

31 January 2024

Mr Gavin Jones
Director, Competition Exemptions
Australian Competition & Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2600

via: exemptions@acc.gov.au

Dear Mr Jones,

Tyre Stewardship Australia Limited application for revocation of authorisation AA1000409 and substitution of AA1000655—interested party consultation

The Australian Council of Recycling (ACOR) welcomes this opportunity to comment on the operation of the Tyre Stewardship Australia (TSA) product stewardship scheme, in order to better support a robust recycling sector in Australia.

ACOR is the peak industry body for the resource recovery, recycling, and remanufacturing sector in Australia. Our membership is represented across the recycling value chain, and includes leading organisations in kerbside recycling, CDS operations, recovered metal, glass, plastics, paper, textiles, tyre and e-product reprocessing and remanufacturing, advanced chemical recycling processes, road recycling, and construction and demolition recovery. Our mission is to lead the transition to a circular economy through the recycling supply chain.

Product stewardship schemes must deliver genuine recycling outcomes

The TSA re-authorisation presents an opportunity for the ACCC to support best-practice product stewardship and rectify challenges with the current scheme.

The recycling sector strongly supports moves to place greater responsibility on producers and distributors for the lifecycle of their goods. With the right measures in place, product stewardship schemes and extended producer responsibility can be an effective way to ensure recyclability and proper funding for recycling efforts. However, the apparent practices and priorities of the current tyre stewardship scheme do not align with the interests of the recycling sector or the waste stream it seeks to address.

The introduction of the *Recycling and Waste Reduction Act 2020* provided for the establishment of voluntary, co-regulatory and mandatory product stewardship schemes. The legislation also allowed for voluntary schemes to operate independently of the Australian Government. The Government has since prioritised both mandatory and co-regulatory schemes, and allowed accredited voluntary schemes the use of their logo to promote the recognition and credibility that government accreditation affords.

Voluntary product stewardship schemes authorised by the ACCC outline general objectives relating to circularity, such as sustainable materials, designing out waste, research and development, and education. However, eventually, all products produced or imported into Australia end up in the Australian waste stream—including those materials banned from export over the last few years. Onshore recycling and the creation of markets for recycled materials must therefore be an overarching priority across all product stewardship initiatives.

A more concerted effort is required to support investment in genuine recycling outcomes. Furthermore, the recycling sector is concerned that some existing product stewardship schemes are not delivering robust recycling outcomes—although often claiming credit for recycling sector achievements—while prospective schemes are being established without the correct drivers in place to drive effective resource recovery.

Priorities for effective product stewardship

Any approach to product stewardship must prioritise genuine recycling outcomes. The following issues which undermine recycling are common among product stewardship schemes, including tyre stewardship:

- underfunding for recycling (or the assumption that recycling is cheap or free),
- lack of prioritisation of, and meaningful support for, end markets for recycled materials,
- prioritisation of scheme administration over resource recovery and recycling outcomes,
- prioritisation of product stewardship schemes over other effective policy and regulatory levers,
- the proliferation of multiple schemes, with diverse governance structures, operations, priorities and outcomes, resulting in inefficiency and consumer confusion,
- lack of accountability and transparency, and
- conflicts of interest in governance and a lack of representation across the entire supply chain—with a focus on manufacturers and distributors rather than collectors, recyclers or procurers of recycled products.

Poorly designed product stewardship schemes can enable greenwashing and do more harm than good by slowing momentum, with strong marketing concealing ineffectual activities. All too often, schemes fail to deliver effective and transparent outcomes for the communities that essentially fund them, and drive down resource recovery outcomes by prioritising cost reduction over performance.

Scheme administrators often prioritise the establishment of a scheme as an end in itself, with the bulk or entirety of the funding dedicated to administration, rather than recycling. This emphasis leads to inefficiencies in collection, aggregation, and overall administration, particularly in crossover markets, by focusing on advancing producer priorities over those of the entire supply chain. In treating schemes as standalone objectives, administrators can also create duplicative systems.

