International Director Job Board); and
 - (b) receiving 80 applications, of whom 8 applicants were interviewed by a TSA Board panel.
- A Board nominated director was put forward at the AGM and, in a close vote, the motion to appoint this director was defeated by the members of company, by reason of a perceived conflict of interest due to the nominated director's involvement with the tyre recycling industry.
- 6.2 TSA is therefore currently discussing this perceived conflict of interest concern with certain members and the intention remains to appoint a director with tyre recycling experience as soon as possible.
- 6.3 TSA considers the notion that its Board is currently bereft of tyre recycling expertise is not accurate. Noting that the former CEO of ATRA presently sits on the Board, TSA's also relies on various committees to inform its position, many of which utilise outside industry experts. For example, the Research and Advisory Committee is tasked with reviewing and making recommendations to the Board in relation to applications for funding which seek to enhance the use of tyre-derived product in domestic application. This committee has external members with relevant experience in the rubber recycling industry and resource efficiency across supply chains. In addition, the Board currently has four Directors who have experience with the tyre re-treading industry (which represents an environmentally sound form of tyre re-use).
- 6.4 The Board of TSA continues to review its composition with a view to adding its depth of tyre recycling expertise. As part of this process of strategic review, the TSA Board has agreed to implement an Industry Consultative Group (ICG). The ICG will include specific members of the tyre recycling and collection industry and will convene 2-3 times a year to discuss with TSA Management and Board Directors specific concerns raised by stakeholders within the industry (represented at various stages

of the supply chain). TSA's work within the recycling industry has been significant in a relatively short period of time, and it continues to engage with this sector to find effective and workable solutions for EOLTs.

7 Recycler/collector non-compliance through landfill and export of baled tyres

- 7.1 As a preliminary comment; TSA considers that there is a direct tension between a stringent and rigorous accreditation process and increasing participation in the Scheme.
- 7.2 In the early stages of the Scheme, TSA has prioritised a focus on enhancing participation in the Scheme so that it may work with Scheme participants to meet their general and specific commitments and further the objectives of the Scheme.
- 7.3 TSA has also been constrained by the current Guidelines which provide TSA with two options which it sees as being inflexible when there are concerns regarding non-compliance. In such circumstances, TSA may:
- (a) allow participants to remain accredited, which may cause reputational issues to TSA and the industry, but allows TSA to continue to work with participants to improve their processes; or
 - (b) revoke accreditation; pursuant to the Guidelines, if this occurs, participants are not entitled to be re-accredited until 12 months has expired. During this time, TSA loses oversight of these participants and any meaningful ability to assist these participants to improve their processes. Revocation also has the capacity to impact other accredited parties along the supply chain given the requirement for accredited entities to only deal with one another.

For this reason, TSA seeks to amend the Guidelines to provide a right to suspend participant accreditation.

- 7.4 Additionally, TSA is faced with other technical issues in the industry, including the following:
- (a) It is not illegal to put tyres in landfill, or to stockpile tyres to a certain volume. In particular, there is no industry agreement on the volume of tyres which constitute an unacceptable stockpile.
 - (b) Similarly, the definition of 'recycling' varies across the industry, i.e. some entities view shredding to landfill as 'recycling', but others do not; there is no industry-wide agreement across the recycling sector regarding which practices which constitute 'recycling'.
- 7.5 While there is a need within the Scheme to ensure participants' obligations are couched in terms of committing to 'guarantee all EOLTs received from Participants go to an environmentally sound use', TSA needs to balance this with the reality that Australia does not have the present capacity to ensure all EOLTs are reprocessed into tyre-derived products.

(a) Position on practices such as landfill and export of baled tyres

- 7.6 TSA notes that baling is simply a process for the bundling of EOLTs for convenience of transport and storage. Any assessment of these practices should therefore be conducted by reference to the environmentally sound end use of those EOLTs which are, or have been, baled, rather than the process of baling itself. TSA otherwise confirms its current approach in respect of the export of tyres as outlined in paragraph 5 above. The present reality is that until there is better infrastructure and a higher demand to support the enhanced production of tyre-derived product in Australia, there will be a significant amount of EOLTs that will be exported for energy recovery or reprocessing overseas, especially passenger tyre stock. Alternatives to exports in these circumstances might otherwise be stockpiling or shredding/dumping to landfill, as domestic recyclers do not have the present capacity

to recycle and/or reprocess 100% of EOLTs domestically generated, nor is there sufficient market demand in Australia for tyre-derived product.

