30 April 2024

Your ref: AA1000655
Our ref: BJH KBWI 119118

Mr Gavin Jones
Australian Competition and Consumer Commission
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Dear Mr Jones

Tye Stewardship Australia'a (TSA) response to ACCC's request for further information dated 17 April 2024

We refer to the ACCC's request for further information dated 17 April 2024 (RFI). We enclose our client's response to the to the RFI as Schedule 1 to this letter (**Response**).

The Response is submitted to clarify the matters raised by the ACCC in its RFI and is not intended to vary the terms of the Application.

Please let us know if you have any further queries.

Yours faithfully

Hall & Wilcox

Hall & Wilcox

Schedule 1

30 April 2024

Tyre Stewardship Australia's (TSA) response to the Australian Competition and Consumer Commission's (ACCC) letter dated 17 April 2024, requesting further information to progress TSA's application for authorisation AA1000655 (the Application).

We refer to the above letter. Please find below TSA's response to the ACCC's follow-up questions.

The ACCC request for further information has six parts:

1. Apparent conflict of interest on TSA's Board.
2. Treatment of data.
3. Cost increases.
4. Landfill rates.
5. ACOR submission.
6. Datasets.

Our response provides general comments to clarify the current situation on end-of-life tyres (EOLT), and then addresses the abovementioned six parts.

General comments

<u>The shift to a circular economy</u>

Across the globe, action is being taken to move towards a 'circular economy'. All of Australia's environment ministers[1], have agreed and reiterated their commitment to transition Australia toward a more resilient and regenerative circular economy. This shift is demonstrated in legislation including the Commonwealth *Recycling and Waste Reduction Act*, in policy in the National Waste Policy and related Action Plan, and in the current work underway by Australia's environment ministers, led by the Western Australian government, to develop options for a stronger product stewardship approach for tyres in Australia.

The Australian voluntary Tyre Product Stewardship Scheme (the Scheme) was germinated from a need for producers to be accountable for end-of-life tyres (EOLT). The focus towards a circular economy has come much later and has included an update to TSA's Constitution to include circular economy expertise on the TSA Board.

<u>Resource recovery vis-à-vis recycling</u>

To understand TSA's data, it is important to clarify the definitions of 'resource recovery' and 'recycling'.

[1] Environment Minister's Meeting. 9 June 2023 Agreed Communiqué. Accessed 19 April 2024 https://www.dcceew.gov.au/sites/default/files/documents/emm-communique-09-june-2023.pdf

The National Standards for Waste and Resource Recovery Data and Reporting[2] distinguish between recycling (which does not include waste-to-energy) and resource recovery (which does include waste-to-energy).

- Recycling: Activities through which wastes are collected, sorted, reprocessed (including through composting), and/or converted into raw materials for use in a production system, **excluding for energy.**

- Resource recovery: Activities through which wastes are collected, sorted, processed (including through composting), and/or converted into raw materials for use in a production system. For data reporting purposes, the quantity of waste allocated to the fate 'resource recovery' is the sum of the quantities allocated to waste reuse, recycling, **and energy recovery.**

This distinction is important as it points to the most significant pathway in the current EOLT industry, being that most that are resource recovered are not recycled. Currently over 70% of waste tyres that are processed for recovery are used as a fuel for energy applications overseas, an outcome with no circularity.

1. Apparent conflict of interest on TSA's Board

a. The Landell Report found that being responsible for oversighting management and the ongoing compliance of recyclers while also being one of those recyclers (or a related entity) amounts to an ongoing actual conflict of interest. We would like to better understand why you consider having the following representation on the Board as not amounting to a conflict of interest:

i Tyre importers/manufacturers

ii Vehicle importers/manufacturers

iii Tyre retailers

b. TSA's response to interested party submissions states that recycling industry experience has been represented on the Board for a significant number of years via appointments of individuals who did not hold active roles within the recycling industry. Please explain why TSA does not currently have any such appointments?