The priority of genuine recycling outcomes must be more strongly established in the stewardship conversation, to enable more representative, effective and efficient implementation of product stewardship in Australia, delivering value to brand owners, government, community and recyclers—and supporting genuinely positive and enduring environmental outcomes.

The recycling industry takes on market risk, legislative risk, investment risk and operating risk to achieve recycling outcomes, within product stewardship schemes that often do not sufficiently address these risks, leading to sub-optimal recycling outcomes. When schemes do engage with recycling activities, the focus is overwhelmingly on collection—the public-facing, marketable element. Schemes generally underinvest in, or ignore, demand generation for recycled material.

It is essential that the focus is shifted from supply-side to demand-side outcomes. In the case of end-of-life tyres (EOLT), a priority is to ensure engagement across the supply chain, including collectors, recyclers and procurers of tyre-derived products.

Many schemes frustrate higher-order recycling outcomes by compounding a disconnect between manufacturers and recyclers, rather than fostering partnership. This divide persists partly because manufacturers are hesitant to bear the entire expense of recycling, especially given the higher costs of production within Australia. This hesitation impedes the symbiotic relationship crucial for effective recycling practices.

Ultimately, uncertainty about where and how product stewardship might become regulated can deter investment in recycling. Since product stewardship schemes are currently predominantly, or entirely, manufacturer-led, the risk exists that regulated schemes could generate conflicts of interest around price setting, for example. This is a critical issue in relation to TSA's advocacy for a regulated Canadian, Italian or New Zealand-styled product stewardship scheme in Australia, as there is a strong likelihood that this would allow manufacturers to set disposal prices and more broadly control the recycling sector.

Other effective policy and regulatory levers, such as stronger enforcement of existing regulation, procurement of recycled content, and implementation of landfill/disposal bans should be advanced prior to deployment of product stewardship schemes. In particular, there must be much more effective enforcement of Australia's waste export regulation to ensure that Australia's international environmental duties are met, and Australia's recycling capabilities are supported—and to ensure a level regulatory playing field for legitimate operators.

As product stewardship schemes proliferate there is an urgent need for a framework to establish best practice and minimum standards, that incorporates the recycling value chain, and which supports strong end markets for recycled content.

Product stewardship schemes must establish robust governance that encompasses the entire recycling supply chain, with a central inclusion of recyclers. Scheme Boards must include representatives and expertise from all stages of a circular supply chain, with equal decision-making powers and formal channels to provide expertise. After all, recyclers—rather than product manufacturers—are the unequivocal experts in the field of recycling. Recycling industry Board representation should be proportionate to the operational costs borne for the actual recycling of the waste stream.

International concerns regarding poor product stewardship design

Reflecting the concerns of Australian recyclers, the Bureau of International Recyclers (BIR) has recently released a [position paper](#), highlighting growing international concern from recyclers about extended producer responsibility (EPR) and identifying recycling industry priorities.

The key recommendations outlined in their paper are as follows:

1. EPR schemes must not disrupt existing efficient markets, and should be set up only when there is a need and only once the effectiveness and the intrinsic value of a waste stream have been assessed.
2. Governments should first refer to other policy instruments to increase circularity such as making design for recycling mandatory and legally binding recycled content targets.
3. Recyclers should be involved in the governance bodies of such schemes to ensure an appropriate balance of interests among the most relevant stakeholders in the value chain.
4. Ownership of waste should be retained by the recycling company entrusted with the responsibility of processing the waste, with transparent and fair tenders and to avoid monopolies and comply with competition rules.

The ACCC guide for business on making environmental claims

The recycling sector strongly welcomed the ACCC's recently released guide for business on making environmental claims. Greenwashing often goes unchecked for far too long. Product stewardship schemes can consistently underperform due to the lack of targets, or lack of consequences for failing to meet targets, even when accredited by the ACCC. The prevailing assumption that regulated schemes will have higher targets than voluntary schemes has not been borne out—regulated scheme targets can be equally weak, resulting in undermining recycling investment. But despite this, product stewardship schemes can be perceived by policy makers and consumers as authorities on recycling outcomes.