7.7 In respect of landfill, TSA notes the following:

- TSA concedes that some volume of EOLTs is legally landfilled by TSA Recyclers/Collectors; TSA reported these figures as being 6.7% of the overall disposal of EOLTs in the 2017 financial year.
- In the early stages of the Scheme's development, TSA accredited certain Recyclers shredding to landfill, on the basis that TSA could potentially assist to connect these businesses to markets for their shredded product. TSA continues to make progress in this regard, notwithstanding that this has been constrained by the limited domestic demand for tyre-derived product, such as shredded tyres
- In remote and rural areas, due to the tyranny of distance and costs associated with transporting EOLTs, some accredited Participants are left with little choice but to shred to landfill, which is acknowledged in the Guidelines. This is preferred over the alternative of whole tyres to landfill or dumping or stockpiling which can pose environmental hazards as well as risks to health and human safety.

7.8 As noted in paragraph 5.5 above, TSA is in the process of publishing a Tyre Recycler Hierarchy that will publicly communicate the processes utilised by various accredited Recycler/Collectors and how these processes rank in the waste hierarchy and environmentally sound uses of EOLTs.

(b) Mechanisms to verify the fate of exported tyres

7.9 Please refer to paragraphs 5.6 to 5.9 above

(c) Processes undertaken by TSA to ensure that participants, including collectors and recyclers, will act in accordance with the Scheme prior to accreditation

7.10 Applicants for accreditation must complete an application form available online via the TSA website and a corresponding action plan which details the manner in which the applicant will meet its general and specific commitments under the Guidelines. These application forms are tailored to each Participant category.

7.11 In addition, after reviewing an application for accreditation as a Recycler or Collector, TSA organises an 'accreditation audit.' These audits comprise a review of that applicant's processes from an occupational health and safety and environmental management systems perspective, in addition to their processes in respect of EOLTs collected and/or processed. As a preliminary stage of the accreditation audit, TSA requests the following documentation (among others):

- throughput details of recycled product outputs to final destination, including export details (bill of lading etc.);
- a copy of stockpile management practices and procedures;
- a copy of all licenses, authorisations and approvals held by the applicant in respect of the recycling and transportation of tyres (such as EPA License / Works Approvals / authority to transport waste etc.);
- a copy of any authorisations held by, or provided to the applicant for:
 - Beneficial Reuse (where relevant); and

- International transfer of wastes (e.g. under Basel Convention where relevant);
- a copy of all local government planning approvals and permits held by the applicant (e.g. Development Approval, Planning Permits);
- a copy of any fines, legal or regulatory notices or clean up orders relating to the applicant and its site or any directors or office holders;
- a copy of any fire/ emergency management plans / assessment reports / inspection certificates;
- details of all insurance held and maintained (including level and scope of coverage);
- a copy of any waste transport certificates/ EPA reporting;
- a copy of any product storage procedures / guidelines;
- details of the types of products/resources dispatched from the applicant's site;
- details of any safety and environmental risk assessments, control measures, and inspections undertaken by or on behalf of the applicant;
- details of how chemicals, including diesel and oils, are stored;
- details of any air emissions monitoring or occupational airborne contaminant monitoring undertaken;
- on site stormwater or wastewater management (e.g. oil/water separator or stormwater protection valves) including Trade Waste Agreement and analytical data;
- any analytical test data (e.g. surface water quality, groundwater bores etc.);
- a list of all major equipment used in the operation of the applicant's business (e.g. balers, shredder, granulator), specifications to Australian Standards, preventative maintenance, pre-operational checks; and
- a copy of all records in respect of any environmental incidents and/or complaints.

7.12 However, in granting accreditation, TSA is required to operate within Guidelines that were drafted prior to the commencement of the Scheme. The current Guidelines are narrowly framed in terms which do not provide TSA much flexibility in deciding whether or not to accredit applicants for authorisation.