The Landell Report considered three types of conflict of interest, being an actual conflict of interest, a potential conflict of interest, and a perceived conflict of interest[3]. TSA addresses each in its responses below.

i. Tyre importers/manufacturers

[2]National Standards for waste and resource recovery data and reporting. Accessed 19 April 2024 - https://www.dcceew.gov.au/environment/protection/waste/publications/national-standard-waste-and-resource-recovery-data-and-reporting

[3] Landell Report, paragraph 6

Participating importers/manufacturers ('organisations involved in the importation of tyres' as per the Scheme Guidelines) voluntarily join the Scheme to assume a level of stewardship accountability for the product they manufacture and/or import into Australia. Participating importers/manufacturers contribute financially to the Scheme, enabling TSA to conduct its work in accordance with the Scheme Guidelines.

The objectives of the Scheme, as established in the Scheme Guidelines, are to:

1. increase resource recovery and recycling and minimise the environmental, health and safety impacts of EOLT generated in Australia, and
2. develop Australia's tyre recycling industry and markets for tyre derived products.

As part of these objectives, TSA has to date committed $9M of contributors' funds towards projects that aim to increase the consumption of EOLT in Australia, which directly results in increased sales to the Australian recycling industry who have value added an EOLT into a processed crumb. It is anticipated that crumb is on average sold at approximately $500-$600p/T, equating to revenues in excess of $24M to recycling organisations.

Tyre importers and manufacturers do not stand to directly gain from directing levies to projects that advance the consumption and sales of tyre derived materials. Tyre importers and manufacturers also do not stand to gain from the results of market development undertaken by TSA.

Based on the above, in TSA's view, inclusion of representatives of tyre importers/manufacturers on the Board of TSA does not amount to an actual conflict of interest. While it could be argued a tyre importer/manufacturer indirectly gains from the development of markets for disposal of EOLT, the development of these markets is the stated objective of the Scheme and is no more of a conflict than the indirect gain obtained by every member of the public in not being burdened with the cost of disposing of EOLT.

The above submission in relation to actual conflicts of interest applies equally for potential conflicts of interest, provided each member of the Board complies with TSA's Conflict of Interest Policy and discloses any potential conflict of interest prior to any actual conflict of interest arising.

To ensure any actual or potential conflicts of interest are promptly disclosed and addressed, TSA has implemented various measures at Board level, including the following:

- All Board members are required to complete a Conflict of Interest Disclosure annually and this is maintained on a Conflict of Interest Register.
- All Board members now complete an annual online training on the Conflict of Interest Policy.
- The Chair opens each Board meeting with a discussion on conflict of interest and signs the minutes confirming no conflicts have arisen or how identified conflicts have been managed.

As to perceived conflicts of interest, TSA's view is that there should be no genuine perception of a conflict of interest with having tyre importers/manufacturers on the Board, given:

- A tyre importer/manufacturer representative is unable to influence how the TSA spends Scheme funds, or the projects that the TSA will focus on, in a way that benefits that importer or manufacturer, or disadvantages industry participants to the manufacturer's/importer's benefit.
- A particular tyre importers/manufacturer does not, and cannot, themselves benefit from its representative being on the Board, in a way that is not shared by other industry participants it represents.

ii. Vehicle importers/manufacturers

TSA does not consider that the inclusion of representation from vehicle importers/manufacturers on the Board amounts to an actual or potential conflict of interest, for equivalent reasons to those as expressed in paragraph (i) above. Vehicle importers/manufacturers do not directly financially gain from the funds provided to industry and decisions made associated with TSA's market development activity, nor are they able to influence Board decisions in a way that directly benefits their particular organisation ahead of other industry participants it represents.

iii. Tyre retailers

TSA does not consider that the inclusion of representation from tyre retailers on the Board amounts to an actual or potential conflict of interest, for equivalent reasons to those expressed in paragraph (i) above. Tyre retailers do not directly financially gain from the funds provided to industry and decisions made associated with TSA's market development activity, nor are they able to influence Board decisions in a way that benefits their particular organisation ahead of other industry participants it represents.

