



# Draft Determination and interim authorisation

Application for revocation of AA1000409 and the substitution of  
authorisation AA1000655

lodged by

Tyre Stewardship Australia Limited

in respect of

the continuation of the Tyre Product Stewardship Scheme

Authorisation number: AA1000655

Date 7 June 2024

Commissioners: Keogh

Lowe

Carver

## Summary

The ACCC proposes to revoke the existing authorisation and grant a new authorisation in substitution to Tyre Stewardship Australia to allow for the continuation of the Tyre Product Stewardship Scheme, pursuant to the Scheme Guidelines. The Scheme is a voluntary, industry-led program which aims to reduce the amount of end-of-life tyres negatively impacting the environment while increasing the recycling rate. This conduct has been authorised since 2013 and is not changed in the current application.

The ACCC proposes to grant authorisation for 3 years.

Continuation of the Conduct is likely to result in environmental and public health and safety benefits by decreasing the volume of end-of-life tyres entering the domestic waste stream (in landfill or dumped), being stockpiled or unsustainably burned for energy recovery. The Scheme's levy-funded research and development into effective uses for end-of-life tyres and its role in promoting tyre-derived products will contribute to the achievement of this benefit, growing the demand for tyre-derived products, and making tyre recycling more commercially viable.

Australia disposed of over 225,000 tonnes of waste tyres in 2022-23,<sup>1</sup> a significant increase from 2018-19 when that figure was 143,000 tonnes.<sup>2</sup> The Scheme reduces the risk of illegal and unregulated fires, toxic gases and chemical leaching caused by tyre stockpiles. Reducing tyre stockpiles is also beneficial by limiting health hazards from rainwater building up in the wells of tyres, providing a breeding ground for pests such as mosquitos and vermin.

The ACCC considers that the Conduct is likely to result in minimal public detriment because:

- Any detriment arising from restrictions on supply imposed on accredited participants is partly mitigated by their ability to deal with unaccredited businesses in certain circumstances.
- The levy charged under the Scheme represents a minimal proportion of the total retail cost of new tyres for consumers.
- It is unlikely that participation in the Scheme will lead to broader coordination or collusion between participants on matters beyond the scope of the authorisation.

In respect of other concerns raised by interested parties, the ACCC encourages TSA to find ways to enable greater involvement from all sectors of the industry in the strategic direction of the Scheme, particularly tyre recyclers. The ACCC considers that there is a need for TSA to publish more comprehensive data with consistent methodologies to ensure sufficient transparency and clarity of outcomes and seeks views on the content and form of this data.

Given the existing authorisation is due to expire on 15 June 2024, the ACCC has granted interim authorisation to enable the Scheme to continue to operate while the ACCC completes its assessment.

Tyre Stewardship Australia considers that transitioning to a co-regulated model under the *Recycling and Waste Reduction Act 2020* (Cth) would allow it to better achieve its goals, and as such, TSA is seeking authorisation for 3 years in the hope that a new regulatory framework will be implemented in that time.

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<sup>1</sup> See Tyre Stewardship Australia, Australian Tyre Consumption and Recovery Report (2022), p 1, available at: <https://www.tyrestewardship.org.au/wp-content/uploads/2022/03/TSA-Tyre-Consumption-Recovery.pdf>.

<sup>2</sup> See Tyre Stewardship Australia, Australian Tyre Consumption and Recovery Report (2018), p 2, available at: <https://www.tyrestewardship.org.au/wp-content/uploads/2022/03/TSA-Tyre-Consumption-Recovery.pdf>.

The ACCC invites submissions in relation to this draft determination before making its final decision. In particular, the ACCC invites interested parties to comment on the following issues that are considered in this draft determination:

- whether there is a need for more consistency and transparency in TSA's data reporting and how this could be achieved
- to what extent participation in the Scheme requires commitments that go beyond what is required by law and therefore results in public benefit.

## 1. The application for revocation and substitution

- 1.1. On 4 December 2023, Tyre Stewardship Australia Ltd (the **Applicant**) lodged an application to revoke authorisation AA1000409 and substitute authorisation AA1000655 for the one revoked ('re-authorisation') to allow for the continuation of the national Tyre Product Stewardship Scheme (**Scheme**), pursuant to the Guidelines for the Scheme (**Guidelines**). The Scheme is a voluntary, industry-led program with the primary aim of increasing the recycling rate of end-of-life tyres (**EOLTs**).
- 1.2. This application for revocation and substitution was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions in Part IV of the Act in respect of the specified conduct.
- 1.3. The ACCC must not make a determination revoking an authorisation and substituting another unless satisfied that it would not be prevented from making a determination granting the substituted authorisation, if it were a new authorisation sought under the Act.<sup>3</sup> The ACCC has a discretion to grant authorisation but must not do so unless it is satisfied in all the circumstances that the conduct would or is likely to result in benefit to the public that would outweigh any likely public detriment (ss 90(7) and 90(8) of the Act (the **authorisation test**)).
- 1.4. Given the current authorisation is due to expire on 15 June 2024, the ACCC has granted interim authorisation to Tyre Stewardship Australia Ltd to operate the Scheme pending consideration of the current application, in accordance with subsection 91(2) of the Act. This is discussed in section 6.

### The Applicant

- 1.5. The Applicant is Tyre Stewardship Australia Ltd (**TSA**) (ABN 44 164 971 939).
- 1.6. TSA is a not-for-profit company limited by guarantee and was formed to implement the Scheme in accordance with its objectives, which are to:
  - increase resource recovery and recycling, and minimise the environmental, health and safety impacts of end-of-life tyres generated in Australia
  - develop Australia's tyre recycling industry and markets for tyre-derived products.
- 1.7. TSA is funded by a levy agreed upon by industry participants, at a rate proportional to the number of tyres imported into Australia (\$0.25 per equivalent passenger unit (**EPU**)).
- 1.8. The TSA annual report states that TSA received \$7,633,885 from levy-paying members to undertake operations in 2022/23.

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<sup>3</sup> See subsection 91C(7) of the Act.

1.9. There are 16 members which are global brands and pay the Scheme levy:

- 13 tyre manufacturers: Ascendo, Bearcat, Bridgestone, Continental, Goodyear/Dunlop, Hankook, Kal Tire, Kumho, Michelin, Pirelli, Toyo, TyreConnect and Yokohama.
- 3 vehicle manufacturers: Mercedes-Benz, Porsche and Volkswagen.

## The Conduct

1.10. The Applicant is seeking revocation of its existing authorisation and substitution of a new authorisation to continue the operation of the Scheme in accordance with the Scheme Guidelines. The Applicant is seeking re-authorisation of the current Scheme and Guidelines which are in the same terms as the Scheme and Guidelines the subject of authorisation AA1000409, which is sought to be revoked.

