



Draft Determination and interim authorisation

Application for authorisation AA1000409

lodged by

Tyre Stewardship Australia

in respect of

the national Tyre Stewardship Scheme

Date: 27 April 2018

Authorisation number: AA1000409

Commissioners:
Sims
Rickard
Schaper
Court
Featherston

Summary

The ACCC proposes to grant authorisation to Tyre Stewardship Australia to allow for the continuation of its Tyre Stewardship Scheme (the Scheme).

The ACCC previously granted conditional authorisation in relation to the Scheme in April 2013. The existing authorisation is due to expire in May 2018.

The ACCC proposes to grant authorisation for six years, rather than the requested 10 years.

The ACCC has also decided to grant interim authorisation to enable the Scheme to continue to operate while the ACCC considers the current application.

The ACCC will seek submissions in relation to this draft determination, including the proposed period of authorisation, before making its final decision.

On 11 April 2013, the ACCC granted conditional authorisation to the Australian Tyre Industry Council for the Tyre Stewardship Scheme (the **Scheme**), to be administered pursuant to The Guidelines for the Tyre Product Stewardship (the **Guidelines**) (authorisations A91336 & A91337). These authorisations expire on 3 May 2018 (but interim authorisation will allow the Scheme to continue).

Tyre Stewardship Australia (**TSA**) was subsequently incorporated to take over the administration and management of the Scheme. The Scheme is a voluntary, industry led, scheme that aims to increase the rate of end of life tyres (**EOLTs**) being put to environmentally sound use. The Scheme was launched in 2014 and TSA initially focused on increasing participation in the Scheme and developing public awareness. TSA has also invested more than \$2 million in market development projects since the commencement of the Scheme.

Among other things, the Scheme imposes obligations on accredited participants to only deal with other accredited participants in the tyre supply chain, and imposes a \$0.25 per tyre levy on certain participants (tyre importers, vehicle manufacturers and miners). The levy does not directly fund recycling of EOLTs but rather seeks to find and promote new uses for these materials. Participants are also required to regularly report to TSA about the volume, and destination, of EOLTs.

In the current application for authorisation, TSA has sought authorisation for 10 years for specific provisions of a revised set of Guidelines for the Tyre Product Stewardship Scheme (**Revised Guidelines**). TSA submits that this will give it greater flexibility in administering the Scheme, allowing it to adapt to best achieve the Scheme's objectives.

Authorisation is sought on behalf of current and future participants in the Scheme. A wide range of businesses or organisations in the tyre supply chain can join the Scheme, including importers, retailers, recyclers and collectors. Their commitments to the Scheme vary, depending on what role the business or organisation has in the tyre supply chain.

In assessing TSA's application for authorisation, the ACCC's role is to assess whether the public benefits generated under the authorisation are likely to outweigh public detriments in accordance with the authorisation test set out in the *Competition and Consumer Act 2010*. The ACCC's role is not to design the ideal scheme, set environmental policy, or police participants' compliance with the Scheme. The ACCC considers that government regulation could also be an effective way to address the problems with disposing EOLTs.

The ACCC considers that the Scheme, administered pursuant to the Revised Guidelines, is likely to result in public benefits. In particular, it is likely to result in a reduction in the volume of tyres entering the domestic waste stream or exported overseas to be burned for fuel in an environmentally unsound manner, and therefore reduce the environmental and health and safety hazards associated with such disposal methods.

The ACCC also considers it is likely that public benefit will be generated through the research and development financed by Scheme levy funds. In particular, the ACCC considers that TSA's proposed research and development, coupled with its industry and public awareness activities, could assist in developing industry recognition of the commercial value of end of life tyres and identify potential markets for tyre derived products.

The ACCC considers that the Scheme is unlikely to generate any significant public detriment because:

- participation in the Scheme is voluntary
- any detriment arising from restrictions on supply imposed on accredited participants of the Scheme is mitigated by their ability to deal with unaccredited businesses in certain circumstances and
- the levy charged under the Scheme represents a minimal proportion of the total retail cost of new tyres for consumers.

It also appears unlikely that participation in the scheme will lead to broader coordination or collusion between participants on matters beyond the scope of the authorisation. In light of the above, the ACCC considers that the public benefits are likely to outweigh any public detriment generated by the proposed Scheme.

However, the ACCC acknowledges concerns raised by interested parties in relation to the effectiveness of the Scheme, including in respect of industry engagement and compliance. For example, interested parties submit that there were issues relating to:

- insufficient industry representation on the TSA Board, particularly in relation to the tyre recycling sector
- accreditation, under the Scheme, of businesses who were not compliant with Scheme obligations and
- insufficient oversight of end of life tyres exported overseas.

These concerns have been raised in relation to the current operation of the Scheme, as well as any future operation under the Revised Guidelines.

While the ACCC takes these concerns seriously, the ACCC acknowledges that the Scheme is evolving and TSA appears to be taking steps to remedy these issues, for example nominating an additional recycling industry representative to the Board, agreeing to form an Industry Consultative Group, introducing a suspension mechanism for non-compliant participants, introducing more rigorous accreditation processes regarding capacity to meet Scheme commitments and developing verification procedures for the destination of exported end-of-life-tyres.

Taking these steps by TSA into account, the ACCC considers that the public benefits of the Scheme are likely to outweigh any public detriment, and that it is not necessary to impose conditions of authorisation.

Further, the ACCC notes that the Revised Guidelines commit TSA to publish annual reports about the progress of the Scheme and for independent reviews to be conducted every four years; therefore removing the need for the ACCC to impose similar reporting conditions, as it did in 2013.

The ACCC proposes to grant authorisation for six years, commencing from the date the ACCC's final determination comes into effect (expected to be in May or June 2018).

This duration would enable an independent review of the Scheme (mandated in the Revised Guidelines) to be completed and any necessary changes to be considered by TSA prior to lodging any application for authorisation to continue the Scheme beyond 2024. If TSA seeks re-authorisation, the ACCC would closely review the results of the revised Scheme, including the level of participation by mining companies and vehicle manufacturers and importers.

Contents

Summary	i
Contents	iv
Abbreviations and definitions	v
The application for authorisation	1
The proposed conduct	1
The applicant	3
Background	4
Consultation	21
ACCC assessment	23
Relevant areas of competition	23
Future with and without	25
Public benefit	27
Environmental and public health and safety benefits	29
Research and development into end of life tyres	34
ACCC conclusion on public benefits	34
Public detriment	35
Restrictions on supply	36
Imposition of the levy	37
Balance of public benefit and detriment	37
Length of authorisation	39
Draft determination	41
The application	41
The net public benefit test	42
Conduct which the ACCC proposes to authorise	42
Next steps	43
Interim authorisation	43

Abbreviations and definitions

ACCC Commission	Australian Competition and Consumer
Act	Competition and Consumer Act 2010
ATIC	Australian Tyre Industry Council
ATRA	Australian Tyre Recycling Association
EOLT	End of life tyre. This means a tyre that is deemed no longer capable of performing the functions for which it was originally made.
EPU	Equivalent Passenger Unit. This means a standardised measure for the quantity of tyres. One EPU contains as much rubber and other materials as a 'typical' passenger tyre. For the purposes of the Scheme, the assumed weight of one new EPU is taken to be 9.5 kg and one end of life EPU is taken to be 8 kg.
GISA	Green Industries South Australia
the Guidelines	The Guidelines for the Tyre Product Stewardship Scheme 17 August 2012
PSA	The Product Stewardship Act 2011
Revised Guidelines	The Guidelines for the Tyre Product Stewardship Scheme, dated 3 May 2018
the Scheme	Tyre Product Stewardship Scheme
TDF	Tyre derived fuel
TDP	Tyre derived product
TSA	Tyre Stewardship Australia Limited

The application for authorisation

1. On 5 December 2017, Tyre Stewardship Australia Limited (**TSA**) lodged an application for authorisation AA1000409 with the Australian Competition and Consumer Commission (**ACCC**). TSA is seeking authorisation for specific provisions of the Guidelines for the Tyre Product Stewardship Scheme, 3 May 2018 (the **Revised Guidelines**) for 10 years. The Revised Guidelines govern the administration of the Tyre Stewardship Scheme (the **Scheme**), overseen by TSA.
2. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the **Act**). Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the Act but nonetheless consider there is an offsetting public benefit from the conduct.¹
3. The ACCC previously granted conditional authorisation for the Tyre Stewardship Scheme (the **Scheme**), to be administered pursuant to The Guidelines for the Tyre Product Stewardship (the **Guidelines**) to the Australian Tyre Industry Council (**ATIC**) on 11 April 2013 (authorisations A91336 & A91337). The existing authorisations expire on 3 May 2018.
4. TSA assumed responsibility for the administration and management of the Scheme following the 2013 authorisation. In its current application for authorisation, TSA has made changes to the Guidelines.
5. On 4 April 2018 TSA subsequently amended its application to request interim authorisation to enable it to continue to operate the Scheme while the ACCC is considering the current application. Interim authorisation is considered further from paragraph 208.

The proposed conduct

6. TSA is seeking authorisation for:
 - conduct on the same terms as the current authorisations (A91336-A91337) – sought on an interim basis to commence on or before 3 May 2018;² and
 - the proposed conduct under the Revised Guidelines set out in application (AA9100409).
7. TSA seeks authorisation for specific provisions of the Revised Guidelines to allow for continuation of the Scheme (**the Proposed Conduct**). TSA considers that these provisions may be at risk of breaching the following sections of the Act:
 - s45 (contracts, arrangements or understandings containing anti-competitive provisions (including cartel provisions)) and
 - s47 (exclusive dealing).

¹ Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at www.accc.gov.au/publications/authorisation-guidelines-2013.

² As outlined in the ACCC's Determination, 11 April 2013 available at <https://www.accc.gov.au/system/files/public-registers/documents/D13%2B45891.pdf>.

8. The Scheme is an accreditation program that aims to reduce the amount of end of life tyres (**EOLTs**) entering the environment via landfill, illegal dumping or undesirable export, while increasing the recycling rate of EOLTs. TSA proposes to administer the Scheme in accordance with the Revised Guidelines, which apply to all participants accredited under the Scheme (**participants**).
9. For the current application, the Revised Guidelines have been amended from the Guidelines authorised in 2013. Further detail of the proposed changes are provided at paragraph 59.
10. Broadly, the Scheme requires participants to adhere to a series of general and specific commitments to ensure the environmentally sound use of EOLTs, to deal only with other accredited participants of the Scheme and to report data to TSA regularly. The Scheme also imposes a \$0.25 tyre levy on tyres that its participants import into Australia.
11. Authorisation is sought for the following specific provisions of the Revised Guidelines:

Provision or obligation of Guidelines for the Tyre Product Stewardship Scheme	Provision
Requirement under participants' general and specific commitments to deal only with other accredited participants, or otherwise to enter into enterprise to enterprise agreements or contractual agreements that give effect to the commitments and the object of the Scheme	Part A, Section 3
Imposition of a levy on tyre importers, vehicle manufacturers and miners of a minimum of \$0.25 per EPU imported into Australia	Part A, Section 4.3
Allocation of levy funds to support initiatives and projects regarding the use and disposal of EOLTs	Part A, Section 4.4
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 	Part A, Section 5.1
Suspension or revocation (for a period of 12 months) for Participant's non-compliance with general and/or specific commitments under the Scheme	Part A, Section 5.3
Imposition of a levy on tyre importers and vehicle manufacturers of a minimum of \$0.25 per EPU imported into Australia	Part C, Section 1.2
Retailers to prioritise dealings with accredited tyre importers	Part D, Section 1.2
Retailers to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs	
Fleet operators to prioritise dealings with accredited tyre importers	Part E, section 1.2
Fleet operators to deal only with retailers accredited by TSA when disposing of EOLTs	

Local governments to deal only with accredited retailers when replacing the EOLTs generated by their fleets	Part F, section 1.2
Local government to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs	
Collectors to ensure all EOLTs collected from retail and other outlets are passed on to accredited recyclers	Part G, section 1.2
Imposition of a levy on miners of a minimum of \$0.25 per EPU imported into Australia	Part I, Section 1.2

12. TSA seeks authorisation of the Proposed Conduct for 10 years.
13. Authorisation is sought on behalf of current and future participants in the Scheme. A wide range of businesses or organisations can join the Scheme.