The Board also does not accredit or suspend tyre retailers - this function is performed at a TSA management level.

b. TSA's response to interested party submissions states that recycling industry experience has been represented on the Board for a significant number of years via appointments of individuals who did not hold active roles within the recycling industry. Please explain why TSA does not currently have any such appointments?

TSA has sought such appointments of individuals who were previously involved in the recycling industry but has been unable to secure those appointments. TSA continues to seek appointment of sufficiently qualified individuals who do not have active roles in the recycling industry but are able to represent the recycling industry based on their prior roles and knowledge.

2. Treatment of data

We would like to better understand what data TSA requires Scheme participants to provide and how it treats that data, particularly any distinctions between data from parties that pay the levy compared with other participants. Specifically, what information does TSA require from parties

in relation to calculating the levy, assessing applications for accreditation, conducting audits and in terms of reporting? How is that information used and are there any restrictions on to whom it is provided? Are these processes set out in the Guidelines?

What information does TSA require from parties in relation to calculating the levy.

Scheme participants can be split into two categories:

- Levy paying participants (contributors)
- Non-levy paying participants (accreditations)

Only tyre importers and vehicle manufacturers are contributing to the Scheme and pay the levy. The levy received from contributors is defined by the ratios for 'equivalent passenger units' (EPU) set out in Appendix 1 of Part A of the Scheme Guidelines. As provided for in part C1.2 of the Scheme Guidelines, contributions are based on a levy of a minimum of 25 cents per EPU sold in Australia.

The process of levy payment is conducted by a third-party auding firm, William Buck, which administers the following process:

1. Each month the contributors will collate their own data based on tyres sold.
2. The contributor will log into a secure ShareSpace and upload sales data from the previous month.
3. William Buck will extrapolate this data from ShareSpace and generate an invoice to the contributor.
4. The contributor receives the levy invoice link and pays the total invoice to William Buck.
5. William Buck receives the invoice funds and reconciles this to the invoice generated. At month end, the total funds received are transferred to TSA.

TSA receives aggregated data and one payment. TSA does not have access to any function performed by William Buck. No levy contributor has access to any other competitor data.

Information required for assessing accreditation, conducting audits, and setting out terms for reporting.

All information in relation to what information TSA requires for accreditation, conducting audits and terms of reporting is available on the TSA website through the application forms for each accreditation category, within the retailer and collector/recycler handbooks, and outlined in the Scheme Guidelines.

General information collected through application forms includes:

- Business details.
- Tyres managed.
- Who tyres are being picked up by or sent to (for retailer and collector categories).
- Evidence of approvals to operate as a recycler (recycler category only).

- More specific detail of information requested as part of application forms can be found in the application forms, available here: https://www.tyrestewardship.org.au/about-tsa/apply-for-accreditation/.

Information collected/assessed during accreditation and compliance audits includes:

- Dealing with TSA accredited participants where required as part of commitment.
- Data reporting to TSA matches business records.
- Business have required procedures to meet regulatory requirements for type of business type (retailers, collectors, and recyclers).
- Full detail of items collected and assessed during audits are outlined in retailer and collector/recycler handbooks attached.

Information collected/assessed during monthly reporting by accredited retailers, collectors, and recyclers includes:

- Type and amount of EOLT managed.
- Destination of the EOLT managed:
    - For accredited retailers it is the accredited collector.
    - For accredited collectors it is the accredited recycler.
    - For accredited recycler it is the destination of the processed EOLT.
- Guides to reporting for participating retailers, collectors, and recyclers are provided on TSA website.

How is the data used and are there any restrictions on who it is provided to.

Individual data reported by accredited participants as part of their accreditation commitments is kept confidential and not shared outside of TSA.

Information collected through accreditation forms (and accreditation audits for collectors and recyclers) are used to approve or reject an application for accreditation. TSA's Board receives access to a limited subset of this data to enable them to approve application for collector and recycler accreditation. To clarify, TSA's Board does not approve or suspend tyre retailer accreditation – refer to question one above.