1.11. In particular, TSA seeks authorisation on behalf of itself and current and future participants in the Scheme in relation to the following provisions of the Guidelines (the **Conduct**) to the extent the conduct engaged in pursuant to these provisions may constitute a breach of competition law:

**Table 1: Conduct for which authorisation is sought**

<b>Guidelines Reference</b>	<b>Conduct or provisions requiring authorisation</b>	<b>Provision of the Act</b>
<b>General commitments for all Participants (Part A, Section 3)</b>	Enterprise to enterprise agreements in furtherance of Participants' general and specific commitments.	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47) Anti-competitive agreements (s 45) Concerted practices (s 45)
<b>Funding (Part A, section 4.3); Tyre importers and vehicle manufacturers - Specific commitments (Part C, section 1.2); Miners - Specific commitments (Part 1, section 1.2)</b>	Imposition of a levy on tyre importers, vehicle manufacturers and miners, of a minimum of \$0.25 per EPU imported into Australia.	Cartel conduct (Division 1 of Part IV) Anti-competitive agreements (s 45) Concerted practices (s 45)
<b>Market development and research (Part A, Section 4.4)</b>	Allocation of levy funds to support initiatives and projects regarding the use and disposal of EOLTs.	Anti-competitive agreements (s 45) Concerted practices (s 45)
<b>Application and accreditation process (Part A, Section 5.1)</b>	Accreditation of Participants on the basis of a: <ul style="list-style-type: none"> <li>• current capacity to meet the general and specific commitments under the Scheme; or</li> <li>• demonstrated capacity to meet the general and specific commitments under the Scheme.</li> </ul>	Cartel conduct (Division 1 of Part IV) Anti-competitive agreements (s 45) Concerted practices (s 45)

<b>Enforcement - Suspension and revocation of accreditation (Part A, Section 5.3)</b>	Suspension or revocation (for a period of 12 months) for Participant non-compliance with general and/or specific commitments under the Scheme.	Cartel conduct (Division 1 of Part IV) Anti-competitive agreements (s 45) Concerted practices (s 45)
<b>Retailers - Specific commitments (Part D, Section 1.2)</b>	Retailers to prioritise dealings with accredited tyre importers.  Retailers to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs.	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47)
<b>Fleet operators - Specific commitments (Part E, Section 1.2)</b>	Fleet operators to prioritise dealings with accredited tyre importers.  Fleet operators to deal only with retailers accredited by TSA when disposing of EOLTs.	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47)
<b>Local Government - Specific commitments (Part F, Section 1.2)</b>	Local governments to deal only with accredited retailers when replacing the EOLTs generated by their fleets.  Local government to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs.	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47)
<b>Collectors - Specific commitments (Part G, Section 1.2)</b>	Collectors to ensure all EOLTs collected from retail and other outlets are passed on to accredited recyclers.	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47)

1.12. The ACCC understands authorisation is sought in relation to the specific provisions of the Guidelines in the first column of the table above.

### How the Scheme works

1.13. Using funds raised from the levy, TSA implements the Scheme in accordance with its corporate objectives, including by:

- administering accreditation of participants in the Scheme
- monitoring and auditing participants' compliance with their general and specific commitments under the Scheme through random and risk-based audits
- undertaking education, awareness, and information activities to promote participation in the Scheme

- investing in market research and development projects relating to the environmentally sound use and disposal of EOLTs.<sup>4</sup>
- 1.14. TSA's accreditation and compliance program grew to 1,773 participants in 2022-23, comprising importers and retailers, EOLT tyre collectors and recyclers, through to local governments and vehicle fleets.<sup>5</sup>
  - 1.15. To become accredited, participants need to show how they comply with environmental, occupational health and safety laws, and they must commit to support the objectives of the Scheme.
  - 1.16. All participants in the Scheme must also commit to contribute to:
    - the environmentally sound use of EOLTs (which includes recycling into tyre crumb, shred, chips, granules, steel and other tyre components; use as a fuel<sup>6</sup> or other means to generate energy; production into tyre-derived products, including tyre derived fuel; and civil engineering)
    - elimination of the inappropriate export of baled tyres from Australia (i.e. large bundles of compressed scrap tyres bound together using wire)
    - elimination of the illegal dumping of EOLTs
    - 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).<sup>7</sup>
  - 1.17. To maintain accreditation, participants are subject to annual audits. This ensures EOLTs are managed in a sustainable manner and mitigates against illegal dumping and storage.<sup>8</sup>
  - 1.18. Approximately 250,000 tonnes of EOLTs were collected by Scheme accredited participants in 2022-23.<sup>9</sup>
  - 1.19. However, of the EOLTs collected, most that are categorised as 'resource recovered' (that is, sent to an 'environmentally sound use') are not actually recycled. Currently, over 70% of waste tyres processed for recovery in Australia are used to produce tyre-

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<sup>4</sup> TSA has also received a grant of \$987,717 from the Department of Climate Change, Energy, the Environment and Water. This was given with the purpose of improving tyre recovery within the mining, agriculture and aviation sectors, as well as recycling rubber tracks and conveyor belts; see Australian Government, Department of Climate Change, Energy, the Environment and Water, [National Product Stewardship Investment Fund](#), accessed 8 February 2024.

<sup>5</sup> Tyre Stewardship Australia, Annual Report 2022-23, p 22, available at: <https://www.tyrestewardship.org.au/company/annual-report/>.

<sup>6</sup> Other than in direct incineration without effective energy recovery and unsustainable burning for energy recovery.

<sup>7</sup> Tyre Stewardship Australia, Application for re-authorisation, Schedule 2, p 12, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>8</sup> Tyre Stewardship Australia, Annual Report 2022-23, p 22, available at: <https://www.tyrestewardship.org.au/company/annual-report/>.

<sup>9</sup> Tyre Stewardship Australia, letter in response to ACCC's request for further information, 30 April 2024, Annexure A, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

derived fuel for energy applications in Asia. TSA submits that this is currently the most cost effective and efficient resource recovery pathway.<sup>10</sup>

1.20. Potential participants in the Scheme include:

- tyre importers and vehicle manufacturers, who are first to supply a tyre to the domestic market. While the import and distribution market includes multiple buyers and sellers (around 100 domestic importers, according to TSA), there are a few large international corporations which comprise a large percentage of the market for the supply of car and truck tyres. All larger importers supply tyres nationally, with many smaller independent importers confining their activities to specific states or cities
- retailers who dispose of EOLTs, who commit to using only legitimate, TSA-accredited recyclers and collectors
- tyre collectors, who are individuals or businesses that collect and/or transport EOLTs in any part of Australia for recycling, reuse or disposal. Approximately 60% of collectors are also tyre recyclers
- tyre recyclers who are businesses recovering material from tyres and processing it into a form to be used as an intermediate product in the manufacture of tyre-derived products, or to recover energy from EOLTs
- fleet operators, who own or operate a fleet of vehicles (including government fleets), and local and state government entities (such as local councils). These parties commit to:
  - only use accredited providers for the disposal of their tyres
  - support participating retailers and importers when purchasing new stock
  - seek Australian tyre-derived products for roads, playing surfaces and parks and gardens
- mining companies.

