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Australian Competition and Consumer Commission  
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Dear Mr Jones

**Tyre Stewardship Australia's response to submissions made by interested parties in their application for revocation of authorisation AA1000409 and substitution of AA1000655 (Response).**

Thank you for providing Tyre Stewardship Australia (**TSA**) with the opportunity to respond to submissions (collectively, **Submissions**) made by interested parties in the public consultation process regarding the above application for revocation and substitution (**the Application**).

TSA notes the perspectives and suggestions made in the Submissions. TSA also notes that some of the matters raised align with the views expressed by stakeholders in the interviews undertaken as part of the independent review conducted by Arcoona Consulting and released in 2022 in its final report (**Arcoona Report**)<sup>1</sup>. TSA, within the limitations of the current Tyre Product Stewardship Scheme (**Scheme**), has been actively responding to the findings, conclusions, and recommendations contained in the Arcoona Report.

**General**

The Application is seeking re-authorisation by the Australian Competition and Consumer Commission (ACCC) in relation to certain conduct undertaken while administering the Scheme, on the basis that this conduct might contravene certain provisions of the *Competition and Consumer Act 2010* (Cth) (**Act**).

The Application is made in the wider context of the Federal Environment Minister's Priority List<sup>2</sup> and the recent enactment of the *Recycling and Waste Reduction Act 2020* (RAWR Act). The Minister's Priority List identifies the waste reduction of end-of-life tyres (**EOLT**) as one of the Minister's current priorities for product stewardship action.<sup>3</sup>

TSA's Application aims to ensure as little disruption as possible to the ongoing operation of the Scheme and, by extension, the used tyre recovery sector while the Federal, State and Territory governments are actively considering possible alternative options for tyre stewardship in Australia. This work, led by the Western Australian government, includes a report on stewardship policy and

<sup>1</sup> Arcoona Report, accessible at <https://www.tyrestewardship.org.au/wp-content/uploads/2022/09/TSA-Independent-Review-2022.pdf>

<sup>2</sup> The Minister's Priority List is made under the *Recycling and Waste Reduction Act 2020* (RAWR Act), accessible at <https://www.dcceew.gov.au/environment/protection/waste/product-stewardship/ministers-priority-list-23-24>.

<sup>3</sup> See website <https://www.dcceew.gov.au/environment/protection/waste/product-stewardship/ministers-priority-list>

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regulatory options that is anticipated to be presented to an Environment Ministers' Meeting<sup>4</sup> in 2024 for consideration, consultation, and decision.

Many of the Submissions suggest or recommend significant changes to the operation of the Scheme. TSA asserts that any alterations as to how the Scheme is currently designed and run, including through the imposition of conditions, would not be materially beneficial. Such changes could potentially complicate the implementation of the government's forthcoming direction regarding tyre stewardship in Australia. Further, if any material changes to the operation of the Scheme are introduced at this time, those changes may become redundant in a relatively short space of time if, for example, the current voluntary Scheme moves to a regulated scheme under the RAWR Act.

A key public benefit of allowing the Application is to provide continuity for the operation of the Scheme, and thus stability for the tyre recovery sector, during this period of government review.

### **Legislative framework**

With the above context in mind, and before responding to the substance of the Submissions, TSA wishes to emphasise certain features of the legislative framework which governs the Application.

The Application is made in respect of certain activities that may be undertaken while administering the Scheme. These specific activities may raise competition law concerns.

The Act provides that these activities may be authorised by the ACCC if the ACCC is satisfied that these activities would result, or be likely to result, in a benefit to the public, and that benefit would outweigh any detriment to the public that would result, or be likely to result, from those activities. While these activities are central to the operation of the Scheme, the determination is not whether the Scheme currently represents its 'optimal version'.<sup>5</sup>

TSA notes that several of the Submissions raise matters that may not go to either the public benefit or the public detriment of these activities, but rather provide general comment and observations on various features of the Scheme, TSA's administration of the Scheme or otherwise offer ways that might improve tyre stewardship generally.