Annual compliance audits (compliance audits are used once accredited within the Scheme) are used to monitor accredited participants' commitments to the Scheme.

Data collected through application for accreditation, audits, and monthly reporting (as specified in Guidelines) is used to enable TSA to primarily report against its Key Performance Indicators set by the ACCC and used to inform the Sustainable Outcomes Indicator, a star rating applied to TSA-accredited tyre recycling facilities (recyclers) and collectors.

Data collected from accredited participants is also used as one data input into the development of a comprehensive understanding of the generation and fate of EOLT in Australia which helps inform not only TSA strategic direction and programs but the strategic direction, policies and programs of both state and federal governments.

3. Cost increases

TSA's 5 April 2024 response at p 3 states that in the absence of the proposed conduct, the cost associated with ensuring an environmentally sound use would be relatively stable, in accordance with inflation. We would like to better understand how to reconcile this statement with TSA's prior statement in its application for authorisation, that 'there would be increased costs for those who would have to source their own disposal services' (at paragraph 14.4(d)(ii)).

The statements are referring to different costs and are not at odds.

TSA stated, in the 5 April 2024 response to the ACCC request for further information, that:

> *'TSA analysis indicates that the current 'displayed' cost associated with ensuring an environmentally sound use of an EOLT to a consumer is just under $8 per EPU (see Table 2 below). In the absence of the proposed conduct, it is expected that the cost associated with ensuring an environmentally sound use would be relatively stable, in accordance with inflation.'*

The above statement is about the likelihood of the 'displayed' cost (meaning what consumers see displayed at a point of transaction as a tyre disposal fee) remaining stable without the Scheme.

TSA stated, in its 1 December 2023 Application (at page 187, paragraph 14.4(d)(ii)) for revocation and substitution of an authorisation, that:

'*Accordingly, among other things, without the existence of the Scheme*:

> ...
>
> *(ii) there would be increased costs for those who would have to source their own disposal services or regulate the industry and achieving cost efficiencies through the economics of scale. The evidence which supports the benefits reference:*
>
> *(A) the economic realities of collecting and processing end-of-life products; and*
>
> *(B) the effectiveness of collection and processing when undertaken on a large scale.'*

The above statement is about the administrative burden (learning cost) imposed on entities when they are trying to determine and arrange an environmentally sound fate for their EOLT, without the accreditation assurance provided by the Scheme.

4. Landfill rates

In relation to TSA's 5 April 2024 response at Table 1, please explain why landfill rates have increased over the relevant periods, despite the proportion of EOLTs collected and going to an environmentally sound use having remained relatively stable.

The data provided in TSA's 5 April 2024 response in Table 1, (included below for reference) outlines two separate sets of data:

- The proportion of EOLT collected by TSA accredited participants. This proportion has remained relatively stable (47/44/46%).
- The proportion of EOLT collected by TSA accredited participants that then went to an environmentally sound use. Of the material collected by participants, less and less has been going to any environmentally sound end use, correlating to more landfilling over the three-year period as outlined.

Table 1: Proportion of EOLT collected by accredited participants and went to an environmentally sound use

Proportion EPUs/tonnes	2020/21	2021/22	2022/23
% of total EOLT generated that was collected by participants	47%	44%	46%
% of EOLT collected by participants that then went to an environmentally sound use	92%	83%	81%
Remainder (Assumes 0% dumping from accredited participants).	8% Landfilled, <1% Stockpiled for processing in following year and mass balance losses	16% Landfilled, ≈1% Stockpiled for processing in following year and mass balance losses	18% Landfilled, ≈1% Stockpiled for processing in following year and mass balance losses

*Please note that percentage of EPUs is the same as percentage of tonnes, as both are units of weight.

The first row in the table above ('% of total EOLT generated that was collected by participants') has been relatively stable driven by the high proportion of facilities processing EOLT being accredited within the Scheme over a long period of time, and the lack of recovery of OTR tyres. These sets of numbers do not represent the fate of the collected tyres e.g. does not represent going to environmentally sound use.