1.21. TSA itself does not recycle EOLTs nor does it directly subsidise recyclers to encourage them to recycle more tyres, as is the case in some other stewardship schemes. Rather, TSA spends its funds on marketing (promoting participation in the Scheme as well as use of tyre derived products), research and development into potential uses for recycled tyre materials, and administering the Scheme (including accreditation and auditing of participants and reporting).

## 2. Background

### The rationale for the proposed conduct

2.1. 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 the full cost of a product over its lifetime

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<sup>10</sup> Tyre Stewardship Australia, letter in response to ACCC's request for further information, 5 April 2024, p 3, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.



is not 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.

2.2. The Scheme Guidelines state that it is expected that:<sup>11</sup>

- EOLT collection and recycling costs 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 compete to provide an environmentally sound tyre disposal service at the lowest possible price, thereby minimising the cost to consumers.
- Over time, investment by TSA in the domestic markets for tyre-derived products and research into other impediments to resource recovery and recycling will reduce the cost to consumers of ensuring the environmentally sound use of EOLTs.

## History and current performance of the Scheme

### 2018 Authorisation

2.3. The Scheme was first authorised in 2013<sup>12</sup> and was most recently re-authorised in 2018.<sup>13</sup>

2.4. In the ACCC's 2018 final determination, the ACCC acknowledged concerns raised by interested parties in relation to the Scheme's effectiveness (for example, lack of tyre recycler representatives on the TSA Board and accreditation of non-compliant businesses). However, the ACCC accepted that the Scheme was evolving and that TSA appeared to be taking steps to remedy these issues.

2.5. The ACCC granted authorisation for 6 years rather than the 10 years sought. The ACCC also stated that the ACCC would closely review the results of an independent review of the revised Scheme, proposed to be carried out during the authorisation period, including the level of participation by mining companies and vehicle manufacturers and importers.

### Arcoona Report

2.6. An independent review of the Scheme was undertaken in 2022 (the **Arcoona Report**). The Arcoona Report concluded that the public benefits of the Scheme very significantly outweigh any public detriment. However, it recommended TSA seek government support to transition to a co-regulatory scheme, where all tyre importers and manufacturers would be required to participate and pay the levy. The key justifications for this recommendation were to ensure the Scheme's financial viability and effectiveness, including solving the problem of some parties free-riding on levy

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<sup>11</sup> Tyre Stewardship Australia, Application for revocation and substitution, 4 December 2023, Schedule 2, p 10, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>12</sup> Australian Tyre Industry Council - Authorisations A91336 & A91337, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-tyre-industry-council-authorisation-a91336-a91337>.

<sup>13</sup> ACCC, Determination: Application for authorisation AA1000409 lodged by Tyre Stewardship Australia Limited, 24 May 2018, available at: <https://www.accc.gov.au/system/files/public-registers/documents/AA1000409%20-%20Tyre%20Stewardship%20Australia%20-%20Final%20Determination%20-%2024.05.18%20-%20PR.pdf?ref=0&download=y>.



contributors.<sup>14</sup>

- 2.7. The Arcoona Report found that of the types of 'Regulated Schemes' available under the *Recycling and Waste Reduction Act 2020* (Cth) (**RAWR Act**) (either a 'Co-Regulatory Scheme' or a 'Mandatory Scheme'), a Co-Regulatory Scheme was preferable.
- 2.8. TSA submits that, as a Co-Regulatory Scheme, the Scheme would use a combination of industry action and/or government regulation to achieve specific outcomes detailed in the rules made by the Minister for the Environment (**Minister**) to further the objects of the RAWR Act.
- 2.9. Under co-regulatory product stewardship, certain kinds of corporations (called liable parties) are required to be members of co-regulatory arrangements approved by the Minister.

### Current performance of the Scheme

- 2.10. As discussed further in the Assessment (Section 4 below), to some extent the Scheme has been successful in achieving its stated objectives (as outlined in paragraph 1.6).
- 2.11. Of the total 544,000 tonnes of EOLTs generated in Australia 2022-23:
  - 46% was collected by Scheme participants. Of the 250,000 tonnes collected by participants, 234,000 were passenger, bus, and truck EOLTs (94%) and 14,000 were off-the-road (**OTR**) EOLTs (6%).
  - 81% of EOLTs collected by Scheme participants went to an environmentally sound use. This includes 83% of the passenger, bus, and truck EOLTs collected by Scheme participants, and 71% of the OTR EOLTs they collected.
  - 18% of EOLT collected by Scheme participants was landfilled, and ~1% was stockpiled for processing.<sup>15</sup>
- 2.12. In Australia overall, around 90% of passenger, bus, and truck EOLTs are recovered (by both Scheme and non-Scheme participants). This contrasts sharply to OTR EOLTs, of which only 12% are recovered.<sup>16</sup> TSA submits that the low recovery rate of OTR EOLTs is due to their large size and structural features, but also due to the sectors in which they are used: mining and agriculture, which, due to the relative remoteness of the companies in these industries, it becomes costly for them to participate in the Scheme. Miners can generally landfill their EOLTs on site subject to meeting any legislative requirements.
- 2.13. Specific targets have been used to measure the efficacy of the Scheme in achieving its objectives since its commencement. In its 2017 application for authorisation, TSA amended these performance targets to the following:

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<sup>14</sup> Tyre Stewardship Australia, Application for revocation and substitution, 4 December 2023, Schedule 3, p 6, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>15</sup> TSA's letter in response to ACCC's request for further information, 5 April 2024, p 3, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>16</sup> See [Australian Tyre Consumption and Recovery Report \(2022\)](#), p 1: Information presented 3-year average for tyre recovery and disposal. Consumption refers to the net import and export of new and used tyres to and from Australia.

- The number of participants in the Scheme increases at set intervals.
- The volume of EOLTs collected by 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% by 2020, 75% by 2023, and 90% by 2028.
- Users seeking accreditation through the TSA website and general website traffic increases annually.
- The potential market demand for Australian tyre-derived products associated with market development activities promoted, funded and/or supported by TSA increases annually.

2.14. The Scheme's performance against its key performance indicators is detailed in **Attachment A** and discussed further in the Assessment section.

## Regulatory environment

### Current voluntary scheme

- 2.15. The Arcoona Report recommended that transitioning the Scheme from the current voluntary scheme to a Regulated Scheme under the RAWR Act would allow TSA to better achieve its goals. As a Regulated Scheme, the Scheme would use a combination of industry action and/or government regulation to achieve specific outcomes.
- 2.16. The Scheme was initially developed under the *Product Stewardship Act 2011* (Cth) (**Product Stewardship Act**) and was first authorised by the ACCC in 2013 (A91335 & A91337) for 5 years.<sup>17</sup>
- 2.17. TSA was subsequently incorporated in July 2013 to take over the administration and management of the Scheme.
- 2.18. On 24 May 2018, TSA was granted authorisation for a revised set of guidelines for a period of 6 years until 15 June 2024 (AA100409).<sup>18</sup> TSA is now seeking re-authorisation for the same conduct.
- 2.19. On 16 December 2020, the RAWR Act came into effect, repealing and replacing the Product Stewardship Act.
- 2.20. The key objectives of the RAWR Act include reducing the impact of products and waste on human and environmental health and developing a circular economy to maximise continued use and account for environmental impacts.<sup>19</sup>

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<sup>17</sup> Australian Tyre Industry Council, Authorisations A91336 & A91337, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-tyre-industry-council-authorisation-a91336-a91337>.

