

TYRE STEWARDSHIP SCHEME

SUBMISSIONS IN SUPPORT OF APPLICATION FOR AUTHORISATION

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INTRODUCTION AND BACKGROUND

1 The Scheme

- 1.1 The Tyre Stewardship Scheme (**Scheme**) is a voluntary, industry-led scheme that aims, primarily, to increase the recycling rate of end-of-life tyres (**EOLTs**). A wide range of businesses or organisations can join the scheme. Their commitments to the scheme vary, depending on what role the business or organisation has in the tyre supply chain.
- 1.2 When EOLTs are put to environmentally sound use they: reduce the demand for virgin materials in the production of goods and energy; reduce pressure on landfill space and improve the amenity of the land; and eliminate the risk of fire and breeding grounds for mosquitoes and other vermin.
- 1.3 Despite the benefits, increased tyre recycling and resource recovery continues to be constrained by:
 - (a) lack of viable markets for EOLTs and tyre-derived products (**TDPs**);
 - (b) limited tyre recycling infrastructure;
 - (c) lack of understanding of the enhanced value, stability and durability that can be achieved through the use of EOLTs and TDPs in roads and other infrastructure projects;
 - (d) demand for whole baled tyres from international energy markets; and
 - (e) regulatory regimes governing the handling of EOLTs that are inconsistent between Australian jurisdictions.
- 1.4 The ACCC first granted authorisation of the Scheme pursuant to subsections 88(1) and 88(1A) of the *Competition and Consumer Act 2010* (Cth) (**Act**) on 11 April 2013.
- 1.5 Tyre Stewardship Australia Limited (**TSA**), being the entity responsible for administration and management of the Scheme, now applies for a further period of authorisation of the Scheme, in an amended form, pursuant to subsection 88(1) and 88(1A) of the Act (**Authorisation**).
- 1.6 The Scheme is the first initiative in Australia to take responsibility for the product stewardship of EOLTs. Accordingly, notwithstanding the fact that some experience has been gained by TSA during the first few years of operation of the Scheme, there is, as with any innovation, a degree of trial and error required in determining how to manage the stewardship of EOLTs in the most efficient and environmentally sound manner possible. In particular, new research and technologies are continuing to emerge to address the environmentally sound use of EOLTs and the larger scale use of TDPs, such that fluidity and flexibility is a necessary element to ensuring the Scheme is able to achieve its full potential.

2 TSA

- 2.1 TSA is a not-for-profit company limited by guarantee which was incorporated specifically for the purposes of administering and enforcing the Scheme.
- 2.2 TSA's role is to implement the Scheme in accordance with its corporate objects, including by:
- (a) administering accreditation of Participants in the Scheme;
 - (b) monitoring and auditing Participants' compliance with their general and specific commitments under the Scheme through random and risk-based audits;
 - (c) undertaking education, awareness and information activities to promote participation in the Scheme; and
 - (d) investing in market research and development projects relating to the environmentally sound use and disposal of EOLTs.
- 2.3 Specific details of TSA's roles are outlined in sections 1, 4 and 5 of Part A of the Guidelines.

HISTORY AND PROGRESS OF THE SCHEME

3 Key achievements and milestones

3.1 The Scheme was officially launched on 20 January 2014.

3.2 Key areas of focus, milestones and achievements of the Scheme to date are summarised as follows:¹

FY 2014/2015	<ul style="list-style-type: none">• Scheme launched by the Hon Greg Hunt MP, Federal Minister for the Environment on 20 January 2014• Online accreditation application platform launched• The Victorian and New South Wales Governments announced changes to vehicles purchasing policies to provide for the use of TSA accredited tyre retailers.• TSA welcomes Australia Post as the first accredited fleet under the Scheme• TSA launches online reporting platform <p>Areas of focus: Recruitment and accreditation, audit and compliance, investment and market development</p>
FY2015/2016	<ul style="list-style-type: none">• TSA launches consumer education campaign regarding the sustainable use of EOLTs• Launch of research project aiming to increase rubberised road products derived from tyre crumb• Retailers commence reporting on TSA’s online reporting platform• Completion of first round of research and development funding to progress new and improved uses for tyre-derived raw material - during the year a total value of \$1.2 million was contributed to nine projects• Initial audits conducted for recyclers and collectors, and a pilot audit program for retailers launched in October 2015 <p>Areas of focus: Creation of a strategic plan, expansion of reporting systems, increase local government authority participation</p>
FY2016/2017	<ul style="list-style-type: none">• Market development activities make significant progress in addressing barriers to the use of tyre crumb in road construction• High profile marketing campaign occurs in newspapers and outdoors across state capitals• TSA assists in funding the National Market Development Strategy for

¹ Information sourced from TSA Annual Reports.

Used Tyres 2017-2022, which will form the basis for a working group to address outstanding issues identified

- Comprehensive audit and compliance program introduced across all participant categories and undertaken through independent auditors

Areas of focus: initiation of comprehensive audit program, increase public awareness campaigns, maximise participant involvement

4 Performance measures and review

4.1 Since the date of commencement, the efficacy of the Scheme in achieving its objectives has been measured by the following means:

- (a) The number of Participants in the scheme.
- (b) The percentage of tyre importers and vehicle manufacturers that are Participants in the scheme, the aim being to achieve greater than 90% of tyre and vehicle importers in the Scheme within five years of commencement.
- (c) The resource recovery and recycling rates of EOLTs that can be attributed to the Scheme.
- (d) The national resource recovery and recycling rates of EOLTs.
- (e) Increase in the percentage of EOLTs that are going to an environmentally sound use.
- (f) Volume of TDPs sold or otherwise provided for environmentally sound use.
- (g) Number of users of TSA website.

(collectively, **Existing Performance Measures**)

4.2 The ACCC's determination dated 11 April 2013 (**Determination**) emphasised the importance of effective administration in order for the Scheme to achieve a net public benefit. The Determination noted that reporting in accordance with the Existing Performance Measures would help to ensure transparency and accountability in the Scheme's operation.

4.3 As set out in further detail in paragraph 7.1 below, the Existing Performance Measures were created by the Australian Tyre Industry Council (**ATIC**) based on its estimations as to what the Scheme may be capable of achieving. However, with the benefits of hindsight, TSA has determined that the Existing Performance Measures:

- (a) contain a number of targets which are unrealistic having regard to the practical realities of the markets in which the Scheme operates; and
- (b) do not accurately reflect the efficacy of the Scheme in achieving its objectives.

4.4 TSA has therefore determined to amend the Existing Performance Measures as set out in paragraph 10.1.

4.5 Nevertheless, in circumstances where TSA is obliged to report in accordance with the Existing Performance Measures, the Scheme's progress to date, by reference to these performance measures is outlined below.

(a) Number of Participants in the Scheme

The numbers of Participants to the Scheme are summarised in the table below.

Participant category	December 2014	30 June 2015	30 June 2016	30 June 2017	Total	Comments
Importers	6	1	1	0	8	Represents > 55% of total replacement tyre market
Retailers	4	434	634	248	1320	Accredited retailers represent more than 50% of Australian retail sales
Collectors	0	2	4	1	7	
Recyclers/Collectors	0	2	16	2	20	Accredited operators handle more than 70% of the available EOLTs managed in Australia
Fleet	1	1	1	1	4	
Local Government	0	0	0	3	3	
Mining	0	0	0	0	0	

TSA has continued to experience growth in Scheme participation, notwithstanding the occasional fluctuation in numbers of Participants due to external factors such as changes in ownership of Participants.

(b) Percentage of tyre importers and vehicle manufacturers that are Participants - the aim to have 90 per cent of tyre and vehicle importers in the Scheme within 5 years

There are now eight fully accredited tyre importers who are Participants of the Scheme. Notwithstanding that this does not appear to be a large number, TSA notes that this represents more than 55% of the market share of the replacement tyre market.

TSA's ability to achieve its original target of 90% of tyre importers has been hindered by the following factors:

- The voluntary nature of the Scheme, in circumstances where there is little-to-no economic incentive for tyre importers and vehicle manufacturers to seek accreditation.
- The replacement tyre market is dominated by a number of key importers, such that measuring the percentage of importers, rather than the market

share occupied by those importers, does not reflect the actual volume of tyre imports that are captured by the Scheme.²

(c) The national resource recovery and recycling rates of EOLTs

The progress regarding the destinations of EOLTs for the duration of the Scheme is summarised in the table below.³

End-of-life Tyre Destination	2014/15	2015/16	2016/17
Energy Recovery (local)	0.6%	0.0%	0.0%
Material reuse & recycling (local)	3.6%	3.5%	5.6%
Civil Applications (local)	0.8%	2.2%	0.4%
Steel recycling	n/a	n/a	1.8%
Exported (Tyre Derived Fuel), baled and casings	32.6%	47.7%	38.7%
Landfilled ⁴	48.7%	36.61%	6.7%
Operational Stockpiles	n/a	n/a	2.9%
Mining landfill	48.7%	36.61%	33%
Unknown destination	13.6%	10.0%	10.9%

TSA notes that there is limited transparency regarding the end-of-life destinations for exported tyres. TSA is therefore unable to accurately measure the percentage of exports which strictly represent resource recovery.