TSA considers that these Submissions do not materially disturb the public benefit/public detriment assessment which is required under the Act. TSA does not believe that the imposition of any conditions in respect to this re-authorisation Application is in the public interest. Any material changes are best made to give effect to the government's direction when it is known.

### **Response to Submissions**

TSA is committed to supporting positive outcomes on tyre stewardship and welcomes the opportunity to respond to the Submissions which address the Application.

In this response, TSA:

- provides its general comments received in relation to the Application (see below); and
- provides more specific responses to the prominent concerns raised (see Annexure A).

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<sup>4</sup> See communique, accessible at <https://www.dceew.gov.au/about/news/stay-informed/communiques>

<sup>5</sup> Determination for authorisation AA1000409, accessible at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited> (2018 Determination), at 163.

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## General response to Submissions

The Submissions express unanimous support for the Application. Several of the Submissions note the public benefits of a continuation of the Scheme.

These Submissions point out, for example, that the operation of the Scheme:

- has assisted in the reduction of environmental, health and safety impacts of EOLTs;<sup>6</sup>
- has assisted in the furtherance of recycling markets and knowledge about the sector which, in turn, have led to positive outcomes for car, bus and truck tyres specifically;<sup>7</sup>
- is effectively and proactively administered and thus continues to play an important role in the move towards the circular economy;<sup>8</sup> and
- enables confidence of the industry in standards and management of EOLT management.<sup>9</sup>

TSA notes that some interested parties suggest amendments to the Scheme and/or a different timeframe for the duration of the requested re-authorisation. TSA acknowledges that the Scheme continues to evolve<sup>10</sup> and that, in case of continuity of the Scheme, there remains, as one would expect, opportunities for improvement.

If the Application is granted, TSA will continue to provide support to tyre recovery sector participants, governments, and other stakeholders to achieve outcomes towards a circular economy for tyres in Australia. For example, TSA will continue to work with off-the-road tyre sector in particular mining, and with local governments, to seek to address their specific challenges and achieve higher rates of recovery.

Further, TSA notes the frustration of local governments which, on behalf of their ratepayers, often bear the cost burden of the limitations of the current Scheme. For example:

*'It is our experience that the current industry-led Tyre Product Stewardship Scheme (TPSS) fails our community.*

*The failure does not stem from TSA's administration of the scheme. It is due to its voluntary nature, allowing poor practices to continue, and burdening the government level with the least capacity, Local Governments, with the management of used tyres.'*<sup>11</sup>

As a revocation without re-authorisation of the proposed activities would lead to the existing Scheme needing to be abandoned, it is TSA's view that this would likely lead to more stockpiling and illegal dumping and, thus, a greater economic and environmental burden (and therefore public detriment). To this end, TSA agrees with the assertion that, without TSA's oversight, there is a 'very real risk of lower order recycling outcomes proliferating in the sector in a 'race to the bottom'.'<sup>12</sup>

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<sup>6</sup> Submission by the Department of Climate Change, Energy, the Environment and Water, dated 20 February 2024.

<sup>7</sup> Submission by the Department of Climate Change, Energy, the Environment and Water, dated 20 February 2024.

<sup>8</sup> Submission by the Southern Sydney Regional Organisation of Councils, dated 29 January 2024; and, similarly, submission by the Victorian Automotive Chamber of Commerce Inc, dated 7 February 2024.

<sup>9</sup> Submission by Tyrecycle Pty Ltd, dated 2 February 2024.

<sup>10</sup> See section 7.1 of Schedule 5 of the Application.

<sup>11</sup> Submission by North Queensland Regional Organisation of Councils, dated 1 February 2024.

<sup>12</sup> Submission by Tyrecycle Pty Ltd, dated 2 February 2024.

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TSA is proud of the work it has achieved within the operation of the Scheme to date and is seeking to continue its efforts while awaiting government direction on tyre stewardship in Australia.