<sup>18</sup> ACCC, Determination: Application for authorisation AA1000409 lodged by Tyre Stewardship Australia Limited, 24 May 2018, available at: <https://www.accc.gov.au/system/files/public-registers/documents/AA1000409%20-%20Tyre%20Stewardship%20Australia%20-%20Final%20Determination%20-%202024.05.18%20-%20PR.pdf?ref=0&download=y>.

<sup>19</sup> RAWR Act, section 3(2).

- 2.21. The RAWR Act provides for 3 levels of product stewardship arrangements, being voluntary, co-regulatory and mandatory. The purpose of voluntary product stewardship schemes is to promote and recognise product stewardship without government regulation and to assure the community that a product stewardship scheme is in operation to achieve the outcomes to which it has committed.<sup>20</sup>
- 2.22. The Australian Government subsequently accredited TSA's Scheme as a voluntary arrangement in March 2021 to further the objects of the RAWR Act. Accreditation lasts until March 2026.

### **Minister's Priority List for product stewardship products**

- 2.23. Before the end of each financial year, the Minister publishes a Priority List to notify the community that a specific product is being considered for further regulation under the RAWR Act (such as a product transitioning to a Regulated Scheme).<sup>21</sup> The Priority List sets out:
- The reason(s) why the Minister is proposing to give that consideration.
  - Actions that the Minister recommends be taken in relation to each listed product (**recommended actions**).
  - The times within which the Minister recommends the actions be taken.<sup>22</sup>
- 2.24. EOLTs were added to the Minister's Priority List for the 2022-23 financial year.<sup>23</sup> TSA submits that this is the first, mandated, step to the Scheme transitioning to a Regulated Scheme.<sup>24</sup>
- 2.25. The RAWR Act requires that the product must be included on the Minister's Priority List for at least 12 months before the Minister can exercise discretion to take any further action.<sup>25</sup>
- 2.26. The Minister must review whether a recommended action has been taken in relation to the product on the list, within the recommended time; and if not, the Minister must either make further recommendations **or** decide that some form of regulation under the RAWR Act is appropriate.<sup>26</sup>
- 2.27. Thus far, the Minister has made no recommendations that some form of regulation under the RAWR Act is appropriate in relation to EOLTs.
- 2.28. In respect of a transition to a Regulated Scheme, TSA submits that:

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<sup>20</sup> Minister for the Environment, the Hon Sussan Ley MP, *Recycling and Waste Reduction Bill 2020 Revised Explanatory Memorandum (2020) (Explanatory Memorandum)*, at [63], available at: [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6573\\_ems\\_f574377a-a9cc-4c31-a8c3-ade79b7f460c/upload\\_pdf/745946.pdf.fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6573_ems_f574377a-a9cc-4c31-a8c3-ade79b7f460c/upload_pdf/745946.pdf.fileType=application%2Fpdf).

<sup>21</sup> RAWR Act, section 67(2A).

<sup>22</sup> RAWR Act, section 67(1).

<sup>23</sup> Minister's Priority list 2023-24, available at: <https://www.dcceew.gov.au/environment/protection/waste/product-stewardship/ministers-priority-list-23-24#tyres>.

<sup>24</sup> Tyre Stewardship Australia, Application for revocation and substitution, 4 December 2023, p 7, available at: <https://www.ajcc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>25</sup> RAWR Act, section 77(3).

<sup>26</sup> RAWR Act, section 77(4).

- Effective transition will likely require the expertise of TSA to help inform the Minister’s decision and may also be required to help re-design the Scheme.<sup>27</sup>
  - The Scheme would be regulated by the Australian Government under the RAWR Act through future scheme rules.<sup>28</sup> Accordingly, the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) would be responsible for developing regulations in consultation with industry. While TSA expects that DCCEEW would consult closely with it in developing a RAWR Act Regulated Scheme, DCCEEW would control the process, not TSA.<sup>29</sup>
  - Any future rules for a Regulated Scheme would be assessed against the government’s impact analysis framework, which requires a regulatory impact statement.<sup>30</sup> This regulatory impact statement would need to address the likely net benefit of transitioning to a Regulated Scheme as against the current voluntary Scheme, by identifying who is likely to be affected by each regulatory option and assessing the economic, social and environmental costs and benefits.<sup>31</sup>
- 2.29. With respect to lead times, TSA submits that transition to a Regulated Scheme would be completed in or around 2026. TSA has therefore sought re-authorisation of the Scheme for 3 years because it expects the transition to a new Co-Regulatory Scheme will be completed by then.<sup>32</sup>
- 2.30. Based on submissions from relevant government entities, it appears the outcomes and timing of any changes to the regulatory environment are less certain.
- 2.31. DCCEEW submits that it is not certain that the Scheme will move to a co-regulatory model. Industry could improve the Scheme or governments could consider other policy or legislative solutions. Given this, DCCEEW suggests that 6 years may be a more appropriate period of authorisation than the 3 years sought.<sup>33</sup>
- 2.32. The WA Department of Water and Environmental Regulation (**DWER**) also recommends the ACCC consider authorising for a longer period to account for potential delays.<sup>34</sup>

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<sup>27</sup> Tyre Stewardship Australia, Application for revocation and substitution, 4 December 2023, p 5, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>28</sup> Arcoona Report, Schedule 3 to application, p. 23, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>29</sup> Arcoona Report, Schedule 3 to application, p. 23, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>30</sup> Minister for the Environment, the Hon Sussan Ley MP, *Recycling and Waste Reduction Bill 2020 Revised Explanatory Memorandum (2020) (Explanatory Memorandum)*, at [63], available at: [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6573\\_ems\\_f574377a-a9cc-4c31-a8c3-ade79b7f460c/upload\\_pdf/745946.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6573_ems_f574377a-a9cc-4c31-a8c3-ade79b7f460c/upload_pdf/745946.pdf;fileType=application%2Fpdf).

<sup>31</sup> Australian Government, Department of the Prime Minister and Cabinet, [The 7 Impact Analysis questions](#), accessed 7 February 2024.

<sup>32</sup> Tyre Stewardship Australia, Application for revocation and substitution, 4 December 2023, at [2.3(b)], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>33</sup> A list of the parties consulted and the public submissions received is available from the ACCC’s public register: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>34</sup> A list of the parties consulted and the public submissions received is available from the ACCC’s public register: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

### 3. Consultation

- 3.1. The ACCC invited submissions from a range of potentially interested parties including Scheme participants, and parties external to the Scheme such as relevant industry associations and peak bodies, consumer groups, state and federal government and relevant regulatory bodies.<sup>35</sup>
- 3.2. The ACCC received 19 submissions from interested parties in relation to the application.
- 3.3. Public submissions by the Applicant and interested parties are on the Public Register for this matter.
- 3.4. Where relevant, submissions are considered in further detail in the Assessment section.