However, TSA's data collection has improved, allowing TSA to more accurately understand and report on the breakdown of EOLT destinations, with new data on those EOLTs held at recycling for future processing (known as 'operational stockpiles').

(d) The national resource recovery and recycling rates of EOLTs which can be attributed to the Scheme

TSA has been unable to meaningfully report on this metric, as it requires an understanding of what would have occurred with and without the Scheme, which would be challenging to measure even with a further developed reporting framework.⁵

However, TSA has invested more than \$2 million in market development projects since commencement of the Scheme. These projects have focussed on increasing the use of TDPs in roads, rail, explosives and civil engineering projects. The projects currently funded by TSA have been projected to consume more than 50,000 tons of TDP per annum.

² Marsden Jacob Associates 2017, *Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia*.

³ The table is sourced from TSA's Annual Report for 2016/2017.

⁴ This refers to percentage landfilled by TSA accredited collectors and/or recyclers. In previous years 'landfilled' included tyres in 'operational stockpiles' (temporary stockpiling) and those tyres estimated to be disposed of at mining sites that are most likely landfilled and/or left at the mining sites as is the current industry practice. In 2016/17 TSA was able to separate out the percentage of tyres that have been 'landfilled' by accredited entities. These landfilled tyres usually are shredded tyres and in some instances, this is the most environmentally sound disposal method available in the absence of markets for EOLT products.

⁵ Marsden Jacob Associates 2017, above n 2.

(e) Increase in the percentage of EOLTs that are going to an environmentally sound use

In FY2017, domestic rates of recycling of EOLTs increased from 3.5% to 7.8%. However, if civil engineering applications and steel recycling were to be taken into account, this figure would be higher.⁶

It is also noted that environmentally sound uses extend beyond recycling and reuse to export for tyre-derived fuel. When taking this end use into account, along with other outcomes, the 2016/17 figure for environmentally sound use reached up to 46%.⁷

The Scheme's initial target was to ensure that, 5 years after commencement of the Scheme, 50% of EOLTs will go to an environmentally sound use. This has not strictly been achieved by TSA.

- 4.6 TSA notes that an independent review of the Scheme conducted by Marsden Jacob Associates in early 2017 (**Independent Review**) highlighted a number of limitations associated with the Existing Performance Measures. These are outlined in detail in the report enclosed at Appendix A. In these circumstances, TSA proposes to amend the performance measures and data requirements as outlined in section 10.

5 Compliance with conditions in ACCC determination

- 5.1 The Determination imposed a number of conditions on the Scheme and TSA. TSA's compliance with these conditions is outlined as follows:

C1: Each year, TSA publishes on its website an annual report on the operation of the scheme over the year ending 30 June (or an alternate annual reporting period as agreed in writing with the ACCC). The report must be published no later than 3 months after the end of each annual reporting period

- (a) TSA has published an annual report for each year of the Scheme's operation. As required, the annual report discloses:
- (i) the number of participants in the Scheme;
 - (ii) the percentage of tyre importers and vehicle manufacturers and importers that are participants in the Scheme;
 - (iii) the resource recovery and recycling rates of EOLTs that can be attributed to the Scheme;
 - (iv) the national resource recovery and recycling rates of EOLTs;
 - (v) the volume of TDPs sold or otherwise provided for an environmentally sound use;
 - (vi) the total levy funds collected under the Scheme;
 - (vii) a breakdown of how levy funds were spent during the period; and

⁶ TSA Annual Report 2016/2017.

⁷ Noting that TSA has been unable to verify on all occasions the destination of EOLTs purportedly exported as tyre-derived fuel.

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- (viii) an explanation of how the funds being spent is contributing to achieving the Scheme's objective.

Copies of TSA's annual reports are enclosed at Appendix B.

C2: *The Board of the TSA must appoint an independent, external consultant to conduct a full review of the operation of the Scheme, to commence on the second anniversary of the commencement of the Scheme. The review is to be completed within six months and a report published on TSA's website.*

- (b) On or about 12 October 2016, TSA engaged Marsden Jacob Associates to conduct the Independent Review. Marsden Jacob Associates published a report of its findings and recommendations in relation to its review in April 2017(**Report**).

A copy of the Report is included at Appendix A.

C3: *The TSA Board must:*

- *implement the recommendations arising from the review prescribed in C2; or*
- *in the event that the TSA Board decides it is not appropriate to implement any particular recommendation, publish written reasons for this decision on the TSA website.*

- (c) On 29 May 2017 TSA wrote to the ACCC in respect of its implementation of the recommendations arising out of the Report. This letter has been made available on the TSA website as required.

A copy of the letter is enclosed at Appendix C.

In particular, the Board has implemented the following measures in accordance with recommendations made in the Report:

- (i) In order to enhance communications to Scheme participants, the Board has implemented the following initiatives:
- A Strategic Plan for 2017 - 2020, which has been published on the TSA website.
 - TSA has employed a Marketing & Communications Manager.
 - TSA has continued to make a substantial investment into its media campaign to ensure broader public awareness of the Scheme and its activities.
- (ii) A Board skills matrix has been completed and identified the need for the appointment of a Director with direct recycling experience. To this end, TSA is presently in the process of recruiting an appropriately qualified director.
- (iii) The Board has documented a conflicts of interest policy to clarify the processes and protocols for managing conflicts of interest. A copy of this policy is enclosed at Appendix D.

6 Funding projects

6.1 To date TSA has contributed levy funds to the following projects.

Organisation	Project description
University of Melbourne: & PreFab Australia	Investigation into the use of tyres as a low density aggregate in lightweight concrete sandwich panels for construction, replacing foam concrete (which can falter structurally) with rubberised concrete which has an enhanced capacity for load bearing.
University Wollongong and the Rail Innovation Cooperative Research Centre	Identification of opportunities to use rubber mats manufactured using TDPs to improve the stability of railways and replace geo-synthetic materials.
Chip Tyre, BioAust Energy, Sequence Blast & Drill	Development of a high speed method for using rubber in on-site production of explosives at mines, quarries and construction projects.
University of Melbourne & Merlin Site Services	Investigating the suitability of using a 60% waste tyre mix in permeate pavement applications as a new storm-water management solution.
UNSW Scholarship & Green Distillation Technologies	Development of graphene-integrated metal composites (super composites) using EOLTs to create a new, durable metal strengthening composite.
Swinburne University & VicRoads	Investigation and laboratory testing into whether crumb rubber from EOLTs can be applied at low levels with crushed concrete.
Monash University	Independent assessment of the tyre pyrolysis processes to measure process outputs for liquid fuels, chemicals and porous material production from EOLTs in an empirical and unbiased manner.
Australian Road Research Board (ARRB) Queensland, Transport and Main Roads Queensland, Department of Environment and Heritage Queensland	Optimisation of the use of recycled tyre rubber by <ul style="list-style-type: none"> • increasing the use of spray seals in Queensland; • monitoring emissions associated with the use of crumb rubber asphalt; and • creating specifications for open graded asphalt.
ARRB Victoria, VicRoads & Sustainability Victoria	Development of an evidence-based strategy to revise current VicRoads asphalt specifications and to identify engineering and economically viable applications for crumb rubber asphalt.
Flexiroc & Talwood Park Racing	Investigation into engineering a free-draining racetrack for the thoroughbred racing industry from tyre derived aggregate.
Polymeric Powders & Austeng	Testing and development of moulded tyre rubber and plastic composites products for use in oil, gas, irrigation and sewerage piping.
University of South Australia and the Australian Research	Identification and demonstration of reinforced crumb rubber concrete as an economically viable and sustainable alternative to conventional reinforced concrete.

Centre

University of Wollongong
& EcoFlex

Examination of the performance of a rubber- based energy absorbing layer as a capping stratum to minimise track degradation and enhance rail ballast performance and longevity.

- 6.2 TSA is currently establishing a framework for undertaking an ex-post assessment of funded projects to assess whether, and to what extent, they have been successful in furthering the Funding Priorities outlined in the Guidelines and the objectives of the Scheme.

AMENDMENTS TO THE GUIDELINES

Having regard to its three years' experience in running the Scheme and the outcome of the Independent Review, TSA proposes to amend the Guidelines in the manner outlined below, concurrently with the re-authorisation of the Scheme by the ACCC. For convenience and ease of review, TSA has included references to the applicable sections of the Guidelines.

7 Background and overview

7.1 The original form of the Guidelines, as submitted to and authorised by the ACCC (**Original Guidelines**), were prepared by ATIC prior to the launch of the Scheme or the establishment of TSA. In these circumstances, the Original Guidelines were drafted in a manner that required ATIC to anticipate the commercial realities associated with operating the Scheme and without any context or material reference points to use as a benchmark.

7.2 TSA's experience in administering the Scheme, gained subsequent to the launch of the Scheme and granting of the Authorisation, has revealed the following major limitations caused by the form and substance of the Original Guidelines:

- Many of the targets set by the Original Guidelines were overly optimistic having regard in particular to:
 - the commercial realities relating to the disposal of EOLTs in Australia, which are outlined in more detail in paragraph 22.2 below; and
 - the voluntary nature of the Scheme.
- The Original Guidelines contained a greater focus on process rather than outcomes, which has impeded TSA's ability to adapt management and direction of the Scheme as necessary to best achieve the Scheme's objectives.