The rationale for the Proposed Conduct

14. The Scheme is an example of product stewardship which recognises that responsibility for the environmental impacts of products through the life cycle, including end of life management, should be shared by participants in the supply chain. Such schemes can be a way of dealing with problems that arise if it is difficult for the full cost of a product over its lifetime to be reflected in its price. If prices do not send appropriate signals to consumers and producers then one consequence is the possibility of too much end-of-life waste and associated environmental costs.
15. TSA submits that there is a cost associated with ensuring the environmentally sound use of EOLTs. TSA expects that this cost will be reflected primarily in charges imposed on consumers by tyre retailers when they assume responsibility for the appropriate management of consumers' EOLTs. Retailers will then compete to provide an environmentally sound tyre disposal service at the lowest possible price.³
16. TSA also expects that, over time, investment by TSA in the domestic markets for tyre derived products (**TDPs**) and research into other impediments to resource recovery and recycling will reduce the cost to consumers of ensuring the environmentally sound use of EOLTs.⁴

The applicant

17. TSA is a not for profit company limited by guarantee. It was incorporated in 2013 specifically for the purposes of administering and enforcing the Scheme.⁵
18. The ACCC previously granted conditional authorisation of the Guidelines to ATIC on 11 April 2013. TSA was subsequently incorporated to take over the administration and management of the Scheme. As a result TSA lodged the current application for authorisation of the Proposed Conduct.

³ TSA, *Guidelines for the Tyre Product Stewardship Scheme*, 8 May 2018, Section 2.2, p. 11.

⁴ Ibid.

⁵ TSA, *Submission in Support of the Application*, Section 2.1, p. 2.

19. TSA's stated mission on its website is 'to reduce the volume of end of life tyres currently being disposed of in a manner which is damaging to the environment i.e. via landfill, illegal dumping or undesirable export'.⁶
20. TSA is funded by a levy imposed on tyre importers, vehicle manufacturers and miners (voluntarily becoming participants of the Scheme) at a rate proportional to the number of tyres imported into Australia (\$0.25 per EPU).⁷

Background

The current situation and problems with tyre disposal

21. TSA submits that in 2015-16, 56.3 million tyre EPUs reached end of life in Australia. This represents an increase of 16 per cent since data collection began in 2009-10.⁸ Of this number, the vast majority of EOLTs are disposed of through landfill, exported, stockpiled, illegally dumped or have an unknown fate. More specifically, the 56.3 million EOLTs were disposed of in the following proportions:⁹
 - recycled domestically – 10 per cent
 - landfill, stockpiled, illegally dumped or categorised as 'unknown' – 63 per cent
 - exported – 27 per cent.
22. Over approximately the next 10 years it is estimated that annual new tyre sales will exceed 63.3 million EPUs.¹⁰
23. Each passenger car tyre contains approximately 1.5 kg of steel, 0.5 kg of textiles and 7 kg of rubber.¹¹
24. TSA advises that disposal of EOLTs through landfill, dumping or export of baled tyres is considered to represent the loss of a valuable resource. The environmentally sound use of EOLTs and TDPs include the manufacture of new rubber products, as a constituent in asphalt roads and in surfaces such as playgrounds. They are also a source of fuel when incinerated under the right conditions.¹²
25. TSA submits that 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

⁶ TSA, viewed 27 March 2018, www.tyrestewardship.org.au/about-tsa.

⁷ TSA, *the Revised Guidelines*, 8 May 2018, Section 4.3, p 16.

⁸ TSA, *the Revised Guidelines*, 8 May 2018, Section 1.1, p 6.

⁹ Randall 2017, Final National Market Development Strategy for Used Tyres 2017-2022, page vii.

¹⁰ TSA, *Submissions in support of application*, 4 December 2017, Section 22.2, p. 26.

¹¹ ACCC, Determination A91336 and A91337, 11 April 2013, Paragraph 49, p. 12, available: [ACCC public register](http://www.accc.gov.au/public-register).

¹² TSA, *the Revised Guidelines*, 8 May 2018, Section 1.1, p.6.

- eliminate the risk of fire and breeding grounds for mosquitos and other vermin and
 - support resources recovery and the recycling industry.
26. In 2015, a significant tyre fire in Melbourne saw more than 100 000 tyres burnt with nearby businesses and residents evacuated.¹³
27. TSA submits that despite the benefits, increased tyre recycling and resource recovery continues to be constrained by:¹⁴
- the lack of viable markets for EOLTs and TDPs
 - limited tyre recycling infrastructure
 - low aggregated volumes of tyres in remote and regional areas and high cost of collection in such areas
 - the 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
 - the high costs of processing tyres to create TDP to sell to market
 - demand for whole baled tyres from international energy markets and
 - regulatory regimes governing the handling of EOLTs that are inconsistent between Australian jurisdictions.
28. The export of EOLTs has risen dramatically in recent years. TSA submits that until there is better infrastructure and a higher demand to support the enhanced production of TDPs in Australia, there will be a significant amount of EOLTs exported for energy recovery or reprocessing overseas.¹⁵
29. TSA submits that there is evidence to suggest that some exported tyres are primarily burned for fuel in an environmentally unsustainable fashion. There is limited transparency as to the end of life destination of exported baled tyres. A focus of TSA is to improve the verification process for exported EOLTs to enable more accurate reporting.¹⁶
30. In addition, crumb rubber (one of the more common TDPs arising from EOLTs) has been increasingly imported from international markets at a cost of up to 40 per cent less than domestic prices.¹⁷

The Scheme¹⁸

The objectives of the Scheme

¹³ Randall 2017, page viii.

¹⁴ TSA, *the Revised Guidelines*, 8 May 2018, Section 1.1, p. 7.

¹⁵ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 7.6.

¹⁶ TSA, *2015/16 Annual Report*, p. 35.

¹⁷ TSA, *Submissions in support of application*, 4 December 2017, Section 22.2, p. 26.

¹⁸ Unless otherwise stated, the discussion under this heading is in relation to how the Scheme under the Revised Guidelines will operate in practice.

31. The Scheme is a voluntary, industry led scheme that aims, primarily, to increase the recycling rate of EOLTs. TSA submits that the objectives of the Scheme are to:
- increase resource recovery and recycling and minimise the environmental, health and safety impacts of EOLTs generated in Australia and
 - develop Australia's tyre recycling industry and markets for TDPs.
32. TSA submits that the Scheme is the first initiative in Australia to take responsibility for the product stewardship of EOLTs.¹⁹

The Revised Guidelines and the operation of the Scheme

33. TSA submits that the Scheme is administered as follows, pursuant to the Revised Guidelines:²⁰
- participants to the Scheme are required to adhere to a series of general and specific commitments in ensuring that EOLTs are disposed of in a manner that constitutes an environmentally sound use, as a condition of accreditation under the Scheme
 - participants' compliance with the commitments is enforced via a regime of random and risk based audits. Failure to adhere to the commitments may lead to revocation or suspension of a participant's accreditation
 - participants are required to deal only with other accredited participants, or otherwise to enter into enterprise to enterprise agreements or contractual arrangements which give effect to the general commitments and the object of the Scheme
 - levies collected pursuant to the Scheme are used by the TSA to support the activities of the Scheme and are applied to research and development for new technologies and market development which further the purposes of the Scheme, and
 - the efficiency of the Scheme is measured and reported on annually.
34. TSA defines **environmentally sound use** to include:²¹
- recycling into tyre crumb, shred, chips, granules, steel and other tyre components
 - use as a fuel (other than in direct incineration without effective energy recovery and unsustainable burning for energy recovery) or other means to generate energy
 - production of TDPs, including tyre derived fuel (TDF) and
 - civil engineering.

¹⁹ TSA, *Submissions in support of application*, 4 December 2017, Section 22.2, p. 26.

²⁰ TSA, *the Revised Guidelines*, 8 May 2018, Section 1.2, p. 8.

²¹ TSA, *the Revised Guidelines*, 8 May 2018, Section 1.1, p. 6.

35. The following uses are specifically excluded from the definition of environmentally sound use:²²
- disposal through dumping, landfill, direct incineration or burning
 - stockpiling as an end point
 - unsustainable burning for energy recovery, and
 - export of baled tyres for the three operations listed immediately above.
36. The Scheme applies to tyres that are loose replacements for use on, or already fitted to, motorised vehicles and non-motorised trailers towed behind motorised vehicles. The Scheme applies to tyres for motorcycles, passenger cars, box truck trailers, buses, mining and earth moving vehicles, cranes, excavators, graders, farm machinery and forklifts.²³
37. The Revised Guidelines state that retreading tyres is consistent with the objectives of the Scheme. Retreading extends the life of EOLTs and delays their entry into the waste stream. There are no fees or charges imposed by the Scheme in relation to the retreading of tyres. For the purposes of the Scheme, tyre retreaders are classified as retailers (see below at paragraph 40).
38. Off the road tyres, including those used in agriculture and mining, constitute a significant portion of the total consumption of tyres in Australia each year and are included within the scope of the Scheme. However, no mining companies are currently participating in the Scheme. TSA advises that for off the road tyres, the key element of the Scheme is an investment in overcoming impediments to resource recovery and recycling. The Scheme acknowledges the geographic barriers to recycling off the road tyres in Australia, the need for specialised recycling equipment, and the need to stimulate markets for TDPs.²⁴ TSA advises that extending the practical scope of the Scheme to include the mining industry is likely to be a major undertaking. It has reserved funds which it proposes to allocate to feasibility studies regarding the inclusion of off the road tyres in the Schemes practical operation.²⁵
39. Figure 1 shows the life cycle of a tyre under the Scheme and overview of the tyre supply chain.²⁶

²² Ibid.

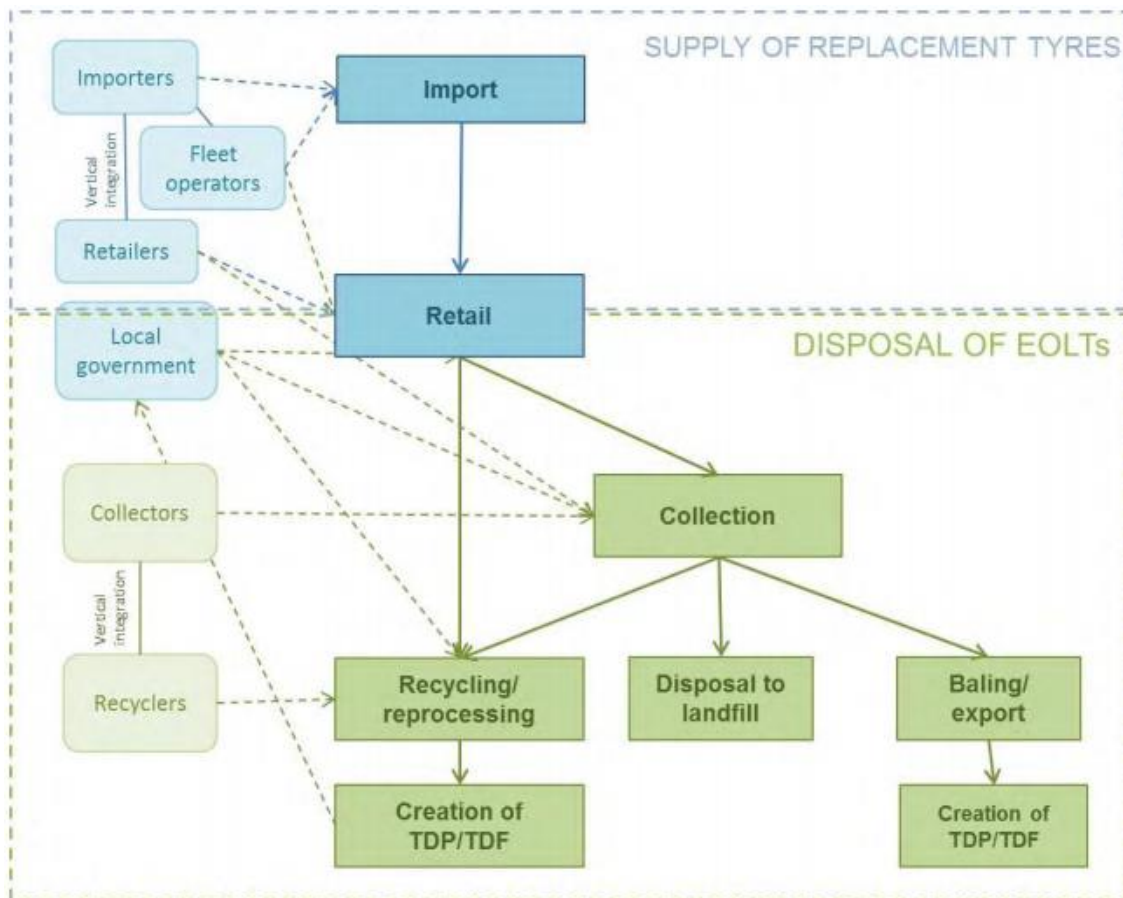
²³ TSA, *the Revised Guidelines*, 8 May 2018, Section 2.4, p. 11.