#### Interested parties' submissions

##### Key government stakeholders

- 3.5. DCCEEW is supportive of the continuation of the Scheme despite the ongoing issues, including free riding and the gap in recovery of EOLTs, particularly OTR tyres. DCCEEW also considers there would be benefit in requiring that there be an independent review of the Scheme.<sup>36</sup>
- 3.6. DWER is supportive of the Scheme based on the value it provides, despite the concerns expressed about its limitations. DWER notes TSA's promotion and financial support of tyre-derived product research and trials, as well as the knowledge base TSA has developed through research and data collection that has been useful for industry and governments.<sup>37</sup>
- 3.7. The New South Wales Government and Southern Sydney Regional Organisation of Councils provided submissions supporting the Scheme in its current form.<sup>38</sup>

##### Industry stakeholders

- 3.8. Eight interested parties expressed their support for the ongoing operation of the Scheme but called for conditions to address several areas for improvement in the Scheme, including the appointment of a tyre recycler representative to TSA's board and more transparent representation of TSA's data.<sup>39</sup> Two interested parties raised

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<sup>35</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>36</sup> Submission from Department of Climate Change, Energy, the Environment and Water, 20 February 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>37</sup> Submission from the Government of Western Australia, Department of Water and Environmental Regulation, 29 January 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>38</sup> Submission from NSW Environment Protection Authority, 19 January 2024; Submission from Southern Sydney Regional Organisation of Councils, 29 January 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>39</sup> Submission from Australian Tyre Recyclers Association Inc., 2 February 2024; Submission from Elan Energy Matrix Pty Ltd, 19 January 2024; Submission from Tyrecycle Pty Ltd, 2 February 2024; Submission from Complete Tyre Solutions Tyre Recycling Pty Ltd, 2 February 2024; Submission from Australian Council of Recycling Inc., 31 January 2024; Submission from Federal Chamber of Automotive Industries Ltd, 2 February 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

concerns with the current operation of the Scheme,<sup>40</sup> one of whom also opposed any Scheme with compulsory participation.<sup>41</sup>

- 3.9. Five interested parties expressed their support for the ongoing operation of the Scheme and expressed support for the Scheme's transition to a Regulated Scheme.<sup>42</sup>
- 3.10. Other notable themes from submissions include concern at the low collection rate of OTR tyres, the difficulty of operating the Scheme in remote and regional areas, a desire for TSA to be more engaged with the automotive industry, and the fact that uncertainty surrounding the transition to a Regulated Scheme discourages participation and confidence in the Scheme.
- 3.11. One stakeholder submitted that poorly designed product stewardship schemes can enable greenwashing and do more harm than good by slowing momentum, with strong marketing concealing ineffectual activities.<sup>43</sup>
- 3.12. In response to interested party submissions, TSA submits that any alterations to how the Scheme is currently designed and run, including through the imposition of conditions, would not be materially beneficial as those changes may become redundant in a relatively short space of time (if, for example, the current voluntary Scheme moves to a Regulated Scheme).<sup>44</sup> TSA's responses to specific issues raised in submissions are discussed further in the assessment section below.

## 4. ACCC assessment

- 4.1. The Applicant has sought revocation of an existing authorisation and an authorisation in substitution. The Applicant has sought authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, may substantially lessen competition within the meaning of section 45 of the Act,<sup>45</sup> or may constitute exclusive dealing under section 47 of the Act.
- 4.2. The ACCC must not make a determination revoking an authorisation and substituting another unless satisfied that it would not be prevented from making a determination granting the substituted authorisation, if it were a new authorisation sought under the Act.<sup>46</sup> Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation 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 would outweigh the detriment to the public that would be likely to result.

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<sup>40</sup> Submission from an Interested Party, 3 April 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>41</sup> Submission from an Interested Party, 25 March 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>42</sup> Submission from Waste Management & Resource Recovery Association Australia Ltd, 29 January 2024; Submission from Australian Local Government Association; 19 January 2024; Submission from South Australian Environmental Protection Authority and Green Industries SA, 29 January 2024; Submission from North Queensland Regional Organisation of Councils, 1 February 2024; Submission from Victorian Automotive Chamber of Commerce Inc., 7 February 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>43</sup> Submission from Australian Council of Recycling Inc., 31 January 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>44</sup> TSA's response to interested party submissions, 27 March 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>45</sup> See subsection 91C(7).

<sup>46</sup> See subsection 91C(7) of the Act.



## Future with and without

- 4.3. In applying the authorisation test, the ACCC compares the likely future with the conduct that is the subject of the authorisation to the likely future in which the conduct does not occur.

### Applicant's submissions

- 4.4. TSA submits that without re-authorisation, the existing Scheme would need to be abandoned, likely leading to more stockpiling and illegal dumping of EOLTs and, thus, a greater economic and environmental burden (and therefore public detriment).<sup>47</sup>
- 4.5. TSA submits that without the Scheme:<sup>48</sup>
- There would be no current alternative framework aimed at addressing the environmentally sound disposal of EOLTs and it is likely to take significant time for one or more governments to establish such a framework.
  - The relative proportion of EOLTs likely to be recycled will stagnate and potentially decline.
  - Recovery for waste-to-energy would increase.
  - Opportunities relating to the supply of recycling and reprocessing services and tyre-derived products will remain underdeveloped and/or return to poor management practices.
  - Disposal charges for consumers would be relatively stable, but administrative costs for entities trying to arrange environmentally sound disposal would increase.
  - Other impacts may also include:
    - The push towards higher value markets will diminish and there will be continued reliance on export.
    - Support for small-to-medium tyre collectors and recyclers would disappear.
    - New and emerging technology investments may choose not to enter the Australian market.
- 4.6. In the Arcoona Report, TSA Directors stated that without TSA, issues such as illegal dumping would have a much lower profile and fewer tyres would be recycled.<sup>49</sup>

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<sup>47</sup> TSA, Response to interested party submissions, 27 March 2024, p 3, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>48</sup> TSA's response to ACCC request for further information, 5 April 2024, p 7, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>; TSA's response to ACCC request for further information, 30 April 2024, p 9, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>; Schedule 5 - TSA Submissions in support of application for revocation and substitution at [14.3], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>49</sup> Arcoona Report, Schedule 3 to application, p. 58, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.