7.3 In these circumstances, the amended form of the Guidelines (**Amended Guidelines**) in large part seek to remove what TSA considers to be unnecessary detail relating to TSA's processes and procedures. In this manner, TSA seeks greater flexibility and fluidity in administering the Scheme so that, over time, as TSA develops greater knowledge and experience, TSA is able to adapt the operation of the Scheme in a manner that is best able to achieve the objectives of the Scheme. Where possible, this is balanced by:

- (a) ensuring certainty in relation to the core obligations (being the general and specific commitments) of participants to the Scheme (**Participants**); and
- (b) the fact that TSA remains transparent and accountable for its actions in administering the Scheme.

8 Substituted applicant

8.1 TSA has determined that it is the most appropriate entity to make the application for Authorisation (**Application**) (rather than ATIC, which made the original application) on the basis that:

- (a) TSA was established to administer the Scheme so, for example, its corporate objects include, among other things:
 - (i) Implementing the Scheme.

- (ii) Monitoring, auditing and reporting on the development of the Scheme.
 - (iii) Undertaking education, awareness and information activities to promote the Scheme and the value of EOLTs.
 - (iv) Providing a forum to discuss ideas and promote multidisciplinary research and institutional collaboration.
- (b) TSA has been directly responsible for the administration of the Scheme since its inception;
 - (c) TSA is in direct receipt of all data relevant to its performance measures and reporting obligations; and
 - (d) TSA has the requisite knowledge and financial resources relevant to the preparation of the Application.

8.2 In particular, TSA notes that the initial application was made by ATIC on the basis that TSA had not yet been incorporated.

8.3 ATIC has also confirmed its acknowledgement to TSA that it would be appropriate for TSA to prepare and submit the Application.

9 Introduction of the Scheme (Part A, section 1)

9.1 The introductory sections of the Guidelines have been amended to include a more detailed explanation of the corporate objects of TSA, given that these are directly relevant to the administration of the Scheme.

9.2 Primarily, this amendment has been made to balance other amendments which, in TSA's view, strip out unnecessary detail, in order to provide a greater degree of certainty to Participants, the industry and the wider public, in terms of providing assurance that the Scheme will be administered in accordance with TSA's constitution.

10 Performance measures and targets (Part A, section 2.5)

10.1 Amendments to the key performance measures and targets of the Scheme are outlined in the table below.

Original performance measures	Amended performance measures
1. the number of participants in the Scheme 2. the percentage of tyre importers and vehicle manufacturers and importers that are participants in the Scheme – the aim being to have 90 per cent of tyre and vehicle importers in the Scheme within 5 years; 3. the resource recovery and recycling rates of end of life tyres that can be	1. The number of Participants in the Scheme increases as follows: <ul style="list-style-type: none"> a. The percentage of tyre importers that are participants/members in the scheme increases to 75% by 2020, 85% by 2023 and 90% by 2028 (measured as market share of total tyre imports). b. The percentage of vehicle manufacturers/importers that are participants/members in the scheme increases to 50% by 2020, 75% by 2023 and 90% by 2028

<p>attributed to the Scheme;</p> <ol style="list-style-type: none"> 4. the national resource recovery and recycling rates of end of life tyres; 5. the increase in the percentage of end of life tyres that are going to an environmentally sound use – the Scheme’s performance target is to increase this percentage from 16 per cent (currently) to 50 per cent of tyres going to an environmentally sound use by the end of 5 years; 6. the volume of tyre derived products sold or otherwise provided for an environmentally sound use; and 7. the number of users of TSA’s website. 	<p>(measured as market share of total new vehicle sales).</p> <ol style="list-style-type: none"> c. The percentage of tyre retailers that are participants/members in the scheme increases to 65% by 2020, 75% by 2023 and 90% by 2028 (measured as market share of total tyre sales). d. The percentage of tyre recyclers that are participants in the scheme increases to 80% by 2020, 85% by 2023 and 95% by 2028 (measured as market share of EOLTs). <ol style="list-style-type: none"> 2. The volume of EOLTs collected by TSA accredited Participants, or accounted for over time, increases annually. 3. The volume of EOLTs exported via TSA accredited recyclers and collectors that have been verified as going to environmentally sound use increases annually. 4. The percentage of EOLTs that are going to an environmentally sound use increases to 50% by 2020, 75% by 2023 and 90% by 2028. 5. Users seeking accreditation through the TSA website and general website traffic increases annually. 6. The market capacity of Australian tyre derived products associated with market development activities promoted, funded and/or supported by TSA increases annually.
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Explanation

10.2 Broadly speaking, the amendments to the performance measures and targets reflect the data that TSA is able to collect from its Participants to more accurately measure the Scheme’s success in furthering its objectives. In particular, TSA notes as follows:

- (a) The targets relating to the percentage increase of Participants is to be measured by reference to market share. This amendment has been made in response to the recommendations arising out of the Independent Review, which in particular acknowledged that a focus on market share would provide a better reflection of the total number of tyres impacted by Scheme Participants.
- (b) In circumstances where the Scheme seeks to continue to operate for at least the next 10 years, TSA has set incremental targets in relation to participation levels as well as the quantity of EOLTs going to an environmentally sound use. These will allow TSA to assess and report on its progress as measured against those targets on an interim basis and to adapt accordingly.
- (c) TSA intends to report on rates of accreditation through the TSA website, as well as website traffic generally, as a means to measure the effectiveness of its marketing and communication strategies.

- (d) By now measuring the volume of EOLTs accepted by Participants, or otherwise accounted for, TSA will be encouraged to enhance its data collection activities, as well as to understand the reach of the Scheme by reference to tyre volume and not just participation levels.
- (e) Similarly, TSA has included a metric for measuring the end of life destinations of tyre exports, noting that this has previously caused issues in understanding the percentage or rates of EOLTs going to an environmentally sound use in circumstances where those EOLTs are exported.
- (f) TSA has removed the performance measures requiring a *'breakdown of how levy funds were spent'* and *'an explanation of how the funds being spent is contributing to achieving the Schemes objectives it does not contain any referable target'* as neither included referable targets against which TSA could measure its progress. TSA confirms that it will otherwise continue to report on the spending of levy funds in its annual reports.
- (g) TSA has also removed the requirement to report on the volume of TDPs sold or otherwise provided for environmentally sound use, noting that this metric is difficult to measure as it requires TSA to collect data that is outside the scope of its activities under the Scheme. Rather, TSA intends to measure the potential market demand for Australian TDPs associated with the market development activities with which TSA has been involved (whether it be through support, funding or other awareness-raising campaigns). TSA considers that this is a more meaningful target which better reflects the objectives of the Scheme
- (h) TSA has removed the requirement to measure data in relation to EOLTs **not** going to an environmentally sound use. To this end, TSA confirms that it intends to report on these figures (as it has done in previous annual reports), but otherwise considers that the need for this performance measure is obviated by the positive targets seeking to increase the percentage of EOLTs going to an environmentally sound use, in circumstances where TSA cannot report on one measure without having regard to the other.

11 Funding of market development and research (Part A, section 4.3)

Overview of amendments

- 11.1 An overview of the proposed amendments to the provisions of the Guidelines relating to funding of market development and research are outlined below:

	Original Guidelines	Amended Guidelines
Allocation of funding	<p>The objectives of the Tyre Research Stewardship Fund are to:</p> <ul style="list-style-type: none"> advance innovative technologies in Australia by supporting focused, collaborative research in high priority technologies; retain local expertise in, and attract international expertise to, Australia in technologies related to end-of-life tyres; support the growth of skills and 	<p>On an annual basis, TSA will allocate a portion of the levy funds to support initiatives and projects which:</p> <ul style="list-style-type: none"> increase the consumption of Australian TDPs from locally generated EOLTs; contribute to market development activities that are consistent with the goal of increased and enhanced

	<p>capacity in Australia in technologies related to end-of-life tyres for the domestic and international markets; and</p> <ul style="list-style-type: none"> • share the results of that research with the wider industry as appropriate whilst respecting intellectual property rights. 	<p>utilisation of EOLTs; and</p> <ul style="list-style-type: none"> • support growth in skills, expertise and capacity in the Australian EOLTs and associated end user markets.
Restrictions on funding	<p>Research funding provided by TSA is dedicated early stage through to proof of concept research and development for the utilisation of end-of-life tyres.</p> <p>Funds will not be available to companies or institutions to support commercialisation activities, i.e., where funding through venture capital and or debt/equity funding would normally apply.</p>	<p>Corporate objects of TSA.</p> <p>A copy of the Constitution of TSA is enclosed at Appendix E.</p>