7.13 In particular, section 5.1 the Guidelines states as follows:

The following steps apply to the process for applying for status as a Participant in the scheme and the process for approving the application/s:

- *An Applicant submits one or more application forms online on the scheme's website or by email or mail. Application forms are provided in Parts C to I of this document.*
- *TSA assesses the application/s and may contact third parties to verify information supplied in the application form. (See Section 5.2.)*

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- *TSA assesses the Action Plan and may require amendments to the plan before giving approval.*
 - *When satisfied with the application and the Action Plan, TSA gives approval for the Applicant to be given status as a Participant.*
- 7.14 On a plain reading of the language of the Guidelines, if TSA is not satisfied with an applicant's application and action plan, it nonetheless is required to allow the applicant to re-submit their application until such time as TSA is satisfied with the application.
- 7.15 The Guidelines provide that in submitting an action plan, an applicant need only outline steps proposed to meet its commitments under the scheme. There is no requirement to demonstrate a current capacity to meet the general and specific commitments under the Scheme. This is consistent with the Scheme's objectives which are to 'increase resource recovery and recycling and minimise the environmental, health', recognising that present industry practices are in need of improvement.
- 7.16 Nevertheless, TSA has sought to address this issue in its amendments to the Guidelines. In particular, 5.1 has been amended as follows:
- TSA assesses the application/s and may contact the Applicant or third parties to verify information supplied in the application form. TSA will notify an Applicant in writing as to whether their application for accreditation has been accepted or rejected.*
- Applicants will be accredited on the basis of an assessment by TSA, to its satisfaction, as to whether:*
- *the Applicant demonstrates a current capacity to meet their general and specific commitments under the Scheme; or*
 - *the Action Plan demonstrates that the Applicant will meet the general and specific commitments under the Scheme.*
- When an application is rejected, TSA may determine the timeline for the application to be re-submitted.*
- 7.17 These amendments make it clear that applicants must show a demonstrated capacity, either presently, or in the future (as outlined in their action plan) to meet their commitments under the Guidelines and provide TSA with a much clearer right to reject an application when there is a concern regarding non-compliance.
- (d) Processes to ensure ongoing compliance
- 7.18 All accredited Collectors and Recycler/Collectors are required to undertake an annual audit to ensure compliance with the Scheme. However, TSA's audits not only monitor compliance, but also promote working towards best practice standards in the industry. TSA has produced publications, such as the Best Practice Guidelines for Tyre Storage and Fire and Emergency Preparedness to assist TSA accredited entities to improve their practices and understand their regulatory requirements. At the end of each audit, TSA works collaboratively with participants to amend their action plans to better align with the Best Practice Guidelines and to better meet the objectives of the Scheme.
- 7.19 Currently 10% of accredited Retailers are audited annually according to a randomised process to verify compliance with the Scheme.
- 7.20 All accredited participants are also requested to complete an Annual Self-Certification Form, which requires the participant to:

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- (a) confirm that it will continue to meet its general and specific commitments under the Guidelines; and
 - (b) undertake sufficient enquiries to satisfy itself that it is compliant with the Scheme.

8 Improvement of data collection

- 8.1 TSA has dedicated resources to improve data collection through its online reporting platform (**Reporting System**), resulting in the following outcomes:
- (a) An increase in reporting rates of TSA accredited retailers from 9% (in December 2016) to 50% presently.
 - (b) In the 2017 financial year, the reporting rate among accredited recyclers and collectors was 100%; who all continue to meet their ongoing monthly reporting obligations.
- 8.2 Additionally, TSA is in the process of engaging a third party IT Consultant to review the Reporting System.

9 Suggestions for improvement to the effectiveness of the Scheme

(a) Independent reviews undertaken over the course of any re-authorisation

- 9.1 It is TSA's intention to ensure:
- regular reviews of its performance are conducted internally; and
 - sufficient external reviews are undertaken to allow for the objective evaluation of the Scheme's performance.
- 9.2 The amended Guidelines provide that further independent reviews of the Scheme will be conducted in 2022 and 2026.
- ### (b) Timing of the review of the Scheme
- 9.3 TSA is mindful of balancing the need to review and evaluate its operations with the need to dedicate sufficient resources to the day-to-day operations of the Scheme which in turn will allow the Scheme to reach its full potential.
- 9.4 Independent reviews are extremely resource-intensive and detract from TSA's ability to focus on improving the efficiency and capacity of the Scheme.
- 9.5 In TSA's view, four years will allow TSA to gain the momentum necessary to allow a significant increase in the efficiency of the Scheme's operations, and will enhance TSA's ability to meet its performance targets.