²⁴ Ibid.

²⁵ TSA, *Submissions in support of application*, 4 December 2017, p. 2.

²⁶ TSA, *Submissions in support of application*, 4 December 2017, p. 21.

Figure 1: Australian tyre industry – tyre supply chain



Participants in the Scheme

40. Potential participants in the Scheme, under the Revised Guidelines, include:
- tyre importers and vehicle manufacturers and importers – businesses or organisations that are engaged in tyre importing, vehicle importing or vehicle manufacturing and are first to supply a tyre to the domestic market
 - tyre retailers – a business or organisation that offers products for sale at retail through any means, including sales outlets, catalogues or the internet. For the purposes of the Scheme, tyre retreaders are Retailers
 - fleet operators – an entity that owns or operates a fleet of vehicles, including private and Australian and state and territory government fleet operators
 - tyre collectors – an individual, business or organisation that collects and/or transports EOLTs in any part of Australia for recycling, reuse or disposal. Collectors that are also recyclers are required to apply for membership in both the 'collector' and 'recycler' categories
 - tyre recyclers – a business or organisation recovering rubber, steel, textile and/or other materials and processing it into a form whereby it can be used as an intermediate product in the manufacture of TDPs, or to recover energy from EOLTs. Recyclers that are also collectors must apply for membership in both 'collector' and 'recycler' categories

- local and state government entities and
 - mining companies.
41. To become a member of the Scheme, a potential participant must complete an application form. In signing the application form, the Authorised Signatory makes an organisational commitment to the Scheme, including a commitment to comply with the Revised Guidelines. In assessing an application, TSA may contact third parties to verify information in the application.
42. Ongoing compliance with commitments made by participants of the Scheme will be monitored by TSA through random and risk based audits throughout the year. Failure to demonstrate compliance with the Scheme may result in the revocation of a member's accreditation.²⁷
43. All accredited collectors and recycler-collectors are required to undertake an annual audit to ensure compliance with the Scheme. Currently 10 per cent of accredited retailers are audited annually according to a randomised process to verify compliance with the Scheme.²⁸
44. Where a participant has breached the requirements of the Revised Guidelines TSA may:
- suspend a participant's accreditation immediately by giving notice in writing or
 - revoke a participant's accreditation by giving 30 days' notice in writing.
45. Where a participant's accreditation is suspended, accreditation may be reinstated once TSA determines the compliance issue is resolved and TSA is satisfied there is evidence to support reinstatement. Where accreditation is revoked, the business or organisation can re-apply for accreditation after 12 months have elapsed.
46. A participant may resign from the Scheme by giving 30 calendar days' notice in writing to TSA. A participant will be able to immediately resign from the Scheme upon any changes to the Revised Guidelines which it believes may have a detrimental impact on it, by giving notice in writing to TSA.

Commitments under the Scheme

47. Participants' commitments under the Scheme vary depending on what role the business or organisation has in the tyre supply chain. In this regard, the Revised Guidelines set out a series of general commitments that apply to all participants of the Scheme, as well as a series of specific commitments for each category of membership.
48. In particular, the general commitments under the Revised Guidelines require all participants in the Scheme to:²⁹
- support the objectives of the Scheme

²⁷ TSA, *the Revised Guidelines*, 8 May 2018, Section 5.2.2, p. 21.

²⁸ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 7.19.

²⁹ TSA, *the Revised Guidelines*, 8 May 2018, Section 3.1, p. 14.

- deal transparently and ethically with others involved in the tyre supply chain, including consumers
 - promote the Scheme to the community, other businesses and organisations, as directed by TSA
 - use the Scheme’s branding and logo and adhere to the conditions that apply to that use, as directed by TSA
 - comply with relevant laws and practices, including those that apply to the environment and occupational health and safety
 - co-operate with audits, provision of required documents and undertake surveys as directed by TSA and
 - report requested data to TSA as directed by TSA (as specified in the Revised Guidelines).
49. Further, all participants in the Scheme are required to commit to contribute to:³⁰
- the environmentally sound use of EOLTs
 - elimination of the inappropriate export of baled tyres from Australia
 - elimination of the illegal dumping of EOLTs and
 - elimination of disposal of EOLTs to landfill (except where no viable alternative is available and subject to state and territory legislation; for example, in rural and remote areas where appropriate recycling facilities are not available, or transportation costs are prohibitive).
50. The specific commitments for each type of participant in the Scheme are summarised in Table 1.

Table 1: specific commitments for participants of the Scheme

Participant	Additional specific commitments
Tyre importers and vehicle manufacturers and importers ³¹	<ul style="list-style-type: none"> • contribute funding to support the administration and activities of TSA. The amount of funding to be contributed is based on a levy of a minimum \$0.25 per EPU imported into Australia, or an equivalent membership fee³² • provide data to TSA on the tyres and number of tyres imported, as directed by the TSA • only import tyres (that is, loose replacements or fitted to new vehicles) that are compliant with the relevant Australian standards and • promote participation in the Scheme to businesses and other organisations to which they supply tyres, including through the development of an Action Plan.

³⁰ TSA, *the Revised Guidelines*, 8 May 2018, Section 3.1, p. 14.

³¹ TSA, *the Revised Guidelines*, 8 May 2018, Part C, p. 29.

³² Ibid.

Retailers ³³	<ul style="list-style-type: none"> • take responsibility for the environmentally sound use of EOLTs left with retailers when consumers purchase tyres • deal only with collectors and recyclers accredited by TSA when disposing of EOLTs or where dealing with a non-accredited collector, ensure contractual arrangements specify that all EOLTs are provided to an accredited tyre recycler for environmentally sound use • regularly provide data (report) to TSA on the types and numbers of EOLTs provided to tyre collectors and/or recycler and/or their alternative disposal route, as directed by TSA • deal ethically and transparently with consumers, specifically in relation to the fees and charges associated with the environmentally sound use of EOLTs and • undertake regular reviews of arrangements with collectors and recyclers.
Fleet operators ³⁴	<ul style="list-style-type: none"> • take responsibility for the environmentally sound use of the EOLTs they generate and • deal only with retailers or importers accredited by TSA when purchasing or replacing new tyres for their fleets.
Local government ³⁵	<ul style="list-style-type: none"> • take responsibility for the environmentally sound use of the EOLTs they generate through their own operations • deal only with retailers accredited by TSA when purchasing or replacing new tyres for their own fleets • ensure tyres being collected by hard rubbish collectors or being dropped off at transfer stations are being appropriately managed, and where possible are being recycled by a TSA accredited tyre collector or recycle or where dealing with a non-accredited collector, ensure contractual arrangements specify that all EOLTs are provided to an accredited tyre recycler for environmentally sound use and • undertake regular reviews of arrangements with collectors and recyclers.
Collectors ³⁶	<ul style="list-style-type: none"> • ensure all EOLTs collected from retail and other outlets with a recycling gate fee are passed to domestic tyre recyclers accredited by TSA • provide regular data (report) to TSA as directed by TSA and • deal ethically and transparently with retailers and other outlets, specifically in relation to the fees and charges associated with disposal of EOLTs.
Recyclers ³⁷	<ul style="list-style-type: none"> • guarantee that all EOLTs received from participants in the Scheme go to an environmentally sound use and • provide data to TSA on the number and fate of tyre EPU processed and sold or otherwise provided for an environmentally sound use, as directed by TSA.

³³ TSA, *the Revised Guidelines*, 8 May 2018, Part D, p. 31.

³⁴ TSA, *the Revised Guidelines*, 8 May 2018, Part E, p. 34.

³⁵ TSA, *the Revised Guidelines*, 8 May 2018, Part F, p. 38.

³⁶ TSA, *the Revised Guidelines*, 8 May 2018, Part G, p. 42.

³⁷ TSA, *the Revised Guidelines*, 8 May 2018, Part H, p. 45.

Mining companies ³⁸	<ul style="list-style-type: none"> • contribute funding to support the administration and activities of TSA, in particular funding to improve the logistics and technology required to recycle EOLTs generated by miners • provide data, as directed by TSA, regarding the numbers of tyres being imported and reaching end of life • promote participation in the Scheme to businesses and other organisations, including those they engage to collect or recycle EOLTs and • make best endeavours over time to ensure that all EOLTs for which they take, or are required to take responsibility, are dealt with in a way that represents environmentally sound use.
--------------------------------	--

Industry Levy

51. TSA is funded by a levy imposed on tyre importers, vehicle manufacturers, and miners (voluntarily becoming participants of the Scheme) at a rate proportional to the number of tyres imported into Australia.
52. The levy is a minimum \$0.25 per EPU imported into Australia, or an equivalent membership fee.
53. TSA advises that the funds raised are used for the following activities:³⁹
 - organisational management costs
 - implementation of its strategy for handling EOLTs
 - administration of the Scheme, including costs associated with accreditation and audit of participants and reporting
 - promotion of the Scheme and
 - market development and research projects.
54. The Revised Guidelines state that TSA will publish an annual report on its website detailing the application of levy funds.⁴⁰
55. In relation to research, the Revised Guidelines outline that TSA allocates a portion of its levy funds to support initiatives and projects which:⁴¹
 - 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 utilisation of EOLTs and
 - support growth in skills, expertise and capacity in the Australian EOLTs and associated end user markets.

³⁸ TSA, *the Revised Guidelines*, 8 May 2018, Part I, p. 48.

³⁹ TSA, *the Revised Guidelines*, 8 May 2018, Section 4.3, p. 16.

⁴⁰ Ibid.

⁴¹ TSA, *the Revised Guidelines*, 8 May 2018, Section 4.4, p. 18.

Changes to the Scheme

56. The Guidelines, as a whole, were authorised by the ACCC on 11 April 2013. Certain aspects of the Scheme and Guidelines have been amended since the 2013 authorisation. In its current application TSA is seeking authorisation for specific provisions of the Revised Guidelines (as in paragraph 11) only.
57. TSA submits that the Guidelines were drafted in a manner that required the ATIC to anticipate the commercial realities associated with operating the Scheme. It considers that many of the performance targets for the Scheme in the Guidelines were overly optimistic, having regard in particular to the commercial realities relating to the disposal of EOLTs in Australia and the voluntary nature of the Scheme. The Guidelines also contained a greater focus on process rather than outcomes, which impeded TSA's ability to adapt management and direction of the Scheme as necessary.⁴²
58. TSA submits that the Revised Guidelines seek to remove what TSA considers to be unnecessary detail relating to TSA's processes and procedures. TSA seeks greater flexibility and fluidity so that over time TSA is able to adapt the operation of the Scheme in a manner that is best able to achieve the Scheme's objectives.⁴³
59. The Revised Guidelines contain the following changes since the 2013 authorisation of the Guidelines:⁴⁴
- the introductory sections of the Revised Guidelines include a more detailed explanation of the corporate objectives of TSA
 - following the independent review of the Scheme's operation completed in 2017, the key performance measures and targets have been revised. They are discussed in further detail at paragraph 60
 - amended provisions relating to funding of market development and research, including the removal of funding parameters, to complement, rather than limit, achievement of the objectives of the Scheme. Alternative safeguards exist to ensure funding is applied first and foremost to support the objectives of the Scheme
 - removed the application forms specific to each type of participant. The Revised Guidelines now explicitly identify the objective criteria against which all applicants will be assessed, to allow for greater flexibility in the applications process
 - a framework for the suspension of participants who fail to comply with their general and/or specific commitments under the Scheme. Originally, TSA could only sanction non-compliance by revoking accreditation and barring the participant from applying for re-accreditation for 12 months

⁴² TSA, *Submissions in support of application*, 4 December 2017, Section 7.2, p. 11.

⁴³ TSA, *Submissions in support of application*, 4 December 2017, Section 7.3, p. 11.

⁴⁴ More detail of the amendments to the Guidelines can be found on pages 11 to 18 of the Tyre Stewardship Scheme Submissions in Support of Application for Authorisation, Annexure 3 of TSA's application, found on the [ACCC's public register](#).