Explanation

- 11.2 Notwithstanding that the Original Guidelines appeared to provide for the establishment of a ‘Tyre Stewardship Research Fund’, once TSA was established, it was determined that, given the nature of projects being funded, there was no utility in establishing a discrete funding body. Accordingly the language has been modified to reflect the reality that TSA is committed to provide funding to certain activities and processes involving the use of EOLT and TDPs, but there is no separate administration of those levy funds applied to market development and research verses those funds utilised to support the implementation and administration of the Scheme.
- 11.3 Experience has shown that the parameters of funding as dictated by the Original Guidelines restricted TSA’s ability to contribute to the overall efficiency of the Scheme and achievement of the Scheme’s objectives through its funding activities.
- 11.4 In particular, it has become apparent that the original objectives and parameters of the ‘Fund’ were inconsistent with the objectives of the Scheme. For example, the support of technologies or projects seeking to commercialise is impermissible under the terms of the Original Guidelines, notwithstanding that such technologies or projects may be most efficient in increasing the use and consumption of TDPs and/or reducing the environmental impacts of EOLTs, both of which are key objectives of the Scheme. The term ‘Funding Priorities’ has therefore been used in place of ‘objectives’ in the Amended Guidelines to seek to avoid confusion between the priorities of funding and the objectives of the Scheme
- 11.5 The Funding Priorities seek to complement, rather than limit, achievement of the objectives of the Scheme; particularly in prioritising initiatives that increase the consumption and utilisation of TDPs sourced from EOLTs and enhancement of the markets associated with these products.
- 11.6 Naturally, this also necessitates a removal of the restrictions which prohibit TSA from contributing funds to companies to support commercialisation activities. In this regard, TSA notes that the following safeguards exist to ensure that all funding provided by TSA is applied first and foremost to support the objectives of the Scheme:
- (a) Applications for funding are assessed on the basis of whether the project or initiative fits within the Funding Priorities and the objectives of the Scheme.

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- (b) While recommendations for funding are referred by the Research Advisory Council, the ultimate decision as to whether or not funding should be granted to a particular organisation rests with the Board of TSA. This ensures all decisions are:
- (i) made in accordance with the corporate objects of TSA; and
 - (ii) delimited by the Board's statutory and fiduciary duties; meaning that all Directors with a vested interest in a particular proposal/application for funding must absent themselves from the decision-making process in relation to that proposal.

In this regard, TSA is prevented from applying funds in such a way as to prioritise certain industry interests over others.

12 Application and accreditation process (Part A, section 5.1)

- 12.1 Application forms have been removed from the Amended Guidelines to allow for greater flexibility in the applications process. In particular, TSA recognises that as the Scheme progresses and the market for EOLT disposal and use of TDPs develops, certain aspects of the application forms and Action Plan templates may become obsolete.
- 12.2 However, the Guidelines now explicitly identify the objective criteria against which all applicants will be assessed; namely, their capacity and commitment to meet the general and specific commitments under the Scheme. This provides greater clarity to prospective Participants in understanding their eligibility for participation in the Scheme.

13 Suspension of accreditation (Part A, section 5.3)

- 13.1 The Amended Guidelines introduce a framework for the suspension of Participants who fail to comply with their general and/or specific commitments under the Scheme.
- 13.2 TSA is concerned with balancing the need for sanctions and a rigorous regulatory framework against the need to enhance and grow rates of participation in the Scheme. In particular, a key obstacle apparent in the Original Guidelines was that a Participant whose accreditation is revoked may not apply for re-accreditation for 12 months from the date of revocation. This 'all or nothing' predicament has caused issues when sanctioning minor instances of non-compliance; particularly in circumstances where participation levels in the Scheme are key to the Scheme being able to achieve its objectives.
- 13.3 Accordingly, the option of suspending a Participant's accreditation gives TSA the flexibility to sanction non-compliance without the need to necessarily exclude Participants from the Scheme for a full 12 months.
- 13.4 TSA believes that the introduction of the suspension mechanism will lead to a higher instance of compliance with the Amended Guidelines by Participants than would otherwise be the case. Ultimately, TSA believes that this will increase the likelihood of the performance measures and targets being met.

14 Interpretation of general commitments (Part D, section 1.2, Part E, section 1.2)

- 14.1 The Amended Guidelines expressly provide that retailers and fleet operators are expected to prioritise dealings with accredited tyre importers and manufacturers over their non-accredited counterparts. While to some extent this has always been implicit in the nature of the general commitments as they apply to retailers and fleet operators, TSA considers that making this expectation explicit is more likely to assist to grow the rates of participation among tyre importers. To date, there has been a lack of commercial incentives for tyre importers to seek accreditation under the Scheme, particularly in circumstances where tyre importers are required to pay a levy on the number of EPUs imported into Australia.
- 14.2 On the other hand, it is not currently a viable option for TSA to require accredited retailers to deal only with accredited importers, because, among other things:
- (a) TSA does not have the resources to enforce such an obligation, noting that the number of retailers accredited under the Scheme would make it extremely difficult to monitor compliance on an ongoing basis; and
 - (b) many retailers have various ongoing contractual arrangements in place for the supply of tyres from both accredited and non-accredited tyre importers. TSA is concerned that requiring accredited retailers to terminate any such arrangements with non-accredited importers may cause a reduction in levels of participation and accreditation under the Scheme, in circumstances where retailers presently make up the significant majority of Participants.
- 14.3 Accordingly, TSA considers that in enunciating the expectation that retailers and fleet operators should preference accredited tyre importers and manufacturers over their non-accredited counterparts, it is able to best strike a balance between creating an enhanced commercial incentive for importers to seek accreditation under the Scheme, while attempting to avoid any correlated disincentives for accredited retailers.

15 Specific commitments - reporting obligations (Parts C - I)

- 15.1 The Amended Guidelines remove the specific data and reporting requirements imposed on each category of Participant, while maintaining a high-level obligation to report to TSA.
- 15.2 Specific reporting requirements for each Participant are instead outlined on TSA's online portal. This allows TSA to modify Participants' reporting requirements from time to time to ensure that reporting is made as efficient as possible by removing the necessity for Participants to provide data that will not further the principles or objectives of the Scheme. In particular, over the past three years, TSA has determined that:
- (a) much of the data provided by certain Participants does not necessarily allow TSA to monitor performance of the Scheme (as outlined in section 4 above); and
 - (b) many Participants are reticent to comply with reporting obligations, such that the greatest results are likely to be achieved if reporting obligations are not viewed by Participants as being too onerous.

16 Specific commitments - Fleet operators (Part E)

As outlined in more detail in paragraph 21.20 below, fleet operators do not generally have any direct dealings with recyclers or collectors, notwithstanding that the specific commitments in the Original Guidelines seem to imply that this is the case. The specific commitments of fleet operators have therefore been updated in the Amended Guidelines to reflect the reality of their relationships with other Participants in the Scheme; namely, that these categories of Participants deal mostly with retailers in connection with the replacement tyres of their fleets.

17 Specific commitments - Local government (Part F)

Similar to fleet operators, TSA considers that the Original Guidelines did not accurately reflect the manner in which local governments interact with the Scheme, which is detailed in paragraph 21.18 below. In these circumstances, the specific commitments of local governments have been amended to ensure that these commitments reflect their operations under the Scheme, namely:

- (a) ensuring that replacement tyres for their fleets are purchased from accredited retailers; and
- (b) collecting EOLTs through hard rubbish collections or transfer stations, which must then be passed on to accredited collectors or recyclers.

18 Removal of levy exceptions

18.1 The Original Guidelines provided for the following exceptions to the imposition of the \$0.25 levy per EPU:

- (a) The EPU ratio for larger tyres is capped at 400 EPU.
- (b) Tyre importers who import less than 1000 EPU annually will not be expected to contribute funds to the Scheme.

18.2 These exceptions have been removed from the Amended Guidelines on the basis that they impede the Scheme's ability to be financially self-sufficient, in circumstances where the voluntary nature of the Scheme is such that tyre importers, vehicle manufacturers and miners willingly submit to payment of the levy on the terms outlined in the Amended Guidelines.