## Interested Party submissions

- 4.7. As noted above, DCCEEW submits that it is not certain that the Scheme will move to a co-regulatory model and suggests 6 years may be a more appropriate period of authorisation.<sup>50</sup> DWER outlined its ongoing work to assess the options for EOLTs, noting that any further work to progress them is subject to a decision by Environment Ministers and may take some years to implement.<sup>51</sup> Numerous interested parties also provided submissions on what they consider would be the likelihood of transition to, and/or the appropriate form of, a Regulated Scheme.
- 4.8. In respect of other interested parties, the Arcoona Report found that:
- Some non-participating tyre importers believe that without the Scheme, Australia would lack the capacity to handle EOLTs and would still be exporting whole tyres.
  - Without TSA, retailers foresee that the situation regarding EOLTs would regress, yet many perceive TSA as being at the start of a long journey.
  - Some tyre recyclers questioned the value of TSA, suggesting its impact is minimal and little would change without it. In contrast, in its submission, Tyrecycle considers that without TSA's oversight, lower standards in EOLT management could prevail, leading to subpar recycling outcomes.
- 4.9. The **Australian Council of Recycling (ACOR)** is Australia's peak industry forum for resource recovery, recycling, and remanufacturing. ACOR submits that although TSA points to increased EOLT recovery rates since its formation as demonstrating the Scheme's success, this change should be more appropriately credited to tightened state-based regulation. ACOR submits that every state has substantially reformed regulation of the storage, transportation, fire safety, end-of-life disposal, and other environmental management aspects of EOLTs, which together have provided a disincentive to stockpiling EOLTs and increased recycling.<sup>52</sup> Another interested party notes that significant landfill waste levies apply to shredded tyres sent to landfill in SA.<sup>53</sup>
- 4.10. In response to ACOR's submission, TSA submits that the operation of the Scheme has a positive impact on EOLT recovery rates; however, any stewardship scheme needs to be enabled and bolstered by complementary regulatory settings. It is therefore difficult to attribute longer-term change to either a stewardship scheme or regulation or other factors (such as EOLT market changes, like import restrictions). TSA submits it is not aware of any tightening of regulations which, in isolation, has had a material impact on recovery rates. However, it does provide one specific

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<sup>50</sup> Submission from Department of Climate Change, Energy, the Environment and Water, 20 February 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>51</sup> Submission from Government of Western Australia, Department of Water and Environment, 29 January 2024, p. 2, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>52</sup> Submission from Australian Council of Recycling, 31 January 2024, p. 4, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>53</sup> Joint submission from the South Australian Environmental Protection Authority and Green Industries SA, 29 January 2024, p 1, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

example of TSA's direct influence to increase recycling – namely, its investment in the road sector to use more crumb rubber.<sup>54</sup>

## ACCC view

- 4.11. The ACCC considers that in the future **with the Conduct**, the Scheme will likely continue to operate in the same way it has been under the current authorisation. This is because TSA is seeking re-authorisation on the same terms as those set out under the current authorisation, without any substantive modifications to the Scheme or Guidelines.
- 4.12. The ACCC notes there is ongoing uncertainty about whether the Scheme will transition to a Regulated Scheme. Considering the submission from DCCEEW and the ongoing review being conducted by DWER, the ACCC considers that it is unlikely that a Regulated Scheme would be introduced during the proposed 3-year authorisation period.
- 4.13. The ACCC makes the following observations in respect of the future **without the Conduct**.
- For *passenger, bus and truck tyres* – in terms of *collection rates*, while TSA does not record overall collection levels, data provided by TSA shows that between 2018-2023 on average 59% of the EOLTs generated in Australia each year were collected by Scheme participants. In terms of *recovery rates*, TSA's reporting shows that between 2018-2023, on average 86% of EOLTs generated each year were recovered overall, by both Scheme and non-Scheme participants. Further, an average of 88% of EOLTs that were collected by Scheme participants each year went to an environmentally sound use. In the future without the conduct, the ACCC considers that tyre collection and recycling of passenger, bus and truck tyres is likely to continue in the short to medium term, albeit with some increased administrative costs for entities trying to arrange environmentally sound disposal. The likely continuation of collection and recycling is due partly to the fact the Scheme does not directly subsidise collecting or recycling and that there is already an established network of businesses performing these roles. However, there appears to be some scope for the Scheme to improve collection as well as recovery rates (which includes recycling and any other environmentally sound use), and to reduce landfilling.
  - For *OTR tyres* – collection and recovery rates are low overall. In terms of *collection*, data provided by TSA shows that between 2018-2023 on average 9% of EOLTs generated each year were collected by Scheme participants.<sup>55</sup> In terms of *recovery*, TSA's reporting shows that between 2018-2023, on average 10% of EOLTs generated each year were recovered (by both Scheme and non-Scheme participants).<sup>56</sup> Further, an average of 93% of EOLTs collected by Scheme participants each year went to an environmentally sound use. There are also no

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<sup>54</sup> TSA's response to ACCC request for further information, 30 April 2024, pp 11-12; available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>55</sup> TSA's response to ACCC request for further information, 30 April 2024, Annexure A; available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>56</sup> Tyre Stewardship Australia, Australian Tyre Consumption and Recovery – 2022-23, available at <https://www.tyrestewardship.org.au/wp-content/uploads/2023/11/Australian-Tyre-Consumption-2022-23.pdf>.

Scheme participants from the mining sector. The ACCC notes that TSA has taken or is planning a number of initiatives to increase participation and overcome impediments to OTR EOLT stewardship, which would cease without the Conduct. Given these factors, the ACCC considers that there is significant scope for the Scheme to contribute to improving collection rates and reducing landfilling, as well as improving recovery rates in the OTR sector, which would otherwise not be realised.

- 4.14. The ACCC recognises that both with and without the Conduct, other government regulation for EOLTs will likely remain and (in most cases) act as a disincentive to dumping, stockpiling and/or landfilling and contribute to increased recovery. However, it notes that without the Conduct, there would no longer be a body enforcing the commitments of the Guidelines via audits and suspending or revoking accreditation. This is likely to have the effect of decreasing collection and recovery rates if, for example, parties were more likely to send EOLTs to landfill as a result.
- 4.15. Without the Conduct, the ACCC considers that TSA will cease its levy-funded **research and development** into potential markets for EOLTs and tyre-derived products. TSA would also cease its promotion of tyre-derived products. These factors would likely result in decreased demand for tyre-derived products, and may therefore also result in decreased recovery rates, particularly over the longer-term (that is, towards the end of the 3-year authorisation period).
- 4.16. Without TSA's **ongoing marketing of the Scheme**, it is likely that there would be somewhat reduced incentives for industry participants to encourage greater recovery of EOLTs by only or mostly dealing with other entities that recycle. The ACCC considers that this, in turn, would result in poorer recovery outcomes of EOLTs. Similarly, as TSA's **consumer-facing marketing**, which encourages consumers to purchase tyres from businesses participating in the Scheme, would cease, then consumers may be somewhat less inclined to acquire tyres from retailers that ensure EOLTs are recovered and go to an environmentally sound use. This, in turn, is likely to mean some retailers will be less inclined to provide an environmentally sound disposal service.
- 4.17. The ACCC also notes that the dismantling of the Scheme is likely to create confusion and uncertainty in the industry, and if government did pursue a Regulated or Co-Regulated Scheme in the future, that would likely make its establishment more difficult.
- 4.18. Lastly, TSA submits that there may be a number of other impacts without the Conduct, such as offshore markets stopping or diminishing, support for small-to-medium collectors and recyclers disappearing, and new and emerging technology investments not entering the Australian market. The ACCC notes that while these are possible effects, it does not have sufficient information to assess them and form a concluded view.