The reality is that the recycling sector is the only credible authority on the intricacies of recycling. Hands-on experience and comprehensive knowledge uniquely position recyclers as the foremost experts in understanding the practicalities, challenges, intricacies and cost of the recycling process, making their insights and guidance indispensable in shaping effective recycling strategies and sustainable practices.

With dozens of product stewardship schemes operating in Australia and many more in development, now is the time to better align these initiatives, set stronger targets, ensure accountability and better address imported products and free riders, to deliver genuine outcomes that support community confidence and proper investment in recycling.

Priorities for an effective product stewardship scheme for EOLT

TSA is a manufacturer-led and governed organisation, which funds research and development, accredits and audits tyre recyclers and collectors, conducts marketing, and funds its own administration. The scheme does not collect nor recycle EOLT and no funds from the scheme are provided to recyclers. There is no

recycling industry representation on the Board and little overall engagement with the recycling sector. Nevertheless, ACCC- and Government-endorsed product stewardship schemes are often called on to speak as an authority on recycling, or are credited with recycling outcomes.

TSA, for example, points to increased EOLT recovery rates since TSA's formation as demonstration of the Scheme's success, however, this change should more appropriately be credited to tightened state-based regulation: over the same time period, every state substantially reformed regulation of the storage, transportation, fire safety, end-of-use disposal and other environmental management aspects of EOLT. Together, these regulatory changes provided an impactful disincentive to stockpiling EOLT and fostered increased recycling investment and activity.

TSA's lack of meaningful engagement with the recycling sector has led to decisions with unintended consequences. For instance, by accrediting tyre balers—which provided the cheapest avenue for disposal—many millions of unprocessed EOLT were exported to developing countries—and likely very poor environmental outcomes, such as open burning. The Australian Government ultimately banned the export of whole baled EOLT, a decision opposed by the TSA.

ACOR notes that the ACCC has already acknowledged concerns raised by sector stakeholders relating to insufficient tyre recycling representation on the TSA Board; however, the problem has not been addressed.

TSA now proposes that the Federal Government intervene in the tyre recycling system through a regulated product stewardship scheme, which would disrupt an established and effective market, despite a current 'collection rate' for used passenger and commercial tyres (distinct from legally disposed on-site mining tyres) of around 97–98 per cent—a collection rate higher than any other recyclable material in Australia, which suggests there is no market-failure to be addressed. On this subject, TSA has presented data regarding EOLT fates in Australia in ways that are understood by the recycling sector to not accurately reflect the true state of affairs.

Among the stated reasons for a regulated scheme is to capture 'free riders' (manufacturers not paying the levy), which is a primary concern for the TSA Board, but one that could be addressed through other mechanisms, such as a mandated import levy.

ACOR is concerned that dispensation granted through ACCC re-authorisation of TSA may advance stakeholder interests over genuine attempts to address EOLT recycling supply chain solutions.

Conclusion

ACOR supports the conditional re-authorisation of TSA and recommends that ACCC require TSA to:

- establish a Board that represents the entire EOLT supply chain, in particular including recyclers;
- provide a more comprehensive and independent assessment of options to tackle free-riders;
- prioritise the development of tyre-derived product markets, with clear reporting on progress; and
- accurately attribute resource recovery and recycling outcomes for tyre recycling (i.e. to state regulations and the recycling sector).

The ACCC should also clarify its expectations surrounding existing and future product stewardship and EPR schemes, including governance and conflicts of interest.

ACOR's members bring considerable real-world resource recovery and recycling expertise, based on operating in every jurisdiction in Australia and internationally, and we would be very pleased to facilitate further dialogue and consultation on the above matters. Should you have further queries, please do not hesitate to contact me via [REDACTED].

Yours sincerely

[REDACTED]
Suzanne Toumbourou
Chief Executive Officer