CONDUCT SEEKING AUTHORISATION

19 Summary of conduct seeking authorisation

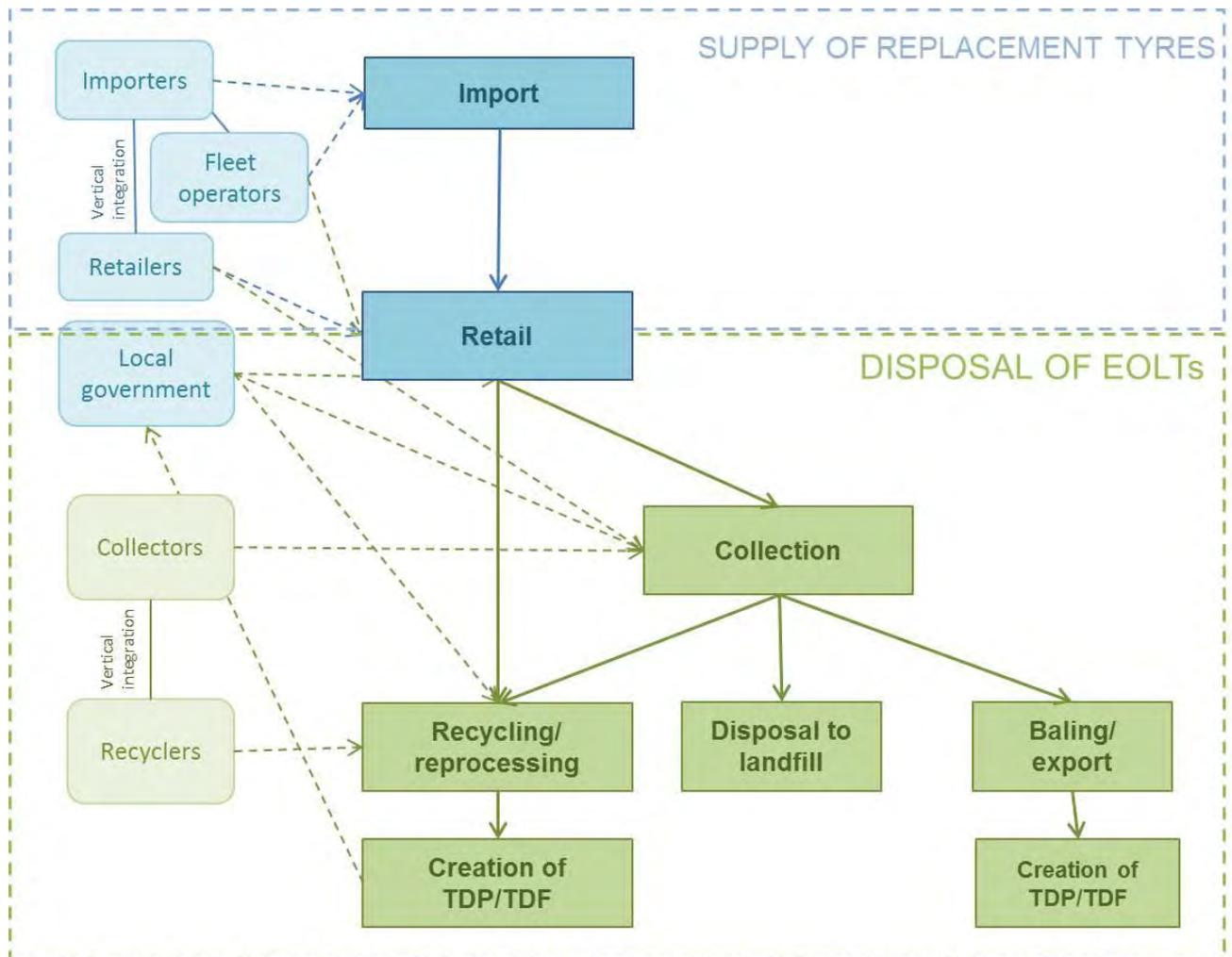
TSA seeks Authorisation in respect of the specific conduct outlined in the table below.

Guidelines Reference	Conduct or provisions requiring Authorisation	Provision of the Act
General commitments for all Participants (Part A, Section 3)	<ul style="list-style-type: none"> Enterprise to enterprise agreements in furtherance of Participants' general and specific commitments 	Cartels (s 44ZZRD; 44ZZRF; 44ZZRG) Exclusive dealing (s47) Anti-competitive agreements (s 45)
Funding (Part A, section 4.3); Tyre importers and vehicle manufacturers - Specific commitments (Part C, section 1.2); Miners - Specific commitments (Part 1, section 1.2)	<ul style="list-style-type: none"> Imposition of a levy on tyre importers, vehicle manufacturers and miners, of a minimum of \$0.25 per EPU imported into Australia 	Cartels (s 44ZZRD; 44ZZRF; 44ZZRG) Anti-competitive agreements (s 45)
Market development and research (Part A, Section 4.4)	<ul style="list-style-type: none"> Allocation of levy funds to support initiatives and projects regarding the use and disposal of EOLTs 	Anti-competitive agreements (s 45)
Application and accreditation process (Part A, Section 5.1)	<ul style="list-style-type: none"> Accreditation of Participants on the basis of a: <ul style="list-style-type: none"> current capacity to meet the general and specific commitments under the Scheme; or demonstrated capacity to meet the general and specific commitments under the Scheme 	Cartels (s 44ZZRD; 44ZZRF; 44ZZRG) Anti-competitive agreements (s 45)
Enforcement - Suspension and revocation of accreditation (Part A, Section 5.3)	<ul style="list-style-type: none"> Suspension or revocation (for a period of 12 months) for Participant's non-compliance with general and/or specific commitments under the Scheme 	Cartels (s 44ZZRD; 44ZZRF; 44ZZRG) Anti-competitive agreements (s 45)
Retailers - Specific commitments (Part D, Section 1.2)	<ul style="list-style-type: none"> Retailers to prioritise dealings with accredited tyre importers Retailers to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs 	Cartels (s 44ZZRD; 44ZZRF; 44ZZRG) Exclusive dealing (s47)
Fleet operators - Specific commitments (Part E, Section 1.2)	<ul style="list-style-type: none"> Fleet operators to prioritise dealings with accredited tyre importers 	Cartels (s 44ZZRD; 44ZZRF; 44ZZRG) Exclusive dealing (s47)

	<ul style="list-style-type: none"> Fleet operators to deal only with retailers accredited by TSA when disposing of EOLTs 	
Local Government - Specific commitments (Part F, Section 1.2)	<ul style="list-style-type: none"> Local governments to deal only with accredited retailers when replacing the EOLTs generated by their fleets Local government to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs 	Cartels (s 44ZZRD; 44ZZRF; 44ZZRG) Exclusive dealing (s47)
Collectors - Specific commitments (Part G, Section 1.2)	<ul style="list-style-type: none"> Collectors to ensure all EOLTs collected from retail and other outlets are passed on to accredited recyclers 	Cartels (s 44ZZRD; 44ZZRF; 44ZZRG) Exclusive dealing (s47)

MARKET ANALYSIS

Life cycle of a tyre under the Scheme and overview of the tyre supply chain



20 Relevant markets

- 20.1 In the ACCC Determination, the ACCC identified that the Scheme was likely to affect competition in national markets relating to the supply of passenger car and truck tyres; collection and distribution of EOLTs; supply of tyre recycling services; retail supply of motor vehicles; and tyre and motor vehicle manufacturing.
- 20.2 TSA agrees with the ACCC's analysis that these are the key relevant markets, except to note that it has not yet accredited any Participants who engage in the retail supply and/or the manufacturing of motor vehicles. In particular, because there are currently no car manufacturers operating in Australia, relationships between tyre importers and vehicle manufacturers exist solely overseas. Accordingly there is little-to-no overlap between the markets for the manufacturing of cars and the supply of tyres for passenger car and truck tyres in Australia and therefore a minimal incentive for vehicle manufacturers to engage with the Scheme. In this regard, TSA considers that the market for the supply of passenger car and truck tyres is better described as the market for the supply of **replacement tyres** for passenger cars and trucks.

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- 20.3 In addition, TSA submits that its contribution to research and market development through its funding activities potentially affects additional markets, such as the markets relating to:
- (a) the research and market development of projects and technologies relating to the use and disposal of EOLTs or recycling of rubber and steel more generally; and
 - (b) the supply of TDPs.
- 20.4 Accordingly, the analysis below in relation to the impact of the Scheme on competition has been conducted by reference to the following national markets:
- (a) the supply of replacement tyres for passenger cars and trucks;
 - (b) the collection and distribution of EOLTs;
 - (c) the supply of tyre recycling services;
 - (d) the research and development of projects and technologies relating to the disposal of EOLTs and the use of TDPs; and
 - (e) the supply of TDPs sourced from EOLTs.

21 Market profile of Scheme Participants

TSA notes that the following information has been sourced predominantly from industry experience of accredited Participants.

Tyre importers and distributors

- 21.1 As indicated in 4.5(b), the majority of the market relating to the import and distribution of tyres is not highly concentrated. While there are multiple buyers and sellers overall in this market (TSA estimates that there are approximately 100 domestic importers in Australia), there are a few large international corporations which occupy a large percentage of the market share for the supply of passenger car and truck tyres. In particular, the eight tyre importers who are currently accredited under the Scheme occupy more than 55% of the market for replacement tyres. All larger tyre importers supply tyres nationally, with many smaller independent importers confining their activities to specific states or cities. In particular, there are higher concentrations of small independent importers operating out of Melbourne and Sydney.
- 21.2 Most tyre importers engage only in importation and distribution activities. However, there is some degree of complexity in terms of market overlap and vertical integration in the market for the supply of replacement tyres, as follows:
- (a) a number of the bigger tyre importers also sell their tyres through retail networks;
 - (b) many tyre importers also supply their branded tyres through affiliated franchise networks;
 - (c) a few of the larger tyre importers also provide re-treading services for truck and other large-vehicle tyres. However, re-treaded tyres tend to be favoured only by fleets operating in waste disposal and similar industries, in which tyres bald quickly without much damage occurring to the tyre casings; and
 - (d) certain commercial fleet operators import their own tyres.