## Relevant areas of Competition

- 4.19. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.20. TSA submits that the Scheme is likely to affect competition in national markets relating to the supply of passenger car and truck tyres; collection and distribution of EOLTs; supply of tyre recycling services; retail supply of motor vehicles; tyre and motor vehicle manufacturing; the research and development of projects and technologies relating to the disposal of EOLTs and the use of tyre-derived products.

4.21. 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 following, in respect of both passenger, car and truck tyres **and** OTR tyres:

- the supply of tyres fitted to new vehicles
- the supply of replacement 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.

## Public benefits

4.22. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as 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.*<sup>57</sup>

4.23. TSA submits that the Conduct results in a number of public benefits.<sup>58</sup>

4.24. Having regard to the submissions of TSA and interested parties, the ACCC has considered the following public benefits:

- environmental and public health and safety benefits from sustaining or increasing the volume of tyres being recovered
- benefits arising from levy-funded research and development into effective uses for EOLTs
- benefits arising from TSA's promotion of tyre-derived products
- benefits arising from transitioning to a Regulated Scheme.

## Sustaining or increasing the volume of tyres being recovered

4.25. TSA submits that environmental and public health and safety benefits (**environmental benefits**) result from more EOLTs being disposed of in an environmentally sound way. Specifically, TSA submits that:

- Since the Scheme's commencement, there has been a marked reduction in the volume of tyres being disposed of in landfill, particularly among Scheme participants. However, TSA recognises that since 2020, less and less EOLTs collected by participants have been going to an environmentally sound end use,

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<sup>57</sup> 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.

<sup>58</sup> Submission in support, at [11.2], [13.2], available at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

correlating to more being landfilled (around 18% in 2022-23). It submits that this increase is likely due to a combination of factors including lower gate fees at regional landfills, greater clean ups of contaminated stockpiles at regional transfer stations, reduced access to shipping containers and significant price increases for shipping containers during and post COVID lockdowns.<sup>59</sup>

- Without the Scheme, the relative proportion of EOLTs likely to be recycled will stagnate and potentially decline, likely leading to more stockpiling and illegal dumping and a greater environmental burden. This is because the increase in production and domestic use of recycled rubber derived from EOLTs (by almost 50%) is partially attributable to TSA's investment in market development and campaigns promoting tyre-derived materials; and also because TSA's momentum in actively engaging with the mining sector would be diminished.<sup>60</sup> Regarding OTR, TSA submits that it is seeking to increase support for participation and OTR EOLT outcomes by undertaking analysis and research on overcoming impediments to OTR stewardship; investing in OTR-specific market development projects (with 2 projects completed, 1 active); establishing 'OTR Tyre and Conveyor Belt Hubs'; and engaging with global technology leads on OTR EOLT solutions. TSA also supports a staged, national ban on onsite disposal of OTR EOLTs.<sup>61</sup>
- Through encouraging production of higher quantities of tyre-derived products, the Scheme aims to reduce the need for production of certain rubber or steel products sourced from raw or virgin materials, thereby preventing the unnecessary depletion of natural resources.<sup>62</sup>
- Through supporting the creation of new market opportunities with the use and disposal of EOLTs, EOLTs are replacing coal as fuel on overseas markets, resulting in reductions in greenhouse gas emissions.<sup>63</sup>
- In encouraging the environmentally sound disposal of EOLTs, the Scheme minimises the risk of illegal and unregulated fires, toxic gases and chemicals leaching caused by tyre stockpiles, and creating breeding grounds for mosquitoes and other vermin.<sup>64</sup>

4.26. In respect of TSA's performance against its other specific targets, it submits that:

- The volume of EOLTs *collected* by accredited participants has increased annually since 2016-17, except for decreases over the 2019-20 and 2021-22 periods, which were due to the impact of labour shortages created by COVID-19.

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<sup>59</sup> TSA's response to ACCC request for further information, 30 April 2024, p 10, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>60</sup> TSA's response to ACCC request for further information, 5 April 2024, p 2, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>61</sup> TSA's response to ACCC request for further information, 5 April 2024, p 5, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>62</sup> Schedule 5 - TSA Submissions in support of application for revocation and substitution at [13.4(c)(ii)], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>63</sup> Schedule 5 - TSA Submissions in support of application for revocation and substitution at [13.4(c)(iii)], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>64</sup> Schedule 5 - TSA Submissions in support of application for revocation and substitution at [13.4(d)], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

- The volume of EOLTs *exported* via TSA accredited tyre recyclers and collectors that have been verified as going to environmentally sound use was 10% in 2019-20, fell to 6% in 2020-21, and rose to 8% in 2021-22. In this respect, TSA notes it continues to be challenged by verifying export destinations but has intensified its engagement with brokers and shipping lines.

4.27. TSA submits that increased tyre recycling and resource recovery continues to be constrained by:<sup>65</sup>

- the voluntary nature of the Scheme. This has hindered TSA's ability to achieve participation targets for tyre importers and vehicle manufacturers, in circumstances where there is little-to-no economic incentive for them to seek accreditation. However, TSA has since developed initiatives to increase participation in the Scheme, including establishing a mining industry working group and allocating approximately \$1 million annually towards consumer awareness campaigns.
- a lack of viable and sustainable on-shore markets for EOLTs and tyre-derived products, primarily due to the ongoing activity associated with exporting used tyres and a lack of on-shore mandatory use of tyre-derived products
- limited tyre recycling infrastructure and capability, particularly in the mining, construction, aviation, agriculture and industrial sectors, affecting the viability of recycling OTRs
- transport costs, particularly for transporting EOLTs from rural or remote areas to metropolitan areas (where most tyre recyclers and re-processors are located)
- lack of understanding and awareness of the enhanced value, stability and durability from using EOLTs and tyre-derived products in roads and other infrastructure projects
- regulatory regimes governing the handling of EOLTs that are inconsistent between Australian jurisdictions and within sectors, such as the mining sector
- limited engagement from retailers to source ethical operations and support greater sustainable outcomes.
- Australia continuing to increase its tyre outputs due to the rising number of vehicle registrations and new tyre sales.

4.28. TSA also submits that it has addressed concerns that were raised during the previous authorisation process about the Scheme's operation:

- TSA has introduced a suspension mechanism for non-compliance.
- TSA has introduced a more rigorous accreditation process.
- TSA has developed foreign verification procedures for the destinations of EOLTs.