- a new express provision that tyre retailers and fleet operators are expected to prioritise dealings with accredited tyre importers and manufacturers over their non-accredited counterparts
- removed the specific data and reporting requirements imposed on each category of participant. Specific reporting requirements for each participant are instead outlined on TSA's online portal
- amended the specific commitments of fleet operators and local governments to more accurately reflect their operations under the Scheme and their relationships with other participants in the Scheme and
- removed two levy exceptions (i.e. the EPU ratio for larger tyres is no longer capped at 400 EPU, and there is no longer an exception for tyre importers who import less than 1000 EPU annually) on the basis that they impede the Scheme's ability to be financially self-sufficient. .

Performance targets and reporting requirements

60. The Revised Guidelines set out that the effectiveness of the Scheme in achieving its stated objectives will be measured as follows, by reference to the following targets:⁴⁵

- the number of participants in the Scheme increases as follows:
 - the percentage of tyre importers that are participants in the Scheme increases to 75 per cent by 2020, 85 per cent by 2023 and 90 per cent by 2028 (measured as market share of total tyre imports)
 - the percentage of vehicle manufacturers/importers that are participants in the Scheme increases to 50 per cent by 2020, 75 per cent by 2023 and 90 per cent by 2028 (measured as market share of total new vehicle sales)
 - the percentage of tyre retailers that are participants in the Scheme increases to 65 per cent by 2020, 75 per cent by 2023 and 90 per cent by 2028 (measured as market share of total tyre sales) and
 - the percentage of tyre recyclers that are participants in the Scheme increases to 80 per cent by 2020, 85 per cent by 2023 and 95 per cent by 2028 (measured as market share of end of life tyres).
- the volume of EOLTs collected by TSA accredited participants, or accounted for over time, increases annually
- the volume of EOLTs exported via TSA accredited tyre recyclers and collectors that have been verified as going to environmentally sound use increases annually
- the percentage of EOLTs that are going to an environmentally sound use increases to 50 per cent by 2020, 75 per cent by 2023 and 90 per cent by 2028

⁴⁵ TSA, *the Revised Guidelines*, 8 May 2018, Section 2.5, p. 12.

- users seeking accreditation through the TSA website and general website traffic increases annually and
 - the potential market demand for Australian TDPs associated with market development activities promoted, funded and/or supported by TSA increases annually.
61. As discussed, the above performance measures for the Scheme have been revised following the independent review of the Scheme completed in 2017, required under the ACCC's conditional authorisations (A91336 and A91337).
62. In addition to annual reporting about how levy funds are used, TSA will publish an annual report on its website about the efficiency and progress of the Scheme having regard to the above performance measures.
63. The Revised Guidelines provide that a further independent review of the efficiencies and operations of the Scheme will be undertaken in or around 2022 and again in or around 2026.⁴⁶

Recent developments

64. TSA advises that development of the Scheme began in 2009, when the tyre industry and government agreed to establish a voluntary industry-led product stewardship scheme for EOLTs.⁴⁷ Further information on the development of the Scheme is set out in the ACCC's previous 2013 determination.⁴⁸
65. TSA advises that the expectation is that the Scheme will be put forward for accreditation under the voluntary product stewardship arrangements of the *Product Stewardship Act 2011*. This expectation was highlighted to the ACCC by ATIC in the original application for authorisation of the Guidelines in 2013.⁴⁹
66. Sustainability Victoria and the Department of Environment and Heritage Protection Queensland are co-leading the development of a national market development strategy for used tyres (the **Strategy**). TSA are involved in co-funding the Strategy, which seeks to provide a framework for a national approach to market development for TDPs in Australia.⁵⁰ A Final Strategy for years 2017-2022 was released in June 2017 and is included in TSA's application as Annexure 3 Appendix F.
67. TSA submits that since lodging its application for authorisation, the Board has agreed to implement an Industry Consultative Group (**ICG**). ICG will include specific members of the tyre recycling and collection industry and will convene two to three 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).⁵¹

⁴⁶ TSA, *the Revised Guidelines*, 8 May 2018, Section 4.3, p. 9.

⁴⁷ TSA, *the Revised Guidelines*, 8 May 2018, Section 1.1, p. 7.

⁴⁸ ACCC, *Determination A91336 and A91337*, 11 April 2013, Paragraphs 51-55, p. 13-14, available: [ACCC public register](#).

⁴⁹ ACCC, *Determination A91336 and A91337*, 11 April 2013, Paragraph 55, p. 14, available: [ACCC public register](#).

⁵⁰ Randell, *National market development strategy for used tyres 2017-2022*, 19 July 2017, p. 1.

⁵¹ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 6.4.

Previous ACCC authorisation

The original authorisation of the Guidelines (A91336 & A91337)

68. On 11 April 2013 the ACCC granted conditional authorisation to ATIC for the *Guidelines for the Tyre Product Stewardship Scheme*. Authorisation was granted for five years until 3 May 2018.⁵²
69. The ACCC considered the Scheme was likely to result in a benefit to the public by reducing the volume of EOLTs entering the domestic waste stream or being exported overseas and burned for fuel in an environmentally unsustainable way. The ACCC considered that the Scheme was unlikely to generate significant public detriment. However, the ACCC recognised that the proposed scheme was in its infancy and imposed conditions of authorisation to help ensure, and verify, the effective and robust administration of the Scheme.
70. Authorisation was granted subject to the conditions that:
- 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.
 - C2: The Board of the TSA appoints 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 of commencing and a report published on TSA's website.
 - C3: The TSA Board:
 - (a) implement the recommendations arising from the review prescribed in C2; or
 - (b) 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.
71. In regards to C1, TSA submits that they have published an annual report for each year of the Scheme's operation, which have included the list of requirements specified by the ACCC.
72. In regards to C2, TSA submits that 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 (the **Marsden Jacob Report**).
73. In regards to C3, on 29 May 2017 TSA wrote to the ACCC in respect of its implementation of the recommendations arising out of the Marsden Jacob Report. TSA submits that it has implemented the following measures as a result of the recommendations:

⁵² ACCC, *Determination A91336 and A91337*, 11 April 2013, available: [ACCC public register](#).

- in order to enhance communications to Scheme participants, the TSA Board has implemented the following initiatives:
 - i. a Strategic Plan for 2017 – 2020 published on the TSA website
 - ii. TSA has employed a Marketing & Communications Manager and
 - iii. TSA has continued to make a substantial investment into its media campaign to ensure broader public awareness of the Scheme and its activities.
 - a Board skills matrix has been completed which 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
 - the TSA Board has documented a conflicts of interest policy for Board members to clarify the processes and protocols for managing conflicts of interest.⁵³
74. TSA submits the following in regards to recommendations made by Marsden Jacob Associates that were not adopted:⁵⁴
- amendments to the performance measures and targets – TSA’s revised performance targets are incremental, and have sought to achieve accreditation rates of 90 per cent by 2028, rather than 2020, noting that TSA’s ability to achieve these targets is constrained primarily by the voluntary nature of the Scheme and the commercial realities of the tyre import, retail, collection and recycling industries
 - amendments to the constitution – TSA Board will consider amending its constitution to define representatives, members and participants after the completion of a review into its structure currently being completed in accordance with its Strategic Plan. The review is expected to be completed by the end of 2018
 - collection of data from ATRA – 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 due to the reporting rates of accredited recyclers and collectors and given that the data collected by ATRA is substantially similar to the data presently collected by TSA.

What’s happened under the existing authorisations (A91336 & A91337)

75. The Scheme was officially launched on 20 January 2014. TSA submits that in the early stages of the Scheme, it prioritised a focus on enhancing participation in the Scheme and developing public awareness. A comprehensive audit program was initiated as the Scheme developed, and TSA submits that its intention is to enhance compliance and verification processes and practices.⁵⁵

⁵³ Copies of the annual reports, the Marsden Jacob Report, TSA’s letter to the ACCC and TSA’s conflicts of interest policy were included in TSA’s current application for authorisation as Annexure 3 – Appendix B, A, C and D respectively, and can be found on the [ACCC’s public register](#).

⁵⁴ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 10.1.

⁵⁵ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 5.6.

TSA has also invested more than \$2 million in market development projects since the commencement of the Scheme.⁵⁶

76. The success or otherwise of the Scheme in meeting its original performance targets was reviewed in the Marsden Jacob Report and is summarised below:⁵⁷

(a) The number of participants in the Scheme:

- TSA has continued to experience growth in the involvement of tyre retailers in the Scheme. Growth in involvement of other parts of the supply chain has not been as substantial.
- The numbers of participants in the Scheme are summarised in Table 2.

Table 2: Number of participants joining the Scheme

Participant category	December 2014	30 June 2015	30 June 2016	30 June 2017	Cumulative Total
Vehicle Manufacturers and importers	0	0	0	0	0
Importers	6	1	1	0	8
Retailers	4	434	634	248	1320
Collectors	0	2	4	1	7
Recyclers/Collectors	0	2	16	2	20 (21)
Fleet	1	1	1	1	4
Local Government	0	0	0	3	3
Mining	0	0	0	0	0

- Of the 20 'recyclers/collectors' in Table 2, TSA submits that three are considered 'recyclers' and the remaining 17 are vertically integrated 'recyclers and collectors'. TSA submits that since lodging its current application for authorisation, an additional 'recycler/collector' has joined the Scheme.⁵⁸

(b) Percentage of tyre importers and vehicle manufacturers and importers that are participants – the original aim was to have 90 per cent of tyre and vehicle importers in the Scheme within five years:

- The TSA 2015/16 annual report states that 27 per cent of tyre importers and zero per cent of new vehicle importers were participating in the Scheme.

⁵⁶ TSA, *Submissions in support of application*, 4 December 2017, Section 4.5, p. 5.

⁵⁷ Marsden Jacob Associates, *Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia*, April 2017, p. 11 – 15.

⁵⁸ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 2.2.

However, TSA notes that tyre importers in the Scheme represent more than 55 per cent of the market share of the replacement tyre market.⁵⁹

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

- Table 3 outlines the destination of EOLTs according to the TSA 2016/17 annual report.

Table 3: Destination of EOLTs⁶⁰

End-of-life destination	Percentage as at 2014/15	Percentage as at 2015/16	Percentage as at 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%
Operational stockpiles ⁶¹	n/a	n/a	2.9%
Landfill	48.7%	36.6%	6.7%
Mining landfill ⁶²			33%
Unknown destination	13.6%	10.0%	10.9%

- The ACCC notes that while the volume of EOLTs being recycled domestically is not as high as originally envisaged under the Scheme, the volume of EOLTs from participants going to landfill has fallen from 48.7 per cent to 39.7 per cent in 2016/17 (comprising 6.7 per cent 'landfilled' by accredited entities and 33 per cent landfilled at mines).

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

- The Marsden Jacob Report does not contain an estimate in quantitative terms, as it requires an understanding of what would have occurred with and without the Scheme.

(e) Increase in the percentage of EOLTs that are going to an environmentally sound use, with a target of 50 per cent in five years

⁵⁹ TSA, *Submissions in support of application*, 4 December 2017, Section 4.5, p. 5.

⁶⁰ TSA, *2016/17 Annual Report*, p. 43.

⁶¹ Operational stockpiles refers to the EOLTs left on reprocessing sites at the end of the month that are yet to be processed.

⁶² In previous years, 'landfill' data included both tyres in 'operational stockpiles' and those tyres estimated to be disposed of at mining sites. In 2016/17 TSA was able to separate the percentage of tyres that have been 'landfilled' by accredited entities from those at mining sites.

- As in Table 3, 7.8 per cent of total EOLTs are going to a domestic destination which is an environmentally sound use (namely, material re-use and recycling, civil applications and steel recycling).
 - In total, Table 3 shows that the volume of EOLTs going to an environmentally sound use (domestically or exported) was 46.5 per cent in 2016/17.
- (f) Volume of tyre derived products sold or otherwise provided for an 'environmentally sound use'⁶³:

Table 4: EOLTs going to tyre derived products or otherwise environmentally sound use 2016/17⁶⁴

End-of-life Destinations	Percentage	Quantity (EPUs)
Material reuse and recycling (local)	7.4%	3.85 million
Civil applications	0.4%	0.21 million
Exported (tyre derived fuel, baled and casings)	38.7%	20.13 million

- The ACCC notes it is unclear how much of the export figures in Table 4 are strictly resource recovery and recycling as they include baled tyres for which there is limited transparency as to the end of life destination. TSA advises that it is currently in the process of developing a downstream verification system for the purpose of verifying the final destinations of all EOLTs exported by TSA accredited recyclers and collectors. This includes enhanced reporting obligations – for example, requiring participants to start providing bills of lading to verify export destinations of EOLTs.
- (g) Number of users of TSA's website:
- The number of internet visits has been increasing over time, with a large increase in the later stages of 2016.