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- 21.3 The current barriers to entry into the market for the import and retail of tyres are low, noting that in recent times Australia has seen an influx of Chinese brands competing with existing brands.
- 21.4 Importers of mining and OTR tyres on the other hand sit quite apart from importers of passenger car and truck tyres. TSA estimates that there are only three or four importers for mining and OTR tyres, given that most of these organisations operate only within the mining industry. To this end, TSA notes that these tyres do not materially intersect with the supply chain for passenger and truck tyres.
- 21.5 Presently, TSA is concerned that there is a limited commercial incentive for tyre importers to seek accreditation under the Scheme, particularly in circumstances where they do not deal directly with EOLTs as a waste stream, except where they also operate at a retail level. In these circumstances, TSA seeks to provide a more explicit encouragement for accredited retailers to prioritise accredited importers where possible as outlined in section 14 above. TSA otherwise notes that anecdotal evidence received from accredited tyre imports indicates that these Participants do not consider that the levy and reporting obligations imposed on them to be significant or onerous.

Tyre retailers

- 21.6 As is evidenced by the number and rates of participation outlined in 4.5(a), the retail sub-market for the supply of passenger and truck tyres is highly concentrated. TSA estimates that there are approximately 2000 to 2500 tyre retailers throughout Australia. Accordingly, with the exception of a number of larger national chains and vertically integrated retailer/importers, generally speaking most tyre retailers do not hold a significant portion of market share, as there is a large number of small companies operating state-based or regional businesses. Data collected by TSA suggests that higher numbers of tyre retailers exist in Victoria, Queensland and New South Wales. The activities of retailers include the repair and replacement of tyres on existing motor vehicles. Tyre retailers are therefore the only Participants within the Scheme who engage with the supply of new/replacement tyres as well as the waste disposal of EOLTs. However, in this regard TSA notes that although integration and market overlap exists in the supply of tyres, as between tyre importers and tyre retailers as outlined in paragraph 21.2 above; there is no corresponding overlap in the disposal of EOLTs (i.e. there is no integration between retailers and collectors/recyclers).

Collectors

- 21.7 The industry associated with the collection and disposal of EOLTs as a waste stream is highly competitive, notwithstanding that there is not a large number of operators in the industry. TSA estimates that there are approximately 30 to 40 collectors operating in various regions of Australia. The industry for the collection of EOLTs is made up of smaller independent businesses that mostly operate in confined regional areas. Similar levels of concentration exist across Victoria, South Australia, New South Wales and Western Australia with little-to-no presence in the Northern Territory.
- 21.8 There is a large degree of market overlap between the provision of collection and recycling services. Approximately 60% of collectors are also tyre recyclers.
- 21.9 Many collectors deal with other end-of-life motor vehicle parts and products in addition to EOLTs, including oil filters, batteries, exhaust systems and scrap metal. Collectors who are not also recyclers generally dispose of EOLTs by one or more of the following means:
- (a) transport (either loose or baled tyres) to provide a recycler;
 - (b) stockpiling; and/or
 - (c) disposal to landfill;

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- 21.10 There are low barriers to entry for collectors (and tyre recyclers, where the two are integrated); due to the high levels of cost competition, new collectors can enhance the volume of EOLTs collected by charging low collection fees.
- 21.11 Collectors accredited under the Scheme, who are obliged to deal only with accredited recyclers, are likely to incur the indirect costs associated with the 'gate fees' charged by recyclers in connection with their processing services. However, TSA considers that to a degree this is offset by ensuring that accredited collectors will receive higher volumes of EOLTs from accredited retailers.

Tyre recyclers

- 21.12 With the exception of one national tyre recycler/collector who accounts for close to 50% of the volume of EOLTs collected nationally and one or two other business who operate across state borders, the tyre recycling industry is otherwise comprised of smaller businesses who confine their activities to regional areas due to the costs associated with the collection and transportation of EOLTs.
- 21.13 TSA estimates that there are approximately 20 to 30 or recyclers located in various parts of Australia, predominantly in Victoria, Western Australia, New South Wales and Queensland. While there are a couple of small tyre reprocessing/recycling operations in the Northern Territory, these operations have limited reprocessing capacity and accordingly, some collectors transport their EOLTs to others states for processing. Additionally, due to the high costs associated with logistics, some of the highly remote and regional retailers in the Northern Territory legally shred their EOLTs to landfill.
- 21.14 As noted in paragraph 21.8 above, there is a high level of integration between the provision of recycling and collection services; TSA estimates that more than 75% of recyclers also perform collection services.
- 21.15 The nature of the services offered by recyclers varies between operators, however recyclers generally engage with one or more of the following processes:
- (a) crumbing/granulation – for production of TDPs such as asphalt production and rubber matting, etc;
 - (b) shredding - predominantly for production and export of tyre-derived fuel, but occasionally also for shredding to landfill;
 - (c) baling – predominantly for export to energy recovery facilities; and/or
 - (d) stockpiling.
- 21.16 Due to the specific nature of these services, tyre-recycling plants cannot be used to process products other than EOLTs.
- 21.17 Industry knowledge suggests that there are high levels of competition between recyclers, particularly due to the cost disparities between each of the processes outlined in paragraph 21.15. In particular, the more environmentally-sound processing practices such as the creation of tyre crumb and other TDPs are much more expensive than stockpiling or disposal to landfill, which may be more commonly adopted by under-resourced recycler/collectors. Tyre recyclers who favour these environmentally sound processes are therefore more likely to charge higher prices (known as 'gate fees') for the receipt of EOLTs.

Local government

- 21.18 Local governments do not fall neatly within the supply chain as compared to the other categories of Participants under the Scheme. Rather, they may interact with the markets for the disposal of EOLTs, the supply of tyre recycling services and the supply of TDPs through the following avenues:
- (a) the collection of EOLTs through hard-rubbish collection services and/or waste transfer stations;
 - (b) the operation of local government fleets (which necessitates the purchase of larger volumes of replacement tyres than domestic consumers); and
 - (c) the procurement of TDPs in infrastructure (e.g. use of rubber crumb in roads, playgrounds, etc.).
- 21.19 TSA is aware that some local governments seek to prioritise the environmentally sound use of EOLTs and use of TDPs where possible on their own initiative. However, in circumstances where local governments otherwise have no interest in prioritising environmentally-sound initiatives, there is little commercial incentive for local governments to participate in the Scheme. In particular, the costs to local governments of prioritising the environmentally sound disposal of EOLTs, for example by providing tyre stockpiles to accredited collectors and recyclers, is much higher than disposing of those tyres to landfill. Rather, TSA acknowledges that seeking accreditation under the Scheme is predominantly based on socially-responsible and/or reputational considerations for local governments.

Fleet operators

- 21.20 Similar to local governments, fleet operators do not engage commercially with the markets for the supply or disposal of tyres in the same manner as the other Scheme Participants. Fleet operators are included in the Scheme by virtue of the fact that they are one of the larger procurers of replacement tyres, and in particular re-treaded tyres.
- 21.21 While TSA notes that there may be limited commercial incentive for fleet operators to seek accreditation under the Scheme, it is becoming increasingly common for fleet operators to seek to reduce their emissions and/or environmental impact in the interests of achieving a 'greener profile'. In this regard, TSA also notes that the obligations of fleet operators under the Scheme are not onerous in circumstances where their main commitment involves purchasing replacement tyres from accredited retailers.

22 Current issues in the relevant markets

- 22.1 The management of EOLTs continues to present a significant challenge in Australia. In particular, notwithstanding that products derived from EOLTs (mostly rubber and steel) have the potential for high-value applications, present market realities and dynamics present little incentive to utilise these TDPs and make it difficult for tyres to be recycled or reprocessed in an efficient manner.
- 22.2 Key aspects of the problem are as follows:
- (a) Australia is continuing to increase its tyre outputs due to rising vehicle registrations and an increase in new tyre sales. In FY2016, Australia generated approximately 56.3 million equivalent passenger units (**EPUs**) in EOLTs, which represents an increase in 16% since

2009/2010. Over the next 10 or so years it is also estimated that new tyre sales will exceed 63.3 million EPU's.⁸

- (b) Data suggests that approximately 60-65% of EOLTs are disposed to landfill, or illegally dumped/stockpiled nationally.⁹
- (c) Transport costs are a significant barrier to the recovery and reuse of EOLTs in the recycling market. In particular, the cost of transporting EOLTs from rural or remote areas to metropolitan areas (where most tyre recyclers and reprocessors are located) can be prohibitive to smaller operators.¹⁰
- (d) The domestic market for TDPs is under-developed, with many recyclers finding it difficult to compete with exporting and baling of EOLTs, This is primarily because the cost of export and baling is much lower due to an international demand for tyre-derived fuel and energy recovery.¹¹
- (e) In addition, over the past 12-24 months, crumb rubber (one of the more common TDPs arising from EOLTs) has been imported from international markets such as Portugal and Canada at a cost of up to 40% less than domestic prices.¹²
- (f) It is estimated that tyre recyclers involved in crumbing activity are presently operating at between 35% and 60% of potential capacity.¹³
- (g) Australia's current capacity to produce high value TDPs is limited to approximately 30,000 tonnes per annum, which is significantly less than the scale of production capacities of the equivalent products used to service construction and associated markets.¹⁴

23 Impact of the Scheme on competition within the relevant markets

Supply of replacement tyres for passenger cars and trucks

23.1 TSA considers that the Scheme has, or is likely to have, the following impacts on the national market for the supply of passenger car and truck tyres:

- (a) TSA considers that the sub-market for truck tyres includes the supply of re-treaded truck tyres, noting that these second-hand re-treads (also known as 'casings') are closely substitutable for new products. However, over the last five years there has been a downturn in the use of second hand tyres, with a decline from 25% to approximately 7-10% of tyres being diverted to the second-hand tyre market during 2009-2014.¹⁵ This is primarily due to a decrease in price of new tyres in Australia. The Scheme therefore has the capacity to enhance competition in this sub-market. Given that the re-treading of tyres represents an environmentally sound use of EOLTs, TSA considers that the increasing public awareness of the Scheme may increase the purchase of re-treaded tyres such as

⁸ Randell 2017, *National market development strategy for used tyres 2017-2022*, p vii.