The second row in the table above ('% of EOLT collected by participants that then went to an environmentally sound use') outlines the proportion of the material collected by participants that went to an environmentally sound use. This essentially highlights the amount of material collected by accredited participants that went to environmentally sound use (percent shown).

These sets of numbers correlate directly to the third row ('Remainder [Assumes 0% dumping from accredited participants]') which indicates the disposal pathway of the 'remainder' material which has increased over the three-year period. What drove the increase over this period is likely due to a combination of a factors. These factors include lower gate fees at regional landfills;

greater clean ups of contaminated stockpiles at regional transfer stations; reduced access to shipping containers and significant price increase for shipping containers during and post COVID lockdowns.

TSA's report *Used Tyre Supply Chains and Fates Analysis 2020* provides a detailed assessment of EOLT fates in Australia. This report is being updated for release in 2024.

5. ACOR submission

The submission by the Australian Council of Recycling states:

'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.'

Could you please explain your view of the respective effects on EOLT recovery rates, over time, on:

a. the operation of the scheme and

b. any 'tightening' of relevant regulations of which you are aware.

TSA has never been tasked to monitor, evaluate, or report, the relative respective effects on EOLT recovery rates of the operation of the scheme vs. regulation (or vs. other impacts such as markets). This task would require significant new resourcing. However, TSA can provide the following comments based on its administration of the Scheme.

TSA's view is that product stewardship is a valid, important tool, to support not just recovery rates, but to support industries to transition towards product greater recycling and ultimately the realisation of a circular economy. TSA's view is that the operation of the Scheme has a positive impact on EOLT recovery rates.

However, a stewardship scheme does not operate in a policy vacuum. To be effective, any stewardship scheme needs to be enabled and bolstered by appropriate regulatory settings. Regulations, that disincentivise undesirable pathways, such as stockpiling, are critical. They redirect resources towards the desired stewardship pathway. Noting that care must be taken to avoid unintended consequences.

Product stewardship[4] is about creating a shared mission, and operating environment to achieve it. Thus, a stewardship scheme and the regulatory framework wrapped around it, and the work of

[4] DCCEEW; Australian standard for waste and resource recovery data and reporting, Definition of product stewardship: 'An approach to managing the impacts of different products and materials which acknowledges that those involved in producing, selling, using, and disposing of products have a shared

everyone and every organisation in the sector, should be considered complementary. The combination of strong stewardship and regulation is the international experience of success[5]. Accordingly, it can be difficult to attribute longer-term change to either a stewardship scheme or to regulation. Or to other factors such EOLT market changes, such as import restrictions by receiving countries.

No doubt that the demand for waste tyres from overseas markets in India and other parts of Asia has been a major driver of recovery rates in Australia growing over the past decade. However, as outlined in TSA's 5 April 2024 response we state that, in the last 5 years, there has been an increase of almost 50% in the production and domestic use of recycled rubber derived from EOLT such as rubber crumb and granules (excluding steel recovered from processing tyres). This increase in recycling into products, which contributes to the overall recovery rate of used tyres in Australia, can be in part attributable to the $9M investment disbursed by TSA in market development and campaigns.

A specific example of TSA's direct influence to increase recycling is demonstrated through TSA's investment in the road sector. Not only has TSA been a key partner for the establishment of specifications of crumb rubber in roads, which underpins investment by the sector, TSA has also invested through the TSA market development fund to add increased infrastructure capability and capacity of the road making sector to use more crumb rubber. These projects include:

- Rubber blending plant for regional Victoria.
- Crumb Rubber Capacity Expansion (for Spray Seal in Qld).
- High Shear Mobile Crumb Rubber Mixer.

As for tightening of regulations that have contributed to the increase in recovery rates over the past decade, TSA is not aware of any tightening of regulations in isolation which has had a material impact on recovery rates. Regulations in NSW to require mines to demonstrate there are no feasible recovery options (in comparison to onsite disposal) every two years has the potential to have a material impact on recovery rates in NSW, however these regulations have only been introduced recently and time will tell if they have an impact.