(c) Increase of the 25c levy

- 9.6 The majority of accredited tyre importers are presently absorbing all or most of the costs of the Scheme-imposed levy. If TSA were to increase the cost of the levy there is a risk that:
- more accredited importers may begin on-charging the cost of the levy to retailers, which in turn may be passed on to end-consumers; and/or

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- some of the existing accredited tyre importers (whose funding is crucial to the continuation of the Scheme) may exit the Scheme.

9.7 TSA considers there is more merit in increasing the participation levels of importers, than in raising the amount of the levy.

9.8 TSA continues to actively engage with importers who are not currently accredited to join the Scheme. TSA has written to all car and tyre importers, encouraging them to join the Scheme and is in the process of following up these communications to make appointments.

10 Implementation of the Marsden Jacob Associates Report

(a) Comments on recommendations not adopted

10.1 TSA has not adopted the following recommendations made by Marsden Jacob Associates for the following reasons:

Amendment to the performance measures and targets

- As noted in the Submissions, the original performance measures and targets were set by ATIC in circumstances where the practical realities of the Scheme in operation were unknown. Having regard to TSA's experience to date in overseeing the administration of the Scheme, TSA has determined that the initial performance measures and targets were unrealistic.
- Where possible, TSA has implemented Marsden Jacobs' recommendations in relation to revising these targets, including in particular by measuring participation levels by reference to market share.
- TSA has not implemented the following revised performance measures recommended by Marsden Jacobs:
 - The percentage of tyre importers that are participants/members in the scheme increases to 90% by 2020 (measured as volume market share of total tyre imports).
 - The percentage of tyre retailers that are participants/members in the scheme increases to 90% by 2020 (measured as market share of total tyre sales).
 - The percentage of tyre recyclers that are participants in the scheme increases to 90% by 2020 (measured as market share of end of life tyres).
- Instead, TSA's revised performance targets are incremental and have sought to achieve accreditation rates of 90% by 2028, rather than 2020, noting that TSA's ability to achieve these performance targets are constrained primarily by the voluntary nature of the Scheme and the commercial realities of the tyre import, retail, collection & recycling industries.

Amendments to the constitution to define representatives, members and participants

- Given TSA is a relatively young entity, its Board believes that constitutional change should occur at relevant periods commensurate with TSA's organisational growth. As TSA grows and expands, any relevant constitutional change will be proposed to the members in the appropriate manner and in accordance with the constitution. The Board of TSA is currently undertaking a review of its structure in accordance with its Strategic Plan review process, with definitions of 'Membership/Participant/Representative' being a key part of that review.

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- The review is expected to be completed by the end of 2018 and TSA will then consider any constitutional amendments or any new applications for membership, noting that membership applications have remained open, yet no membership applications have been received since October 2016. TSA has not dismissed this particular recommendation from the Marsden Jacob Associates' review; rather it firmly believes it must be reviewed at the appropriate time and with the rigor required to ensure TSA is able to further the Scheme's objectives.

Collection of data from ATRA

- At the time of the Marsden Jacob Associates report, TSA had not yet finalised the improvements to its data collection processes and capabilities. However, in circumstances where only one member of ATRA has not been accredited under the Scheme, TSA does not consider it necessary to collect data from ATRA, in particular:
 - due to the reporting rates of accredited recyclers and collectors as outlined in paragraph 8.1; and
 - given that the data collected by ATRA is substantially similar to the data presently collected by TSA.

(b) Accreditation under the Product Stewardship Act

- 10.2 TSA is unable to apply for accreditation under the *Product Stewardship Act* until such time as the Department of Energy and Environment calls for submissions for accreditation. This had not occurred since the Marsden Jacobs Report was finalised. However, TSA has been in regular contact with the Department in relation to submitting an application for accreditation.