⁹ Ibid, p viii.

¹⁰ Hyder 2015, *Stocks & fate of end of life tyres 2013-2014 study*, p 67.

¹¹ Randell 2017, above n 8, p viii.

¹² ¹² Randell 2017, above n 8, p 56.

¹³ Hyder 2015, above n 10, p 64.

¹⁴ Randell 2017, above n 8, p xiv.

¹⁵ Hyder 2015, above n 10, p 56

to enhance the economic viability of this product and offer greater competition to new tyres, thus increasing competition in the market for the supply of replacement tyres.

- (b) TSA otherwise notes that the Scheme is unlikely to have a significant adverse impact on the levels of competition within this market, noting in particular:
- (i) the Scheme does not create any additional barriers to entry into the market, due to its voluntary nature and the negligible amount of the levy charged on tyre importers. Accordingly, as outlined in paragraph 21.3, the barriers to entry remain low; and
 - (ii) the cost of becoming accredited under the Scheme for importers and retailers are minimal; as outlined in paragraph 21.5, existing Participants do not consider their general and specific commitments to be onerous or to impede their general business activities.
- (c) TSA also notes that the requirement for certain Participants to deal only with one another may amount to a cartel provision given that it has the purpose of restricting the supply of EOLTs to a class of persons, being non-accredited recyclers. This is discussed in further detail in paragraphs 23.4 and 23.8 below. However, TSA considers that in practice, any restriction on dealings is insignificant, as anecdotal evidence received by TSA from accredited retailers indicates that, except for in rural and regional areas, there are minimal obstacles associated with becoming accredited under the Scheme, particularly in circumstances where it is industry practice to build disposal fees into the retail price of tyres.
- (d) In the Determination, the ACCC discussed concerns relating to the imposition of a \$0.25 levy on tyre importers, noting in particular that the levy may be passed through to customers in the retail pricing of tyres. For the avoidance of doubt, TSA does not consider that the imposition of this levy could have the purpose or effect of fixing, maintaining or controlling the price of tyres, either directly or indirectly. In particular, TSA notes that, notwithstanding the imposition of the levy, Participants (tyre importers in particular) retain the discretion to determine the ultimate price of their tyres under the Guidelines; and in any event, the quantum of the levy is not so high that Participants would in practice be required to necessarily include the cost in their pricing. However, to the extent that the imposition of a tyre levy may be viewed as having the purpose or effective of fixing, maintaining or controlling the price of tyres, TSA notes that:
- (i) this cost of the levy underpins the operation of the Scheme, as it is used to fund the costs incurred by TSA in administering the Scheme, as well as being applied to market development and research projects to enhance the utilisation of EOLTs, thereby allowing TSA to deliver the public benefits outlined in section 24; and
 - (ii) the amount of the levy is negligible having regard to the retail price of tyres which can range from between approximately \$50 and \$300 each, such that any on-charging of the levy is unlikely to have any noticeable impact on end users.

Collection and distribution of EOLTs

- 23.2 TSA notes that there is presently a degree of market failure concerning the collection and distribution of EOLTs, particularly due to the costs associated with transporting EOLTs for the purpose of ensuring their environmentally sound disposal, as outlined in paragraph 22.2 above.
- 23.3 In requiring Participants to deal only with one another in certain circumstances, the Scheme seemingly has an impact on this market in terms of its restriction on the supply of EOLTs, particularly as between:
- (a) accredited retailers and non-accredited importers (albeit that this obligation is less strictly enforced); and
 - (b) accredited retailers and non-accredited collectors; and
 - (c) accredited retailers/collectors and non-accredited recyclers.
- 23.4 To the extent that these restrictions may be viewed as a ‘cartel provision’ within the meaning of the Act because they may have the purpose of restricting the supply of EOLTs to a particular class of persons, being non-Participants, TSA notes that this requirement is also a necessary feature of the Scheme in encouraging participation and in allowing the Scheme to meet its objectives and to deliver the public benefits as outlined in paragraph 24 below. TSA also considers that the restrictions are not likely to have a significant detrimental impact on the industry, noting in particular that:
- (a) Participants are accredited on the basis of objective criteria which are directly referable to the Scheme’s objectives, in circumstances where the general and specific commitments imposed on Participants are not unduly onerous, except in the case of collectors located in regional and remote areas.
 - (b) In relation to collectors and distributors located in rural and regional areas, for whom the incidental costs associated with participation in the Scheme (namely, the requirement to distribute EOLTs only to accredited recyclers) may be high, the Guidelines provide that TSA may take into account the limited availability of accredited recyclers when assessing an accredited collector’s compliance with the Scheme. This ensures that TSA is able to work collaboratively with collectors to ensure that they can prioritise meeting the objectives of the Scheme in circumstances where the cost of strictly adhering to their specific commitments might be prohibitive. TSA also notes that collectors located in rural and remote areas represent only a minimal proportion of Participants in the Scheme.
 - (c) TSA is committed to persuading recyclers located in rural and remote areas to become accredited.
 - (d) Accredited retailers and local governments may deal with non-accredited collectors in circumstances where they enter into contractual arrangements which are consistent with the objectives of the Scheme, and which ensure that EOLTs are provided to accredited recyclers. In addition, TSA considers that this is unlikely to be considered third-line forcing given that, for the reasons outlined below, these arrangements are unlikely to substantially lessen competition.
- 23.5 Similarly, to the extent that these restrictions may have the purpose or likely effect of substantially lessening competition in a market, TSA also considers that the actual or potential anti-competitive effect of the conduct required or encouraged by the Scheme is likely to be nominal or non-existent having regard to the following:
- (a) Accreditation under the Scheme may impede collectors’ ability to competitively price their collection services in the short term due to the higher gate fees likely to be charged by

the accredited recyclers they are required to deal with (as outlined at 21.17). In this regard, the Scheme has the capacity to heighten levels of competition between accredited and non-accredited collectors as any commercial disadvantage suffered by accredited collectors over the short-term is likely to be offset by the requirement that accredited retailers provide their EOLTs to accredited collectors, except in limited circumstances, which may enhance the volume of EOLTs collected by accredited collectors and increase their capacity to compete with non-accredited collectors who may prioritise disposal of EOLTs to landfill.

- (b) As a consequence, the Scheme may lessen barriers of entry in this market, as it will provide a means by which collectors who may prioritise disposal of EOLTs to an environmentally sound use may offer greater competition to collectors who may prioritise disposal of EOLTs to landfill.

23.6 TSA otherwise notes that, to the extent that competition in the collection and distribution of EOLTs is negatively affected by the restrictions on dealings between accredited and non-accredited business, this is nonetheless necessary to allow the Scheme to achieve the public benefits outlined in paragraph 24.

Supply of tyre recycling and reprocessing services

23.7 The domestic market for the supply of tyre recycling and reprocessing services also continues to experience market failure for number of reasons, including those outlined at paragraph 22.2.

23.8 Similarly to paragraph 23.3 above, TSA concedes that the general and specific obligations requiring Scheme participants to deal only with one another may have an impact on the supply of tyre recycling and reprocessing services, in particular as between:

- (a) accredited retailers, fleet operators, local governments and non-accredited collectors/recyclers; and
- (b) accredited collectors and non-accredited recyclers.

23.9 In this regard, TSA refers to and repeats the matters set out in paragraph 23.4 and 23.5, noting in particular that the effect of the restriction is somewhat reduced by virtue of the fact that accredited retailers, fleet operators and local governments are permitted to deal with non-accredited collectors in circumstances where they have entered into contractual arrangements with these entities to ensure that all EOLTs are provided to an accredited recycler. While this may otherwise fall within the definition of 'exclusive dealing' under the Act, TSA notes that this conduct is unlikely to contravene the Act as it is unlikely to substantially lessen competition, as follows:

- (a) By reason of the cost competition in this market, which favours cheaper processes over their environmentally sound alternatives as outlined in 21.17, for recyclers there are indirect costs associated with becoming accredited under the Scheme, namely, the increased costs of recycling or reprocessing tyres in an environmentally sound manner. This may act as an obstacle to accreditation for some of the smaller recyclers in the short term and may also heighten competition in this market between accredited recyclers and non-accredited recyclers favouring processes which are not environmentally sound.
- (b) However, TSA notes that the Scheme also has the capacity to lower the barriers to entry into the market for tyre recycling and reprocessing services and enhance the ongoing commercial viability of accredited recyclers, by affording those 'environmentally sound' recyclers a greater capacity to compete with recyclers providing cheaper but less environmentally sound processes, as follows:

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- (i) The specific obligations imposed on accredited retailers and collectors to deal only with accredited collectors enhances the volume of EOLTs received by accredited recyclers.
 - (ii) The Scheme has the capacity to enhance markets relating to TDPs as outlined in paragraphs 23.10 to 23.11(e) below, thereby increasing the demand for the production of TDPs such as rubber crumb, which represents an environmentally sound use of EOLTs.