In TSA's 5 April 2024 response, TSA makes note of dumping and stockpiling which continues to occur across the country with the most recent large stockpile fire occurring February 2023 in Lincoln Gap, South Australia. This is occurring despite increased regulation.

6. Datasets

responsibility to ensure that those products or materials are managed in a way that reduces their impact, throughout their lifecycle, on the environment, and on human health and safety'. Accessed 22 April 2024.

[5] https://wastemanagementreview.com.au/tsa-goes-global-to-bring-circular-tyre-economy-across-the-line/

The ACCC is seeking a breakdown of some of the data already provided and some additional data for its assessment. We ask that you please fill out the table annexed to this letter where the relevant data is available to you. Please let us know if you need any clarification about data requested in the table.

See next page. Data are generally rounded to the nearest thousand, reflecting the estimated accuracy level of the data. This means that some columns and/or rows of numbers may not add perfectly.

TyreStewardship AUSTRALIA

Annexure A

	Passenger and truck					OTR					Total				
	18/19	19/20	20/21	21/22	22/23	18/19	19/20	20/21	21/22	22/23	18/19	19/20	20/21	21/22	22/23
Total EOLT generated (tonnes to nearest '000)	353,000	346,000	397,000	400,000	397,000	145,000	140,000	127,000	130,000	148,000	498,000	487,000	524,000	530,000	544,000
Volume of EOLT going to environmentally sound use (tonnes to nearest '000)	314,000	313,000	352,000	326,000	307,000	15,000	17,000	14,000	11,000	12,000	329,000	330,000	366,000	336,000	318,000
% going to environmentally sound use*											69%	72%	68%	63%	58%
% going to environmentally sound use**	89%	90%	89%	81%	77%	10%	12%	11%	8%	8%	66%	68%	70%	63%	58%
Volume of EOLT collected (tonnes to nearest '000)	TSA does not report, or record, data on EOLT collection outside the context used elsewhere in this table. TSA feel it doesn't add any additional value to record collection in the context of generation.														
% of total EOLT generated that was collected															
Volume of EOLT collected by Scheme accredited participants (tonnes to nearest '000)	225,000	205,000	235,000	225,000	234,000	13,000	14,000	12,000	9,000	14,000	238,000	220,000	246,000	235,000	250,000
% of total EOLT generated that was collected by Scheme accredited participants	64%	59%	59%	56%	59%	9%	10%	9%	7%	9%	48%	45%	47%	44%	46%
Volume of EOLT collected by Scheme accredited participants going to environmentally sound use (tonnes to nearest '000)	203,000	194,000	214,000	187,000	194,000	12,900	13,900	11,800	8,600	10,000	216,000	208,000	226,000	196,000	204,000
% going to environmentally sound use	90%	95%	91%	83%	83%	99%	99%	98%	96%	71%	91%	95%	92%	83%	81%

Australian Government Accredited Product Stewardship Scheme

* Indicates the KPI as reported at time of release of annual report.

** As outlined in Appendix A of TSA's Used Tyres Supply Chain And Fate Analysis report, data on EOLT generation and fates relies on several data sources and assumptions, which are refined and improved as better data becomes available. Where relevant, these refinements are back dated to ensure that TSA can have accurate discussions of changes to the tyre recovery landscape over time (comparing like data to like data). The previously provided "% going to environmentally sound use" was reflective of the request for Key Performance Indicators from Annual Reports and were thus provided as they were in each annual report. The different values provided here are instead the current best understanding of % that went to environmentally sound use in those years. Overall recovery rates are now thought to be slightly lower than originally estimated for 18/19 and 19/20 mostly due to new research (OTR Report) which indicated there was a greater weight of OTR tyres reaching end of life than originally estimated. TSA is currently undergoing a review of data sources and assumptions by a third-party as part of TSA continues improvement and will be publishing findings of this review mid 2024.