11 Length of authorisation sought

- 11.1 All but one of the interested party submissions concede that the Scheme is presently necessary to improve the volume of EOLTs going to an environmentally sound use. In this regard, TSA considers that the Scheme is likely to achieve a net public benefit for the next 10 years, noting in particular that:
- (a) currently the 25c levy is not materially affecting end consumers, nor is this likely to occur if the amount of the levy remains the same, as noted in paragraphs 9.6 to 9.8 above;
 - (b) for the reasons outlined in section 23 of the Submissions, the Scheme is unlikely to have an adverse impact on competition within the various markets along the tyre supply and disposal chain; and
 - (c) for the reasons outlined below in section 12, the Scheme has the capacity to address concerns relating to misleading conduct by tyre retailers who charge fees to consumers for disposal of their EOLTs.
- 11.2 TSA also notes that in the context of operating an innovative tyre accreditation scheme, five years is not a long time. In particular, the objectives of the Scheme require many industry operators (particularly those in the recycling and collection industries) to substantially alter their current practices, including by investing in new technologies and infrastructure to enhance reprocessing capabilities or by favouring certain expensive activities (e.g. domestic reprocessing) over current cheaper alternatives (e.g. export of whole tyres, or legal landfill options).
- 11.3 TSA's principal rationale for seeking authorisation for 10 years is to provide a level of certainty regarding the operation of the Scheme, noting in particular that the Scheme will be unable to continue in the absence of ACCC authorisation given the potential for liability exposure under the *Competition and Consumer Act 2010*. This in turn will:

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- (a) allow TSA to invest funds and resources into longer-term projects, including the expansion of the operation of the Scheme to mining projects and OTR tyres; and
 - (b) allow for the Scheme to gain momentum through TSA's ability to dedicate sufficient resources to maximising the impact and reach of the Scheme, in circumstances where applying for re-authorisation is resource-intensive and has the capacity to interrupt the Scheme's regular operations.
- 11.4 In addition, TSA considers that a 10 year authorisation communicates to the industry and the community that TSA is serious about making a meaningful impact in improving the number and volume of EOLTs going to an environmentally sound use.
- 11.5 A 10 year authorisation is unlikely to preclude or fetter the establishment of an alternative statutory-based scheme or co-regulatory scheme if there was an appetite within the state or federal governments to enact the relevant legislation. In these circumstances, the Scheme may be replaced by a statute-based scheme, however the period of authorisation of the Scheme is unlikely to have any bearing on this possibility.
- 11.6 Equally, TSA has no reason to believe that there exists any current intention within the tyre industry to establish a scheme in competition with the Scheme, nor does it appear that there is even a remote possibility that an alternative effective voluntary scheme relating to the disposal of EOLTs would be established in the absence of the Scheme. In particular, most of the major tyre industry enterprises and/or industry bodies are currently members of, or participants in, the Scheme. In TSA's view, an effective industry scheme can only be implemented if these major enterprises and/or industry bodies are involved in the scheme. On this basis, granting an authorisation to the Scheme would not adversely affect competition from any potentially alternative industry scheme as there is no other real prospect of an alternative industry scheme being formed.

12 Other comments - misleading and deceptive conduct

- 12.1 The National Market Development Strategy for Used Tyres 2017-2022 (provided with the Submissions as Appendix F) identified concerns regarding the practices of tyre retailers in charging disposal fees to consumers, as follows:
- (a) Some retailers significantly inflate these fees by as much as five times the actual collection fee borne by the retailer, meaning only a portion of the fee charged is passed to the collection and or recycling industry.
 - (b) Disposal fees may misleadingly be referred to as 'recycling fees' in circumstances where some of the collected EOLTs may instead go straight to landfill.
- 12.2 The Scheme seeks to directly overcome these issues and reduce the instances of misleading and deceptive conduct at a retail level. In particular, one of the specific commitments for accredited retailers is to *'deal ethically and transparently with consumers, specifically in relation to the fees and charges associated with the environmentally sound use of EOLTs'*. This is verified by TSA through compliance audits; retailers are required to retain copies of dockets and/or receipts from collectors and recyclers for auditing purposes, such that TSA can ensure that accredited retailers do not engage in misleading practices.

Yours faithfully

A handwritten signature in black ink, appearing to be the initials 'HW' followed by a flourish.

Hall & Wilcox

Encl.