77. TSA considers that the performance measures contained in the Guidelines authorised by the ACCC in 2013 contained a number of targets which were unrealistic having regard to the practical realities of the markets in which the Scheme operates, and do not accurately reflect the efficacy of the Scheme in achieving its objectives.⁶⁵ Limitations associated with the existing performance measures were highlighted in the Marsden Jacob Report, which supports revising targets relating to growth of the program via the number of new participants.⁶⁶

⁶³ TSA defines 'environmentally sound use' as **excluding** disposal through dumping, landfill, direct incineration or burning, stockpiling as an end point, unsustainable burning for energy recovery and export of baled tyres for any of these end uses.

⁶⁴ TSA, *2016/17 Annual Report*, p. 45.

⁶⁵ TSA, *Submissions in support of application*, 4 December 2017, Section 4.3, p. 4.

⁶⁶ Marsden Jacob Associates, *Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia*, April 2017, p. 16.

Consultation

78. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
79. The ACCC invited submissions from a range of potentially interested parties including national and state based industry bodies, government, tyre importers, fleet operators and a selection of individual recycling businesses.⁶⁷ A summary of the public submissions received from TSA and interested parties follows.

TSA

80. TSA submits that given the voluntary nature of the Scheme, the negligible amount of the levy charged on tyre importers and the low costs involved in becoming accredited, the considerable public benefits that are likely to flow from the Scheme will outweigh any public detriments generated.⁶⁸

Interested parties

81. The ACCC received 11 public submissions from interested parties and one confidential submission from a tyre importer. Nine interested parties generally support authorisation to allow continuation of the Scheme, while two interested parties consider a net public benefit from the Scheme is unlikely.
82. The ACCC received public submissions in support of the Scheme and Revised Guidelines from the following interested parties:
 - Bridgestone Australia Ltd – tyre importer/retailer
 - Bridgestone Mining Solutions Australia Pty Ltd – tyre importer/retailer and
 - Michelin Australia Pty Ltd – tyre importer and distributor.
83. The following interested parties expressed their support for the ongoing operation of the Scheme, but consider that there are a number of areas for improvement in the Scheme:
 - Australian Tyre Industry Council (**ATIC**) – industry association
 - Australian Tyre Recyclers Association (**ATRA**) – industry association
 - Department of Environment and Energy – joint submission prepared in consultation with state and territory environment agencies, the Australian Local Government Association and several state local government associations.
 - Environment Protection Authority South Australia and Green Industries South Australia (**EPA and GISA**)
 - Sustainability Victoria and

⁶⁷ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

⁶⁸ TSA, *Submissions in support of application*, 4 December 2017, Section 23, p. 26.

- Tyrecycle – collector and recycler.
84. Broadly, the above interested parties are of the view that there is a significant public interest in the continued authorisation of the Scheme. TSA is considered to play an important role in EOLT management in Australia, and has delivered value in continuing to progress the Scheme.
 85. The interested parties outlined positives flowing from the Scheme to include the fact that most major brand owners are now participating in the Scheme, the development of the research and development fund and the increased awareness of the importance of tyre recycling.
 86. **ATRA, the Department of Environment and Energy, EPA and GISA, and Tyrecycle** submit that greater inclusion and representation of the recycling sector as members of the TSA Board is still required.
 87. **ATIC, ATRA, the Department of Environment and Energy, and Tyrecycle** consider that TSA needs to take further action to combat non-compliance with the Scheme, such as the revocation of accreditation for Scheme participants who, in contradiction of the Revised Guidelines, stockpile or landfill EOLTs or export whole-baled tyres to unsustainable outcomes.
 88. **ATIC, the Department of Environment and Energy, and Tyrecycle** recommend improvements to the Scheme in the quality and robustness of reporting obligations on Scheme participants and TSA, including greater verification on the destination of EOLTs to determine whether they are reaching an environmentally sound end use.
 89. **EPA and GISA** expressed support for TSA's implementation of the recommendations made by the Marsden Jacob report, except for removing the performance targets relating to resource recovery and recycling rates of EOLTs attributable to the Scheme.⁶⁹
 90. **Sustainability Victoria** expressed concern that the 10 year authorisation period sought by TSA will not provide relevant government bodies with adequate opportunity to review the progress of the Scheme. Sustainability Victoria also expressed concern over the Scheme's performance measures and targets and reporting requirements.
 91. **LGAQ** considers that the public benefits of the Scheme outlined by TSA have not been fully realised. It also considers that the proposed Scheme does not respond to market challenges with EOLT management and disposal. LGAQ submits that the Scheme requires significant redesign to address the ongoing concerns of local government, such as responsibility for the clean-up of illegal dumping.
 92. The Western Australian Local Government Association (**WALGA**) opposes authorisation of the Proposed Conduct. WALGA considers that the Scheme has not delivered any measurable change in local markets or increase in the national resource recovery and recycling rate – namely, tyre management practices continue to be driven by cost, rather than a commitment to environmentally

⁶⁹ TSA have removed this target from the Scheme on the recommendation of The Marsden Jacobs Report, which considers that it would not be possible to attribute increased resource recovery and recycling rates to the Scheme. **EPA and GISA** would like TSA to continue to explore measurement options for this performance target, rather than the removal of the target.

sound use of EOLT. It also submits that the proposed changes to the Scheme will not deliver tangible outcomes, and does not incentivise businesses to participate in the Scheme or penalise those operating outside the Scheme. WALGA recommends that state and federal governments implement either a regulatory or co-regulatory product stewardship scheme that assigns producers with financial and physical responsibility for EOLTs.

93. The submissions by TSA and interested parties are considered as part of the ACCC's assessment of the application for authorisation.
94. The specific issues raised by TSA and interested parties are considered in more detail where relevant in the assessment section of this draft determination. Copies of public submissions may be obtained from the ACCC's website www.accc.gov.au/authorisationsregister.

ACCC assessment

95. Pursuant to subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting authorisation in relation to conduct unless it is satisfied in all the circumstances that the conduct would result or be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the conduct.⁷⁰

Relevant areas of competition

96. In its 2013 determination, the ACCC considered that the relevant areas of competition were the:
 - supply of passenger and truck tyres
 - collection and distribution of EOLTs
 - supply of tyre recycling services
 - retail supply of motor vehicles and
 - tyre and motor vehicle manufacturing.
97. The ACCC also noted that broader product markets might be impacted if the implementation of the Scheme was expanded to additional industries – for example, off the road tyres used in the mining sector.⁷¹
98. In its current application, TSA submits the key areas of competition likely to be impacted by the Scheme are the same as those outlined in the 2013 authorisation decision, except for two suggested deviations. Namely, TSA submits that:⁷²
 - the market for the supply of passenger car and truck tyres is better described as the market for the supply of replacement tyres. TSA submits that it has not accredited any participants who engage in the retail supply and/or manufacturing

⁷⁰ As a cartel provision applies to the Proposed Conduct, subsection 90(7)(a) does not apply: section 90(8).

⁷¹ ACCC, *Determination A91336 and A91337*, 11 April 2013, p 17, available: [ACCC public register](http://www.accc.gov.au/public-register).

⁷² TSA, *Submissions in support of application*, 4 December 2017, p. 21.

of motor vehicles (there are currently no car manufacturers operating in Australia). As such, there is little to no overlap between the markets for manufacturing of cars and the supply of tyres for passenger car and truck tyres in Australia.

- the Proposed Conduct might also affect markets relating to the research and development of projects and technologies relating to the use and disposal of EOLTs or recycling of rubber and steel more generally. It may also impact the supply of tyre derived products.⁷³
99. The ACCC considers it is not necessary to precisely identify the relevant areas of competition in assessing this application. The ACCC considers that the relevant areas of competition likely to be affected by the Proposed Conduct include:
- the supply of replacement passenger car and truck tyres
 - the collection and distribution of EOLTs
 - the supply of tyre recycling services
 - research and development services relating to the disposal of EOLT and
 - the supply of tyre derived products.
100. In relation to these areas of competition, the ACCC notes that:⁷⁴
- There are currently eight tyre importers accredited under the Scheme, representing 55 per cent of the market for replacement tyres.
 - Larger tyre importers sell their tyres through national retail networks or affiliated franchise networks.
 - There are approximately 2000 to 2500 tyre retailers in Australia engaged in the repair and replacement of tyres on existing motor vehicles.
 - There are approximately 30-40 EOLT collectors operating across Australia. This industry comprises a number of smaller independent businesses that mostly operate in confined regions.
 - There is a large degree of overlap between the provision of collection and recycling services, with around 60 per cent of collectors also being tyre recyclers. Similarly, around 75 per cent of recyclers also perform collection services.
 - With the exception of one national tyre recycler/collector, Tyrecycle, the tyre recycling industry is mainly comprised of smaller businesses that conduct their activities in local markets due to the costs associated with the collection and transportation of EOLTs.
 - There are 20-30 tyre recyclers, predominately located in Victoria, Western Australia, New South Wales and Queensland. There are limited tyre

⁷³ Ibid, p. 22.

⁷⁴ TSA, *Submissions in support of application*, 4 December 2017, pp. 22-25.

reprocessing/recycling operations in the Northern Territory. The ACCC is advised that due to high transport costs, some of the highly remote and regional tyre retailers in the Northern Territory legally shred their EOLTs to landfill.⁷⁵

- Tyre recyclers typically provide the following services – crumbing/granulation (used to produce TDPs such as asphalt production and rubber matting); shredding (used to produce and export tyre derived fuel and also to landfill); baling (for export to energy recovery facilities); and stockpiling. The more environmentally-sound processing practices, such as tyre crumbing, are much more expensive than stockpiling or disposing to landfill.

Future with and without

101. To assist in its assessment of the Proposed Conduct against the authorisation test, the ACCC compares the benefits and detriments likely to arise in the future with the conduct for which authorisation is sought against those in the future without the conduct the subject of the authorisation.
102. **TSA** have indicated that without authorisation for the Proposed Conduct it would need to cease operating the Scheme. In the absence of the Scheme, TSA considers that there is a current lack of regulation regarding the disposal of EOLTs for an environmentally sound use, and that 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.⁷⁶
103. TSA submits that without the Scheme, opportunities relating to the supply of recycling and reprocessing services and TDPs will continue to remain underdeveloped, and TDPs sourced from EOLTs are unlikely to meet their potential. There is a lack of 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 of EOLTs.⁷⁷
104. Similarly, without the Scheme **Tyrecycle** considers there would be a significant reduction in market development investment for TDPs, and a reduced push for uptake of TDPs in relevant industries. The absence of the Scheme would also lead to reduced oversight on tyre recycling activities which are currently aided by TSA's audit and compliance function.⁷⁸
105. **Michelin Australia Pty Ltd** considers that without the Scheme there would be a lack of a common objective amongst stakeholders to address public concerns in respect of EOLTs, and there is no industry standard to govern the treatment of EOLTs.⁷⁹
106. Without the Scheme, the **Department of Environment and Energy and EPA and GISA** predicts uncertainty about the fate of a considerable proportion of

⁷⁵ TSA notes that in these circumstances, shredding to landfill is environmentally preferable to whole tyres being dumped or landfilled as these alternatives pose health and safety risks.

⁷⁶ TSA, *Submissions in support of application*, 4 December 2017, p. 33.

⁷⁷ TSA, *Submissions in support of application*, 4 December 2017, p. 33.

⁷⁸ Tyrecycle Submissions, 25 January 2018, p. 3.

⁷⁹ Michelin Australia Pty Ltd Submissions, 25 January 2018, p. 1.

used tyres and the potential for significant economic, environmental and social impacts associated with their improper management.⁸⁰

107. Regarding the continued operation of the Proposed Conduct, the **Department of the Environment and Energy** submits:

In working closely with Commonwealth, state and local governments the TSA ensures a coordinated national approach to minimising the environmental, health and safety impacts of EOLTs generated in Australia.