Yours faithfully

*Hall & Wilcox*

**Hall & Wilcox**

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# Annexure A - Response to the Submissions

While TSA's position as set out above is that these perspectives and suggestions do not materially disturb the public benefit/public detriment assessment which is set out under the Act, TSA's comments on the main concerns raised in the Submissions are as follows:

## 1 Limitations of the current Scheme

TSA notes the concerns and suggestions related to the limitations of the current Scheme.

TSA concurs with the sentiment in many of the Submissions that the current Scheme can be improved upon.

From TSA's perspective, the key limitations of the design of the current voluntary Scheme are:

- The Scheme does not provide a level playing field for all participants, by allowing free riders.
- The Scheme does not apply a levy structure across all tyres using a standard measurement such as weight.
- The voluntary nature of the Scheme means that both financial contributions, and participation, can cease at any time, resulting in Scheme failure.
- The outcomes of the Scheme continue to be undermined by the activities of stockpiling and illegal dumping.
- The recovery rates in the off-the-road sector are currently under-performing significantly.
- Scheme does not apply to certain off-the-road rubber product segments, such as conveyor belts and rubber tracks.
- The Scheme does not address disadvantages in rural and remote communities.
- The end market demand and 'higher order' product utilisation is not incentivised sufficiently.

In recognition of the above, TSA, industry and government have been involved in discussions concerning improving the Scheme for several years, including to raise the profile of these issues through the Minister's Priority List (first listed 2022/23, listed again 2023/24), which now requires the actions below:

1. Manufacturers, importers, distributors and retailers must demonstrate improved and measurable product stewardship actions which could include any of the following: expanding and improving the industry-led product stewardship scheme (including through a significant decline in free riding); product design improvements and supply chain initiatives to increase durability, reparability, re-usability and/or recyclability; other supply

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chain initiatives that measurably support good product stewardship and circular economy progress. This is expected by November 2024.

2. To avoid government regulation, tyre importers not currently members of the Scheme should commence formal participation. This is also expected by November 2024.

TSA expects that, as part of the Minister's Priority Listing response, the analysis and options developed by government for tyres, conveyors belts and tracks, will determine the next steps for tyre stewardship in Australia.

In the meantime, TSA has, within its current remit and resources, principally been running a accreditation program for all Scheme participants, stimulating markets through its market development program which has included over \$9M of direct funding for projects and research, and undertaking awareness raising through communication and engagement, including to consumers and the off-the-road sector. Participation in the Scheme has been relatively steady, and has plateaued, despite efforts to encourage full participation by tyre importers, auto brands, and retailers and collectors, to join.

## 2 Communication of information

TSA notes the concerns and suggestions related to the communication of information.

TSA's method for data collation and analysis was last substantially reviewed in 2019 and is delineated in the 2019 Used Tyre Fate Analysis Report (released in 2020 by TSA) (UTFA Report).<sup>13</sup>

Since this time, TSA has made small refinements to the method to improve our confidence in the results, while maintaining the ability for year-on-year comparisons to be valid. There have not been any substantial changes to the method.

Each November, TSA issues public reports - a fact sheet, and an Annual Report - that communicate industry data, used tyre fates, and progress against key performance indicators for the previous financial year. Data used to inform these public reports is from a variety of sources including Scheme participants (including retailers and recyclers), the Australian Bureau of Statistics, the Federal Chamber of Automotive Industries, and other data sources including industry consultation.

TSA would like to take the opportunity to highlight that the state and federal governments regularly request and rely on TSA data.

In December 2023, TSA commenced a project, and has since awarded a contract for, a third-party peer review of TSA's data management. This review will result in a 2022/23 Used Tyre Fate Analysis Report. This is anticipated to be completed and published as a public document mid-year 2024.

More specifically in response to reporting of landfilling and claims made about illegal dumping increasing:

- TSA has always reported '*landfilling*' as '*not recovered*', which is standard for waste reporting in Australia, irrespective of the type of waste material being reported on (see

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<sup>13</sup> UTFA Report accessible at <https://www.tyrestewardship.org.au/reports-facts-figures/used-tyre-supply-chain/>.