Supply of TDPs sourced from EOLTs

- 23.10 TSA expects that its continued investment into technologies and projects relating to the wide-scale use of TDPs sourced from EOLTs has the potential over time to increase the capacity for production of TDPs such as to enhance competition in related markets.
- 23.11 In particular, research has shown that TDPs have the capacity to compete with a wide range of different products in other industry sectors, including:¹⁶
- (a) rubber explosives;
 - (b) rubber bitumen;
 - (c) playground / soft-fall surfaces;
 - (d) fuel; and
 - (e) binders, glues and adhesives.
- 23.12 By funding emerging technologies in this space, TSA considers that the Scheme may assist to overcome the market barriers that presently exist in terms of the economies of scale at which TDPs are produced. In this manner, the Scheme may allow TDPs sourced from EOLTs to compete with the above products, among others.

Projects for research and market development regarding the use and disposal of EOLTs

- 23.13 TSA considers that the competitive process adopted in the provision of funding has the ability to itself stimulate and increase competition in areas of research and market development relating to the use and disposal of EOLTs. In particular, the national reach of the Scheme in conjunction with its funding capabilities has the capacity to generate higher levels of demand for these activities and projects.
- 23.14 In this regard, TSA confirms that eligibility for funding is not limited to the members or Participants of the Scheme.

Miscellaneous comments

Application process for accreditation

- 23.15 TSA notes that, by implementing an application process for the accreditation of Participants, the Scheme may be viewed as implementing artificial restrictions on the supply of EOLTs between accredited Participants at various levels of the supply chain.

¹⁶ Randell 2017, above n 8, p 59.

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- 23.16 However, TSA also notes that these restrictions are unlikely to be material, particularly because:
- (a) there are no direct costs associated with becoming accredited, except for tyre importers, car manufacturers and miners (levy);
 - (b) the Scheme is an 'open' scheme in the sense that it is available to all prospective Participants who fall into the relevant classes;
 - (c) those applying to the Scheme are assessed against objective criteria which are directly referable to the objectives of the Scheme.
- 23.17 In addition, TSA considers that the application process is necessary to ensure Participants are accredited only on the basis of their commitment and ability to further the purposes and objectives of the Scheme.

Suspension and revocation

- 23.18 TSA acknowledges that, to the extent that it is required to suspend or revoke the accreditation of Participants for reasons of non-compliance; there may be possible anti-competitive detriments suffered by those Participants given they are no longer permitted to deal with other accredited business along the tyre supply chain in most circumstances.
- 23.19 To the extent that the provisions of the Guidelines relating to suspension and revocation of accreditation may have an exclusionary effect or otherwise be considered a cartel provision; TSA notes that this is a necessary measure to ensure that TSA is able to enforce the Scheme in a manner which best meets the Scheme's objectives and thereby maximises the prospects of the Scheme delivering the public benefits listed in section 24.

24 Public benefits

- 24.1 The Scheme has been designed for the purpose of delivering a range of benefits to individual Participants, the tyre industry and the broader community as a whole.
- 24.2 As is outlined in the Guidelines, benefits to the public include:
- addressing the current 'market failures' outlined in sections 21 and 23;
 - increased use of a resource stream currently being disposed of as waste;
 - reduction in the number of tyres not going to an environmentally sound use;
 - an enhanced Australian recycling industry and sustainable markets for EOLTs and TDPs;
 - increased capacity to handle EOLTs in Australia;
 - the enhancement of competition in markets for EOLTs and TDPs through research and development;
 - an improved business environment particularly for tyre collectors and recyclers;
 - increased consumer awareness of the impacts of EOLT disposal; and
 - enhanced credibility for the tyre industry through demonstrated leadership in environmental management and adoption of corporate social responsibility strategies.

24.3 As outlined in section 4 above, the Scheme has made significant progress in only three years of operation, notwithstanding the various limitations imposed by the Original Guidelines, the Scheme's voluntary nature, and performance measures in need of modification.

24.4 In particular, TSA notes the following in respect of those public benefits offered by the Scheme:

(a) Research and development into effective uses for EOLTs and their TDPs

TSA has invested over \$2 million in market development projects since September 2015. As detailed in section 6, each of these projects seeks to enhance the efficient and sustainable use of EOLTs and their associated TDPs in such areas as roads, rail, explosives, as well as polymer and civil engineering applications.

The proposed amendments to the parameters of TSA's funding activities now also seek to prioritise projects and technologies which increase the capacity for the utilisation of TDPs from EOLTs. The manner in which the Scheme has impacted, and may continue to impact the market for TDPs is outlined in section 23 above.

An analysis of the potential opportunities for TDPs estimated that the cumulative uptake of TDPs over the next 10 years could be as high as 260,500 tonnes, representing a recycling rate of more than 50%.¹⁷

(b) Market benefits

As outlined in detail in section 23 above, the Scheme has the capacity to:

- (i) enhance competition in the markets associated with the collection and disposal of EOLTs; and
- (ii) create new opportunities to enhance markets for the products of TDPs sourced from EOLTs.

(c) Environmental benefits

- (i) As outlined in paragraph 4.5(c), since commencement of the Scheme, there has been a marked reduction in the number of tyres being disposed of in landfill, particularly among Scheme Participants. In particular, over the course of 2016/2017, only 6.7% of tyres were disposed directly to landfill by Participants.
- (ii) Through encouraging the production higher quantities of secondary materials sourced from EOLTs, the Scheme is reducing the need for production of certain rubber or steel products sourced from raw or virgin materials, thereby preventing the unnecessary depletion of natural resources.

(d) Public health and safety benefits

In encouraging the environmentally sound disposal of EOLTs, the Scheme minimises the risk of fires; toxic gases and chemicals leaching caused by tyre stockpiles. Tyre stockpiles in particular are a high fire risk when compared to other waste types.¹⁸

(e) Other benefits

¹⁷ TSA Annual Report 2016/2017.

¹⁸ UTS 2016, *Waste Fires in Australia: Cause for Concern?*

The Scheme has the capacity to reduce the significant costs incurred by State Governments in dismantling tyre stockpiles. By way of example, the costs incurred by the Victorian Environmental Protection Authority in the clean-up of a major tyre stockpile in Stawell, Victoria was approximately \$5 million.¹⁹

25 Conclusion: Future with and without the Scheme

- 25.1 TSA considers that, having regard to the matters outlined above, the Scheme does, and will continue to, result in a net public benefit, when weighed against the possible anti-competitive detriments.
- 25.2 In particular, TSA notes that in the absence of the Scheme, there is a current lack of:
- (a) regulation regarding the disposal of EOLTs for an environmentally sound use, noting in particular that the existing regulatory frameworks are primarily concerned with minimising the risks to health and human safety, rather than associated environmental impacts of tyre disposal; and
 - (b) incentives for industry players to engage with the environmentally sound disposal of EOLTs, having regard in particular to the costs associated with recycling and reprocessing EOLTs.
- 25.3 Accordingly, among other things, without the existence of the Scheme:
- (a) opportunities relating to the supply of recycling and reprocessing services and TDPs will continue to remain underdeveloped;
 - (b) TDPs sourced from EOLTs are unlikely to meet their potential; and
 - (c) as previously acknowledged by the ACCC in the Determination, it is likely to take a significant period of time for one or more governments to establish an effective alternative framework for the environmentally sound disposal for EOLTs.
- 25.4 On the other hand, as noted in section 23 above, the anti-competitive detriments of the Scheme are likely to be nominal; in fact, in many cases the Scheme has the capacity to enhance rather than diminish competition in the relevant markets. In addition, the Scheme has the capacity to deliver a broad range of public benefits associated with the environmentally sound disposal of EOLTs.

REFERENCES

Randell Consulting Pty Ltd (2017) *National market development strategy for used tyres 2017-2022*. (Appendix F)

Hyder Consulting Pty Ltd (2015), *Stocks & fate of end of life tyres 2013-2014 study* (Appendix G)

UTS Institute for Sustainable Futures (2016), *Waste Fires in Australia: Cause for Concern?* (Appendix H)

¹⁹ <https://www.insidewaste.com.au/site/news/1052386/cost-clean-stawell>

Appendix A - Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia

Appendix B - TSA Annual Reports

Appendix C - Letter from TSA to ACCC dated 29 May
2017

Appendix D - Conflict of interest policy

Appendix E - TSA Constitution

Appendix F - National market development strategy for used tyres 2017-2022

Appendix G - Stocks & fate of end of life tyres 2013-2014 study

Appendix H - Waste Fires in Australia: Cause for Concern?