...There is significant national public interest in the continuation of the Scheme...Tyre product stewardship must be led from within the industry to deliver an effective program, with Commonwealth, state and territory governments providing input and oversight.⁸¹

108. However, **WALGA** submits that terminating the Scheme would not have a significant impact on local governments in Western Australia, with tyre management, transport for recycling and illegal clean-up all ongoing costs. It conducted a survey of its member councils in 2017 which revealed that 44 per cent of tyres from (57) councils that responded to the survey were recycled. Of these councils that were recycling tyres, 25 indicated who the recycler was, with 80 per cent of recycled tyres from these councils being processed by TSA accredited recyclers. It considers that local governments are already committed to using credible recycling businesses where it is feasible, noting that none of the responding (25) councils were participants in the Scheme.⁸²

109. Regarding WALGA's submission above, TSA acknowledges that some local governments seek to prioritise the environmentally sound use of EOLTs and use TDP where possible on their own initiative. However, it also acknowledges that there is little commercial incentive for local governments to participate in the Scheme due to the higher costs associated with the environmentally sound disposal of EOLT – for example, by providing tyre stockpiles to accredited collectors and recyclers.

ACCC view

110. The ACCC considers that without authorisation TSA would no longer operate the Scheme. As a result, the current participants in the Scheme would operate, at least in the short term, as they did prior to the commencement of the 2013 authorisation, when the majority of EOLTs ended up in legal and illegal waste streams or exported to be burned in an environmentally unsustainable manner.
111. The ACCC considers that dismantling the established Scheme may lead to confusion and uncertainty in the relevant industries, with no guarantee that an alternative EOLT stewardship scheme would take the Scheme's place.
112. As noted in the 2013 authorisation, the ACCC considers that in the absence of a voluntary industry-led product stewardship Scheme, regulations governing the disposal of EOLTs would likely take a significant period of time to develop and implement. Further, the ACCC notes the Department of the Environment and Energy's submission that tyre product stewardship must be led from within the industry with oversight and input from government.

⁸⁰ Department of the Environment and Energy Submissions, 2 February 2018, p. 4.

⁸¹ Department of the Environment and Energy (joint submission), 2 February 2018 2018, p. 4.

⁸² Western Australian Local Government Association, January 2018, pp. 2, 3.

113. However, the ACCC acknowledges that some interested parties consider the existence of the Scheme is discouraging the development of alternative EOLT stewardship Schemes and/or more effective government regulation. The ACCC considers that government regulation could also be an effective way to deal with the disposal of EOLTs.

Public benefit

114. The Act does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Tribunal which has stated that the term should be given its widest possible meaning, and includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.⁸³

115. In support of its application, **TSA** submits that despite the Scheme commencing operation in 2013, the management of EOLTs continues to present significant challenges in Australia, with there being scope for ongoing improvement.

116. TSA submits that the key aspects of these challenges are:⁸⁴

- Australia continues to increase its tyre output – over the next 10 years new tyre sales are estimated to increase to 63.3 million EPUs (56.3 million in FY2016)
- approximately 60-65 per cent of EOLTs are disposed to landfill or illegally dumped nationally
- transport costs are a significant barrier to the recovery and reuse of EOLTs in the recycling market, particularly in rural and remote areas
- the domestic market for TDP is under-developed because the cost of export and baling tyres is much lower due to an international demand for tyre-derived fuel and energy recovery
- more recently, crumb rubber (a common TDP arising from EOLTs) has been imported from countries such as Canada and Portugal at a cost 40 per cent less than domestic prices
- tyre recyclers involved in crumbing activity are presently operating at between 35 and 60 per cent of potential capacity and
- 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 required to service construction and associated markets.

117. TSA claims that the Proposed Conduct results in the following public benefits:⁸⁵

- increased use of a resource stream currently being disposed of as waste

⁸³ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

⁸⁴ TSA, *Submissions in support of application*, 4 December 2017, pp 25-26.

⁸⁵ TSA, *Submissions in support of application*, 4 December 2017, p. 31.

- 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.
118. The Scheme seeks to reduce the number of EOLTs going to environmentally unsound use by imposing general obligations on participants to contribute to elimination of inappropriate export of baled tyres, illegal dumping of EOLTs, and unnecessary disposal to landfill. General obligations also include a requirement for participants to cooperate with ongoing audits, and provide required documentation and data TSA. The Scheme also imposes specific obligations on participants to deal only with other accredited participants of the Scheme, or only deal with non-accredited businesses under contracts that commit to the objectives of the Scheme.⁸⁶
119. In addition, a key feature of the Scheme is the imposition of an industry levy on tyre importers, vehicle manufacturers and mining companies that elect to participate in the Scheme. The levy (currently \$0.25 per passenger car tyre) is used by TSA to monitor tyre collection and recycling activity to ensure adherence to the objectives of the Scheme, as well as funding research and market development activities for tyre derived products.
120. During the period of the existing authorisation, TSA advises that the Scheme has resulted in:
- A reduction in the volume of tyres going to landfill – from 48.7 per cent in 2014/15 to 39.7 per cent in 2016/17 (comprising 6.7 per cent by accredited Scheme participants and 33 per cent going to mining landfill).
 - A growth in participants in the Scheme at certain levels of the supply tyre supply chain. However, the mining industry is yet to engage with the Scheme at all; and nor have any vehicle manufacturers and importers been accredited under the Scheme.
 - The volume of EOLTs going to an environmentally sound use has increased (but not as rapidly as originally envisaged when the Scheme was originally designed)⁸⁷. In 2016/17, TSA's annual report stated that the volume of EOLTs going to an environmentally sound use reached 46.8 per cent

⁸⁶ TSA, *the Revised Guidelines*, 8 May 2018, Section 1.2, p. 8.

⁸⁷ The Scheme's initial target was to ensure that, five years after the commencement of the Scheme, 50 per cent of EOLTs would go to an environmentally sound use.

(consisting of 7.7 per cent local material and reuse and recycling; civil applications 0.4 per cent; and 38.7 per cent exported for use as tyre derived fuel (baled and casings)). Having said this, TSA acknowledges that is currently not able to verify the destinations of all EOLTs purportedly exported to be used as tyre derived fuel.

- TSA's data collection activities are improving.

121. Having regard to the submissions of TSA and interested parties, the ACCC considers the public benefits likely to result from the Proposed Conduct under the Scheme are:

- environmental and public health and safety benefits associated with the reduction of the number of EOLTs being disposed of in landfill, illegally dumped, or exported to be burned in an environmentally unsustainable manner and
- research and development into effective uses for EOLTs.

122. These public benefits are discussed in further detail below.

Environmental and public health and safety benefits

123. A number of interested parties submitted that there would be environmental benefit from the continuation of the Scheme:

- **Bridgestone Australia** believes there is a significant public benefit in continuation of the Scheme, both from an environmental and public health perspective.⁸⁸
- **Bridgestone Mining** believes that without TSA there is no common objective in the industry to deal with current issues in relation to EOLTs.⁸⁹
- **The Department of Environment and Energy** submits that there is significant public interest in the continuation of the Scheme, to mitigate the current uncertainty surrounding the fate of EOLTs.⁹⁰
- **EPA SA** and **GISA**, in their joint submission, support the continuation of the Scheme on the basis that it will improvement the management and outcomes of EOLTS.⁹¹
- **Michelin** submits that without TSA, there would not be a common objective within the industry to address public concerns relating to the recycling and reduction of EOLTs going to landfill.⁹²

124. While generally supporting the ongoing operation of the proposed Scheme, a number of interested parties have suggested that further improvements to the Scheme are required. In particular, there needs to be broader industry engagement and representation, as well as more robust accreditation and compliance processes and oversight of the Scheme.

⁸⁸ Bridgestone Australia submission, 8 January 2018.

⁸⁹ Bridgestone Mining submission, 10 January 2018.

⁹⁰ Department of Environment and Energy, 2 February 2018, p. 1.

⁹¹ Environment Protection Agency SA and Green Industries SA submission, 7 February 2018, p. 1.

⁹² Michelin submission, 25 January 2018, p. 1.

Industry engagement

125. Some interested parties raised concerns that the TSA Board does not adequately represent the entire tyre supply chain (namely, that it doesn't include recycling expertise) and this is having a negative impact on the Scheme's efficacy:
- The **Department of Environment and Energy** submits that, in order to meet the challenges associated with the Scheme (including issues with non-participation in the Scheme), TSA needs to better engage with recycling industry representatives as members of the TSA Board.⁹³
 - **ATRA**, who represents a large proportion of tyre recyclers in Australia, submits that the bulk of the TSA Board is represented by importers and retailers, and therefore the TSA Board was substantially uninformed about used tyre recycling in Australia.⁹⁴
 - **Tyrecycle**, a major tyre recycler in Australia, submits that the current makeup of the Board 'is one-dimensional, lacking contemporary expertise from Recycling and other relevant sectors'; including the fleet, mining and government sectors.⁹⁵
126. In response to these concerns, **TSA** submits that its Board does not lack recycling experience, as it includes the former CEO of ATRA (as the Independent Director).⁹⁶ However it also advises that, after reviewing the makeup of the TSA Board it decided to appoint an additional recycling director to the Board, but its nominated recycler was voted down by TSA's members, by reason of a perceived conflict of interest. TSA advises that it is holding ongoing discussions with certain members, and remains committed to appointing an additional director with recycling experience as soon as possible.⁹⁷
127. Further, TSA submits the TSA Board has agreed to implement an Industry Consultative Group, which will include specific members of the recycling and collecting industries. It is intended that the Industry Consultative Group will meet with the TSA Board two to three times a year to discuss concerns raised by stakeholders in the industry. TSA also relies on various internal committees which utilise outside industry experts – for example the Research and Advisory Committee has external representation with experience in the rubber recycling industry.
128. The ACCC notes that, in its previous determination, it encouraged TSA to ensure the TSA Board was 'appropriately representative of all relevant segments of the industry and adds further Board members as required'.⁹⁸ The ACCC also notes that following the independent review of the Scheme in 2017, the Marsden Jacob report stated that although views of the recycling industry have been represented on the Board, there is scope to broaden the representation of recycling industry views.⁹⁹

⁹³ Department of Environment and Energy, 2 February 2018, p. 3.

⁹⁴ ATRA submission, 25 January 2018, p. 5.

⁹⁵ Tyrecycle Submissions, 25 January 2018, p. 7.

⁹⁶ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 6.2.

⁹⁷ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 6.1.

⁹⁸ ACCC, Determination A91336 and A91337, 11 April 2013, p. 27, available: [ACCC public register](#).

⁹⁹ Marsden Jacob Associates, *Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia*, final report, p. 33.

129. The ACCC still considers that strong engagement with industry participants along the entire tyre supply chain is important to ensure participation within the Scheme and its ongoing effective administration. The ACCC expects that TSA will continue to take genuine steps to appoint a recycling director to its Board as soon as practicable.

Accreditation and compliance processes under the Scheme

130. **WALGA**, the **Department of Environment and Energy**, **ATRA**, and **Tyrecycle** submit that the accreditation process of the Scheme is not working in practice. Each raised concerns that TSA failed to sanction a number of collectors that were accredited under the Scheme despite the fact that they were not disposing of tyres in an environmentally sound way (either by stockpiling, landfilling, or exporting).¹⁰⁰ WALGA highlighted the findings of the Marsden Jacob report, that potentially non-compliant businesses were accredited under a grace period, and submitted that TSA appeared to be “flexible” on matters such as reporting obligations to encourage participation by the industry’.¹⁰¹
131. **ATRA** submits that some of its members actively resisted joining the Scheme because TSA had accredited some organisations that did not have any recycling infrastructure or end markets in place.¹⁰²
132. **TSA** acknowledges that there is a direct tension between adopting a stringent and rigorous accreditation process and the goal of increasing participation in the Scheme and that, in the early stages of the Scheme, it prioritised enhanced participation so that it could work with participants to meet their obligations.¹⁰³
133. TSA submits that its ability to deal with non-compliance was hamstrung by the inflexibility of the Guidelines. Its only two options were to allow participants to stay within the Scheme, allowing TSA to continue working with the participants to improve their processes; or revoking accreditation and losing oversight and the ability to assist in improving the former participants’ processes. TSA claims that, by introducing a new suspension sanction under the Revised Guidelines, TSA has addressed this inflexibility.¹⁰⁴
134. TSA also submits that, in certain circumstances (including in remote and regional areas), it was not possible for recyclers to dispose of EOLTs in an environmentally sound way.¹⁰⁵ TSA notes that, in such circumstances, shredding to landfill is environmentally preferable to whole tyres being dumped or landfilled, as these alternatives pose health and safety risks.¹⁰⁶ TSA states that it is in the process of developing a Recycler Hierarchy, that will communicate publicly the processes used by each accredited recycler-collector and how these processes rank in terms of environmentally sound use.¹⁰⁷
135. TSA also submits that, under the Guidelines, applicants were only required to outline steps they proposed to take to meet their commitments under the

¹⁰⁰ Dept. Environment, p. 3; Tyrecycle submission, 25 January 2018, p. 8.