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Australian standard – definition of recovered materials<sup>14</sup>) with stockpiling and illegal dumping also *'not recovered'*.

- TSA reporting of increased illegal dumping is backed up by credible data and information from external sources, including direct engagement with local governments and data sets such as 'Snap Send Solve'.<sup>15</sup>

### **3 TSA governance**

TSA notes the concerns and suggestions related to board representation and governance.

TSA's board has an independent Chair, who previously held the role of State Manager of the South Australia/Northern Territory Division of the Australian Institute of Company Directors.

TSA and its Chair continue to work towards the board composition as outlined in our Constitution and note the stakeholder commentary in the Arcoona Report about the desirability of a skills-based board. The three most recent appointments to the board have experience in circular economy matters, independent retailing, government, mining, and energy.

Recycling industry expertise has been represented on the board of TSA, for significant years, across two appointments. Experience included previous ownership of Tyrecycle and the former Executive Director of the Australian Tyre Recycling Association. During their appointments on the board these individuals did not hold active roles within the recycling industry.

This aligns with independent governance advice received by TSA that recyclers with commercial interests in the Australian market may have a perceived conflict of interest which may hinder future direction and engagement across competing businesses and technologies in the EOLT business sector.

In terms of consultation, the Board seeks regular presentations and engagement with industry representatives, including those from recycling sector, and attends and presents at meetings as requested by industry associations, government departments, and independent organisations, including research organisations.

TSA notes, for the information of the ACCC, in respect to the Submissions relating to governance changes, that a connection exists between the parties. ATRA is a division of ACOR, and the CEO of Tyrecycle is the President of ATRA, and Chairperson of ACOR. Elan and CTS are both members of ATRA.

### **4 KPIs**

TSA welcomes a review of the key performance indicators (KPIs) prescribed in the 2018 ACCC Determination. TSA is supportive of measures to strengthen its operation as a transparent and publicly accountable organisation.

TSA is of the opinion that its KPIs should reflect its role and responsibilities as outlined in the Scheme guidelines (Guidelines), which were reviewed and authorised by the ACCC under the 2018 ACCC Determination. TSA's role and responsibilities have not changed between the time of the 2018 ACCC Determination and the date of the Application.

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<sup>14</sup> Australian Standard accessible at [Australian standard for waste and resource recovery data and reporting](#).

<sup>15</sup> Dumped tyre findings, accessible at <https://www.snapsendsolve.com/partners/dumped-tyres-finding-solutions-for-a-cleaner-future>

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It is worth noting that TSA not only reports on its ACCC prescribed KPIs, but also reports against its Strategic Plan each year in its comprehensive Annual Report – both of which are available on the TSA website. TSA also reports to ASIC as not-for-profit company on its operations and expenditure, including external auditing of its finances.

## **5 Landfill exemptions**

TSA, as Australia's tyre stewards, is continually advocating for higher order outcomes for tyres aligned to the waste hierarchy and principles of a circular economy.

While landfill represents the lowest order of the waste hierarchy and no circularity, TSA acknowledges that there are circumstances where there are no viable recovery options other than landfill or onsite burying of EOLTs in pit on mine sites (with the appropriate environmental approvals), such as in regional and remote locations.

TSA supports steps to minimise the number of EOLTs that are disposed of in landfill and buried on mining sites, where the transition is controlled and managed, in consultation with the sector and government.

TSA is of the opinion that measures should be designed to ensure that they do not simply move the problem along the value chain, causing greater environmental and social harm or market failure than the existing approaches to disposal.

It is incorrect to suggest that permission to landfill in the Guidelines means that sending EOLTs to landfill is considered '*recovered*'. The Guidelines permit landfilling when there are no viable recovery options available to collectors/recyclers or tyres are deemed too contaminated to be recycled. This concession for landfilling permitted in the Guidelines allows collectors and recyclers to maintain their TSA accreditation in those circumstances. However, it does follow that landfilling is considered '*recovery*'.