¹⁰¹ WALGA submission, 24 January 2018, p. 7.

¹⁰² ATRA submission, 25 January 2018, p. 7.

¹⁰³ TSA, *Response to ACCC Information Request*, 26 March 2018, Sections 7.1 & 7.2.

¹⁰⁴ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 7.3.

¹⁰⁵ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 7.7.

¹⁰⁶ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 7.7.

¹⁰⁷ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 7.8.

Scheme, rather than demonstrating they were able to take such steps.¹⁰⁸ TSA submits that under the Revised Guidelines, which require applicants to show demonstrated capacity to meet Scheme obligations, TSA has a clearer right to reject applications where there is risk of non-compliance.¹⁰⁹

136. In relation to ongoing compliance, TSA notes that all collectors and recycler-collectors are required to undergo an annual audit to ensure compliance with the Scheme, as well as complete an annual self-certification form, which requires participants to confirm and review whether they will continue to meet their obligations under the Scheme.¹¹⁰
137. The ACCC notes that TSA is making changes to the administration of the Scheme to ensure more robust and transparent accreditation process, including the introduction of a suspension mechanism, a tyre Recyclers Hierarchy, and more rigorous requirements regarding capacity to meet Scheme commitments

Oversight of exports under the Scheme

138. **ATRA** and **Tyrecycle** also raised concerns that, under the Scheme, baled tyres were being exported with little to no oversight as to whether they were ultimately disposed of in an environmentally sound way.
139. **ATRA** submits that for the Scheme to be effective, a verification process for EOLTs needs to be in place, but that the Revised Guidelines provide no verification process or indicate when any such process will be put in place. ATRA submits that the lack of such a process means that participants' reports about the volume of exported EOLTs going to an environmentally sound use cannot be substantiated, reducing the effectiveness of the Scheme.¹¹¹
140. **Tyrecycle** submits that, by not ensuring the environmentally sound disposal of EOLT prior to accreditation, TSA is undermining the value of the Scheme. A consumer choosing an accredited tyre retailer has no guarantee that their old tyres will be ultimately disposed of in an environmentally sound way.¹¹²
141. **TSA**, in response, accepts that its ability to currently verify the fate of exported EOLTs is constrained by various industry and market factors, including that exporters (who are not accredited under the Scheme) are reticent to provide details of the EOLTs final destinations.
142. Further, TSA submits that it is currently developing a downstream verification process for final destinations of EOLTs, including enhanced reporting requirements for recyclers and collectors on the fate of EOLTs exported by TSA accredited recyclers and collectors. This includes enhanced reporting obligations which require recyclers and collectors to provide data on the destination of their exported tyres, including the provision of bills of lading where possible¹¹³
143. The ACCC considers that verification of the fate of EOLTs exported to other countries is a serious issue and TSA appears to be taking steps to improve its verification processes. The ACCC will continue to look closely at TSA's progress

¹⁰⁸ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 7.12-7.16.

¹⁰⁹ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 7.17.

¹¹⁰ TSA, *Response to ACCC Information Request*, 26 March 2018, Section 7.18-7.20.

¹¹¹ ATRA submission, 25 January 2018, p. 8.

¹¹² Tyrecycle submission, 25 January 2018, p. 5.

¹¹³ TSA, *Response to ACCC Information Request*, 26 March 2018, Sections 5.6 & 5.7.

in improving verification, and encourages TSA to focus on resolving this process as soon as is practicable, and notes the Industry Consultative Group meetings would seem to be an appropriate forum to further engage with the industry on this issue.

ACCC view on environmental and public health and safety public benefits

144. The ACCC considers that, notwithstanding the operation of the Scheme during the period of the existing authorisation, there is still a current lack of commercial incentive for Australian businesses to dispose of EOLTs through recyclers. The ACCC notes that businesses dumping or placing tyres into landfill or burning them as fuel do not face the full environmental costs of doing so. Costs to clean up illegally dumped tyres are often borne by local government and land owners.
145. The ACCC also recognises the environmental and health and safety risks associated with stockpiles of EOLTs, including: fire risk and the release of toxic gases; potential leaching of chemicals and collection of landfill gases; and the potential disease risk of stockpiled tyres to act as breeding sites for mosquitoes and other vermin.
146. To the extent that the Scheme results in a reduction in the volume of used tyres entering the domestic waste stream or exported overseas to be unsustainably burned for fuel, the ACCC considers there is a clear public benefit likely to result from the proposed Scheme, particularly by reducing the environmental and health and safety hazards associated with such disposal methods.
147. While the volume of EOLT going to an environmentally sound use under the existing authorisation has not increased as rapidly as the original performance targets envisaged, the ACCC considers that this number is likely to be higher than what would have occurred without the Scheme in place.
148. The ACCC notes the concerns raised by interested parties that further changes to the Revised Guidelines are needed. The ACCC considers that transparent and robust accreditation and verification processes help to ensure the effectiveness of the Scheme. It also considers that strong engagement with industry participants along the entire tyre supply chain is important to ensure participation in the Scheme and its ongoing effective administration. In this regard, the ACCC expects that TSA will continue to take genuine steps to appoint a recycling director to its Board as soon as practicable.
149. The ACCC considers that TSA appears to be making steps to remedy the above concerns raised by interested parties about the operation of the Scheme – for example, nominating an additional recycling industry representative to the Board, agreeing to form an Industry Consultative Group, introducing a suspension mechanism for accreditation, and introducing more rigorous requirements regarding capacity to meet Scheme commitments.
150. Further, under the Revised Guidelines governing the operation of the Scheme, TSA has committed to conducting future independent reviews of the Scheme in 2022 and 2026.
151. Taking TSA's ongoing work into account, the ACCC considers that the Scheme is likely to result in environmental and public health and safety public benefits associated with the reduction of the number of EOLTs being disposed of in landfill, illegally dumped or being burned in an environmentally unsound way.

Research and development into end of life tyres

152. As discussed above, a proportion of the levy funds raised by TSA will go towards funding for research and development into the market for EOLTs. Developing Australia's tyre recycling industry and markets for TDPs is one of the overarching objectives of the Scheme.¹¹⁴
153. **Tyrecycle** submits that TSA has taken considerable steps regarding this objective, 'investing a considerable portion of its funding in market development activities'.¹¹⁵ Tyrecycle also submits that the changes to the Guidelines will allow for additional investment by TSA in the market research and development area, by allowing them to move from purely research projects into areas such as commercialisation and project implementation.¹¹⁶
154. In their joint submission, **EPA** and **GISA** highlighted the recent endorsement of a National Market Development Strategy for tyres (discussed above at paragraph 66), which was endorsed by state, federal, and territory governments. This framework is intended to provide a national approach to market development for TDP. EPA and GISA submitted that, subject to ACCC Authorisation, this will be implemented by TSA and overseen by government.¹¹⁷

ACCC view

155. The ACCC notes that, notwithstanding the previous authorisation of the Scheme, the market for TDPs is still relatively underdeveloped, and that further development in the market for TDPs is still required.
156. Under the 2013 authorisation, TSA has invested over \$2 Million in market development projects.¹¹⁸ Research projects, which have been undertaken by governmental and educational organisations, have included examining uses for TDPs in mining, road-building and civil engineering.¹¹⁹
157. The ACCC considers it is still likely that public benefit will be generated through the research and development financed by the Scheme's levy funds. In particular, the ACCC considers the TSA's proposed research and development, coupled with its industry and public awareness activities, could assist in developing industry recognition of the commercial value of EOLTs and identify potential markets for TDPs. The ACCC considers that, in the longer term, normal commercial drivers should develop to determine efficient levels of investment in market research and development.

ACCC conclusion on public benefits

158. The ACCC notes that a number of interested party submissions call for TSA to make further revisions to the operation of the Scheme to ensure its efficacy.
159. In assessing the Proposed Conduct, the ACCC has not sought to assess whether these changes proposed by interested parties would result in an optimal version of the Scheme. Rather, it has assessed the Proposed Conduct in the

¹¹⁴ TSA, *the Revised Guidelines*, 8 May 2018, Section 1.2, p. 8.

¹¹⁵ Tyrecycle submission, 25 January 2018, p. 7.

¹¹⁶ Tyrecycle submission, 25 January 2018, p. 7.

¹¹⁷ Environment Protection Agency SA and Green Industries SA submission, 7 February 2018, p. 2.

¹¹⁸ TSA, Submissions in support of Application, 4 December 2017, p. 32.

¹¹⁹ TSA, Submissions in support of Application, 4 December 2017, Section 6, p. 9.

form put forward by TSA in its current application for authorisation. The ACCC assessment of the Scheme and the Revised Guidelines is forward looking, although informed by its current operation under the existing authorisation.

160. The ACCC considers that the Proposed Conduct is likely to result in the following public benefits:
- environmental and public health and safety benefits associated with the reduction of the number of EOLTs being disposed of in landfill, illegally dumped, or exported to be burned in an environmentally unsustainable manner and
 - research and development into effective uses for EOLTs.
161. Although industry participants have reported to the ACCC that the Scheme has had issues with implementation since its inception, including with industry engagement and compliance, the ACCC considers that TSA is making steps to enhance the operation of the Scheme and that the public benefits are likely to occur.

Public detriment

162. The Act does not define what constitutes a public detriment and the ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:
- ...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹²⁰
163. The Scheme is a national voluntary industry-led tyre stewardship scheme which among other things, imposes an industry levy to fund research and market development activities for EOLTs (it does not directly fund tyre recycling) and imposes obligations on participants to only deal with other participants in the Scheme.
164. **TSA** submits that the Scheme does not result in any significant public detriment because:¹²¹
- participation in the Scheme is voluntary
 - any impact on competition from the requirement for participants to only deal with other participants is mitigated somewhat by the ability to enter into contracts with non-participating businesses in certain circumstances and
 - participants (tyre importers) retain the ability to determine the price of their tyres, and the (\$0.25) levy under the Scheme represents a very small portion of the overall retail price of tyres (which is approximately \$50 to \$300 per tyre).
165. Having regard to the submissions of TSA and interested parties, the ACCC's assessment of the likely public detriments from the Proposed Conduct follows.

¹²⁰ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

¹²¹ TSA submission in support of the application for authorisation AA1000409, 5 December 2017, pp 26-28.

Restrictions on supply

166. As discussed previously, the Scheme requires that participants deal only with other accredited participants of the Scheme, or otherwise enter into agreements which give effect to the general commitments and objects of the Scheme.¹²² Specific commitments require that:
- fleet operators and local governments only deal with accredited manufacturers or retailers when purchasing replacement tyres and
 - fleet operators, local governments and retailers only deal with accredited collectors or recyclers when disposing of EOLTs or to deal with non-accredited collectors only when contractual arrangements are in place specifying that all EOLTs go to an accredited recycler.
167. Non-compliance with these commitments may result in participants having their membership suspended for a period of time, or cancelled for a minimum period of 12 months. The ACCC encourages TSA to publish any suspensions or revocations, and the reasons, on its website to ensure transparency in the compliance process.

ACCC view

168. The ACCC considers that the Scheme is likely to generate some public detriment by restricting accredited businesses from dealing with non-accredited businesses in the EOLT supply chain (restricting non-accredited businesses' ability to compete to supply services to accredited participants), particularly in relation to accredited collectors and non-accredited recyclers. This could have a greater impact in regional and remote areas where access to accredited collectors and recyclers is limited or impossible. The ACCC considers that the more participants join the Scheme, the greater the competitive disadvantage for non-accredited businesses.
169. Having said this, the ACCC recognises that the requirement to deal only with accredited businesses is a key feature of the Scheme, designed to promote participation in the Scheme, and therefore is also a key part of delivering the public benefits. The ACCC also notes that no tyre collectors or recyclers have raised concerns in relation to this issue.
170. The ACCC considers the size of any public detriment is partly mitigated by the ability of accredited businesses to deal with non-accredited businesses by otherwise entering into agreements which give effect to the general commitments and objects of the Scheme.
171. TSA notes that, in relation to these restrictions, the Revised Guidelines provide that TSA may take into account the limited availability of accredited recyclers when assessing a collector's compliance with the Scheme. The ACCC considers this could alleviate possible concerns in rural and remote regions where the number of TSA accredited tyre collectors and recyclers for example, may be somewhat limited.

¹²² TSA, *the Revised Guidelines*, 8 May 2018, Section 1.2, p 8.

Imposition of the levy

172. Generally, the imposition of a levy has the potential to produce a public detriment, to the extent that the levy is passed on to consumers, resulting in higher prices.
173. **TSA** submits that it does not consider that the levy would have the effect of fixing, controlling or maintaining the price of tyres, and that the quantum of the levy is small enough that participants would not need to include it in their pricing.
174. **Bridgestone Australia** and **Michelin**, both importer-distributors, submit that most of the levy is usually borne by the importer-distributors rather than being passed on to the consumer.¹²³

ACCC view

175. The ACCC considers that the imposition of the levy (a minimum of \$0.25 per EPU) is likely to result in negligible public detriment. It is difficult to determine what proportion of the levy is ultimately passed through to consumers in the form of higher prices; this will depend on a range of factors including competition in the market. Even if it were passed through in full, the \$0.25 levy would represent a very small proportion of the overall retail price (0.5 per cent for a low cost \$50 tyre). TSA considers that there is currently more merit in focusing on increasing the number of importers participating in the Scheme than in raising the amount of the levy.
176. The ACCC is aware that some tyre retailers charge other, unrelated disposal or recycling charges (for example, a \$5 per tyre recycling fee). These charges are not a result of the levy.

Balance of public benefit and detriment

177. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.
178. In its assessment of the TSA's application seeking authorisation for the Proposed Conduct, the ACCC has taken into account the views expressed by TSA and interested parties, including with particular regard to:
- the number EOLTs entering the domestic waste stream has reduced during the initial period of the Scheme's operation
 - TSA has invested \$2 million in market development projects since September 2015
 - in accordance with the conditional authorisation of Guidelines in 2013, an independent review of the operation of the Scheme against performance targets was conducted in 2017. TSA has, or is in the process of, implementing many of the recommendations from that review

¹²³ Bridgestone Australia submission, 8 January 2018, p 1; Michelin submission, 25 January 2018, p 2.

- TSA has committed to conduct further independent reviews of the proposed Scheme in 2022 and 2026 publish annual reports about the proposed Scheme's operation and
 - TSA is undertaking to continue to work with stakeholders to help ensure that it make ongoing improvements to enhance the operation of the Scheme – for example, through the appointment of an additional director from the recycling industry to the Board of the TSA and the introduction of an Industry Consultative Group.
179. The ACCC considers that the Scheme is likely to result in a public benefit by reducing the amount of EOLTs being illegally dumped or landfilled domestically, or being exported overseas and burned for fuel in an environmentally unsustainable way, thereby reducing the environmental and health and safety hazards associated with such disposal methods.
180. The ACCC also considers that public benefit is likely to be generated by the research and development undertaken from the levy funds collected under the Scheme. In particular, this research and development, as well as public awareness activities, could assist the market recognise the commercial value of EOLTs and identify further opportunities to use and develop tyre derived products, contributing to the increase in disposal of tyres in an environmentally sound manner.
181. For the reasons outlined in this draft determination the ACCC is also satisfied that the Proposed Conduct is likely to result in minimal public detriment because:
- participation in the Scheme is voluntary
 - any detriment resulting from restrictions on supply on members is mitigated by their ability to deal with 'non-members' of the Scheme in certain circumstances and
 - the levy charged under the Scheme represents a minimal proportion of the total retail cost of new tyres for consumers.
182. Therefore, the ACCC considers that in all the circumstances the Proposed Conduct is likely to result in a public benefit that would outweigh the minimal public detriment likely to result.
183. Overall, the ACCC considers that the appropriate net public benefit test is met.
184. Having said this, the ACCC notes that the ongoing success of the proposed Scheme, and the delivery of a net public benefit, will depend on the effective and transparent administration of the Scheme. While the ACCC does not propose to impose annual reporting obligations on TSA (as it did in the original 2013 authorisation), the ACCC notes that the Revised Guidelines commit TSA to publish annual reports about the operation of the Scheme and provide that two further independent reviews of the Scheme will be undertaken in or around 2022 and in or around 2026.
185. The ACCC also notes that raising funds through the imposition of an industry levy is not in itself a benefit of the Scheme, but rather it is TSA's application of those funds to appropriate activities that will generate the likely public benefits

from the Scheme. Under the Revised Guidelines, TSA is still required to account for its spending of levy funds in its annual reports.¹²⁴

186. Further, the ACCC encourages TSA to continue to work with the relevant stakeholders, including recyclers and governments, to ensure that it continues to improve the practical operation and outcomes of the Scheme. Rather than imposing conditions of authorisation, as proposed by certain interested parties and per the 2013 authorisation, the ACCC considers that granting authorisation for a shorter period of six rather than 10 years provides an appropriate mechanism to ensure that the concerns that have been raised are addressed. This is discussed further below.

Length of authorisation

187. The Act allows the ACCC to grant authorisation for a limited period of time.¹²⁵ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
188. In this instance, **TSA** seeks authorisation of the Proposed Conduct for 10 years. In support of its request it notes that all but one interested party concedes that the Scheme is presently necessary to improve the volume of EOLTs going to an environmentally sound use. It submits that 10 years provides sufficient certainty to industry operators (particularly those in recycling and collection industries) to alter their current practices, including by investing in new technologies and infrastructure to improve reprocessing capabilities over cheaper alternatives (for example, exporting whole tyres or legal landfill options).¹²⁶
189. TSA also considers a 10 year authorisation would not preclude the establishment of an alternative statutory-based or co-regulatory tyre stewardship scheme if there was an appetite for this within government.¹²⁷
190. The **Department of Environment and Energy, Sustainability Victoria, and Tyrecycle** all made submissions in relation to the requested length of authorisation. These submissions raised concerns relating to the operation of the Scheme in practice; each submitting that 10 years would prevent timely opportunities for TSA, and government stakeholders, to review and improve upon the Scheme.
191. In its response to interested party submissions, TSA also submits that a 10 year authorisation will provide it with a level of certainty in regard to the operation of the Scheme, and will in turn allow TSA to invest funds and resources in longer term projects, and allow for the Scheme to gain momentum, rather than be required to seek re-authorisation of the Scheme within a shorter timeframe.¹²⁸

ACCC view

192. The ACCC notes concerns raised by interested parties regarding the necessity for timely review of the Scheme. It is not necessary for TSA and governments to

¹²⁴ TSA, *the Revised Guidelines*, 8 May 2018, Part A, Section 4.3, p. 17.

¹²⁵ Subsection 91(1).

¹²⁶ TSA, Response to ACCC Information Request, 26 March 2018, section 11.

¹²⁷ *Ibid.*

wait for the expiry of the authorisation for them to review the scheme. Nor does the Scheme preclude governments from deciding to enact regulatory change. Nevertheless, the ACCC agrees that a shorter duration of authorisation than the 10 years requested will give TSA a clear incentive to ensure that it implements its plans and addresses the concerns raised to ensure that the Scheme realises a net public benefit.

193. Given the proposed timing of the first independent review of the proposed Scheme, in or around 2022, the ACCC's preliminary view is that six years is an appropriate period of authorisation. This would allow the first independent review to be completed and any necessary changes to be considered by TSA prior to lodging any application for authorisation to continue the Scheme. If TSA seeks re-authorisation, the ACCC would closely review the results of the revised Scheme, including the level of participation by mining companies and vehicle manufacturers and importers.
194. Accordingly, the ACCC proposes to grant authorisation to the Proposed Conduct for six years.
195. The ACCC invites submissions on the proposed period of authorisation.

Draft determination

The application

196. On 5 December 2017 Tyre Stewardship Australia (**TSA**) lodged application AA1000409 with the ACCC, seeking authorisation under subsection 88(1) of the *Competition and Consumer Act 2010* (the **Act**).
197. TSA seeks authorisation of the conduct as it may contain a cartel provision or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act; or constitutes the practice of exclusive dealing under section 47 of the Act.
198. TSA seeks authorisation for itself and on behalf of current and future members of the Tyre Product Stewardship Scheme (**the Scheme**) to allow for continuation of the Scheme. TSA administers the Scheme in accordance with the *Guidelines for the Tyre Product Stewardship Scheme, 3 May 2018* (the **Revised Guidelines**).
199. TSA is seeking authorisation for:
- conduct on the same terms as the current authorisations (A91336-A91337) – sought on an interim basis to commence on or before 3 May 2018¹²⁹ and
 - the proposed conduct under the Revised Guidelines set out in application (AA9100409).
200. TSA seeks authorisation in relation to specific provisions within the Revised Guidelines (the **Proposed Conduct**), namely:

Provision or obligation of Guidelines for the Tyre Product Stewardship Scheme s	Provision
Requirement under participants' general and specific commitments to deal only with other accredited participants, or otherwise to enter into enterprise to enterprise agreements or contractual agreements that give effect to the commitments and the object of the Scheme	Part A, Section 3
Imposition of a levy on tyre importers, vehicle manufacturers and miners of a minimum of \$0.25 per EPU imported into Australia	Part A, Section 4.3
Allocation of levy funds to support initiatives and projects regarding the use and disposal of EOLTs	Part A, Section 4.4
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 	Part A, Section 5.1

¹²⁹ As outlined in the ACCC's Determination, 11 April 2013 available at <https://www.accc.gov.au/system/files/public-registers/documents/D13%2B45891.pdf>.

Suspension or revocation (for a period of 12 months) for Participant's non-compliance with general and/or specific commitments under the Scheme	Part A, Section 5.3
Imposition of a levy on tyre importers and vehicle manufacturers of a minimum of \$0.25 per EPU imported into Australia	Part C, Section 1.2
Retailers to prioritise dealings with accredited tyre importers Retailers to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs	Part D, Section 1.2
Fleet operators to prioritise dealings with accredited tyre importers Fleet operators to deal only with retailers accredited by TSA when disposing of EOLTs	Part E, section 1.2
Local governments to deal only with accredited retailers when replacing the EOLTs generated by their fleets Local governments to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs	Part F, section 1.2
Collectors to ensure all EOLTs collected from retail and other outlets are passed on to accredited recyclers	Part G, section 1.2
Imposition of a levy on miners of a minimum of \$0.25 per EPU imported into Australia	Part I, Section 1.2

201. Subsection 90A(1) of the Act requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

202. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to subsections 90(7) and 90(8) of the Act, that in all the circumstances the Proposed Conduct for which authorisation is sought would result or be likely to result in a public benefit that would outweigh any detriment to the public that would result or be likely to result from the Proposed Conduct.¹³⁰

Conduct which the ACCC proposes to authorise

203. The ACCC proposes to grant authorisation AA1000409 to TSA for the Proposed Conduct outlined at paragraph 200.
204. The ACCC proposes to grant authorisation AA1000409 for six years, commencing from the date the ACCC's determination comes into effect.
205. This draft determination is made on 27 April 2018.

¹³⁰ As a cartel provision applies to the Proposed Conduct, subsection 90(7)(a) does not apply: section 90(8).

Next steps

206. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

Interim authorisation

207. Authorisations A91336 - A91337, which currently afford protection for the Scheme's operation, expire on 3 May 2018.
208. On 4 April 2018 TSA amended its application for authorisation (AA1000409) to include conduct relating to the continued operation of the Tyre Product Stewardship Scheme on the same terms as the 2013 authorisations, for the interim period while the ACCC considers the current application for authorisation. TSA sought interim authorisation for the continuation of the Scheme, on the same terms as the 2013 authorisation.
209. TSA submits that the primary purpose for seeking interim authorisation was to ensure continuation of authorisation of the Scheme until the ACCC's final determination in respect of the current application for authorisation comes into effect. It submits that interim authorisation will provide TSA, and Scheme participants, with the certainty required to facilitate continuation of the Scheme during this period.
210. The ACCC grants interim authorisation to TSA to operate the Scheme on the same terms as authorised by Authorisations A91336 - A91337, including subject to the conditions outlined in the ACCC's final determination in respect of the Scheme, dated 11 April 2013. Interim authorisation commences immediately and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.