4.29. TSA referred to the Arcoona Report, which found that TSA has commendably administered the Scheme and exhibits a high level of corporate governance understanding and practice; and that the public benefits very significantly outweigh any public detriment. It also concluded that transition to a Regulated Scheme where all tyre

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<sup>65</sup> Schedule 5 - TSA Submissions in support of application for revocation and substitution at [2.3], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.



importers and manufacturers participate would solve the ‘existential problem’ of the Scheme’s financial non-viability (that is, if a big levy contributor were to depart the Scheme), as well as the related problem of free riding.<sup>66</sup>

### ***Interested party submissions***

4.30. A number of interested parties submit that there would be environmental benefits from continuation of the Scheme:

- **DCCEEW** submits there is a national public interest in continuation of the Scheme due to the ongoing public benefit it provides in addressing the environmental and human health impacts of EOLTs.
- **New South Wales Environmental Protection Authority** notes that it is imperative that the Scheme’s work to increase the recycling rate of EOLTs continues.<sup>67</sup>
- The **Victorian Automotive Chamber of Commerce** considers TSA to be an integral part of the national waste policy solution.
- The **Southern Sydney Regional Organisation of Councils** found that the effective operation of the Scheme made a significant contribution to normalising the need for tyres to be reused and repurposed.

4.31. A number of interested parties acknowledge factors that are limiting the Scheme’s ability to deliver environmental benefits, particularly its voluntary nature:

- The **South Australian Environmental Protection Authority and Green Industries SA** note that the free rider issues present a significant challenge for TSA in achieving its aim to increase used tyre recovery.<sup>68</sup> **ATRA** considers that because the Scheme is voluntary, there is little direct accountability for TSA to achieve the objects of the Scheme or its own key performance indicators. In the Arcoona Report, local government interviewees tended to agree that the Scheme is limited by its voluntary status, supporting the idea of a mandatory Scheme.<sup>69</sup>
- A number of interested parties support the immediate continuation of the Scheme on a voluntary basis in the absence of regulatory intervention but consider that a Regulated Scheme is required to address the long-term, negative effects of EOLTs.<sup>70</sup>
- Some consider that only a scheme with mandated participation can deliver true environmental benefits. **North Queensland Regional Organisation of Councils**

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<sup>66</sup> Arcoona Report, Schedule 3 to application, p. 4, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>67</sup> Submission by NSW Environment Protection Authority, 19 January 2024 at p 1, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>68</sup> Submission by South Australian Environmental Protection Authority and Green Industries SA, 29 January 2024, p 1, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>69</sup> Arcoona Report, Schedule 3 to application, p. 69, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>70</sup> Submission by the Australian Local Government Association, 19 January 2024; joint submission by South Australian Environmental Protection Authority and Green Industries SA, 29 January 2024; submission by the Victorian Automotive Chamber of Commerce, 7 February 2024; submission by the Waste Management & Resource Recovery Association of Australia, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.



(NQROC) notes that the Scheme's low participation rate, the increasing number of EOLTs in landfill and the unabated illegal dumping of tyres, have combined to put significant pressure on councils, the community's health, and the environment. Therefore, only a 'more prescriptive framework' can drive meaningful change.<sup>71</sup>

- 4.32. Regarding other limiting factors, ACOR submits that because TSA is a manufacturer-led and governed organisation, and because TSA does not collect nor recycle EOLTs or fund recyclers, the realisation of environmental benefits is significantly hindered.<sup>72</sup>
- 4.33. The Arcoona Report found that participating importers interviewed expressed frustration at the lack of tangible results from the Scheme, with multiple interviewees noting that demonstrating value is particularly important in getting increased participation in the Scheme.<sup>73</sup>

### ACCC view

- 4.34. To the extent that the Conduct results in a sustained or increased volume of tyres being recovered and thus in a reduction in the volume of EOLTs entering the domestic waste stream (including via landfill or dumping), being stockpiled or unsustainably burned for energy recovery, the ACCC considers there is a clear public benefit likely to result, particularly by reducing the environmental and health and safety hazards associated with such disposal methods.
- 4.35. The ACCC notes that the Scheme has only met 3 of the 9 performance targets that TSA established in its Guidelines when it sought authorisation in 2018, as shown in **Attachment A**. In particular, the volume of EOLTs going to an environmentally sound use under the existing authorisation has not increased to the level that the targets envisaged.
- 4.36. In this respect, the ACCC considers that the likelihood that the Conduct may sustain or increase the volume of EOLTs being recovered is heavily dependent on the levels of (voluntary) participation (shown in **Attachment A**). In terms of parties who have the most direct impact on collection and recovery levels: the participation rates of tyre recyclers are consistently high (and exceed TSA's performance targets), although tyre retailers have generally had low participation rates. Levy contributors have had low or very low participation rates (tyre importers and vehicle manufacturers/importers, respectively). However, overall participation rates have increased since the previous authorisation was granted in 2018 (from 1,590 participants in 2017-18<sup>74</sup> to 1,773 participants in 2022-23).<sup>75</sup>
- 4.37. The ACCC also acknowledges TSA's submissions that the recent reduction in volumes of EOLT going to an environmentally sound use is likely to be partly attributed to the COVID-19 pandemic, which made it more difficult for Scheme participants to process and move EOLTs and tyre-derived products. It also recognises TSA's submission that the low percentage of exported EOLTs going to an environmentally sound use is

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<sup>71</sup> Submission by North Queensland Regional Organisation of Councils, 1 February 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>72</sup> Submission from the Australian Council of Recycling, 31 January 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>73</sup> Arcoona Report, Schedule 3 to application, p. 62, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>74</sup> TSA Annual Report 2017/18, p 53, available at: <https://www.tyrestewardship.org.au/company/annual-report/>.

<sup>75</sup> TSA Annual Report, 2022/23, p 22, available at: <https://www.tyrestewardship.org.au/company/annual-report/>.

attributable to the challenge of verifying export destinations and that TSA is intensifying its engagement with brokers and shipping lines.

4.38. The ACCC acknowledges that it is difficult to determine the extent to which the Conduct is likely to contribute to an increase in the volume of EOLTs being recovered, versus this being attributable to the impact of regulation or other factors. However, the ACCC considers the Scheme is likely to result in some environmental public benefit for the following reasons:

- In respect of *passenger, bus and truck EOLTs* – without the Conduct, it is likely that over the next 3 years, the vast majority of EOLTs collected by businesses that are currently Scheme participants would continue to be recovered (currently, on average 88% of tyres) because the established network of tyre recyclers and collectors would still be operating and there would be ongoing demand for tyre-derived products and tyre-derived fuel. As a result, the Conduct is not likely to lead to substantial environmental benefits in this category of tyres. However, it is likely that for at least some participants, their incentives to direct EOLTs to environmentally sound uses would reduce without the Conduct, even if only marginally. Therefore there is some scope for the Conduct to contribute to sustaining or improving overall collection levels and reducing landfilling, and greater scope for it to contribute to improving recovery levels.
- In respect of *OTR EOLTs* – without the Conduct, it is likely that the vast majority of EOLTs collected by businesses that are currently Scheme participants would continue to be recovered (currently, on average 93%), for the same reasons set out above. However overall OTR collection and recovery rates (by Scheme participants and non-Scheme participants) are currently low. TSA has taken and is planning a number of initiatives to increase participation and overcome impediments to OTR EOLT stewardship, which would likely cease without the Conduct. The ACCC considers that to the extent that the Conduct, via these initiatives, would increase OTR collection or recovery rates, it would result in a public benefit, which could potentially be significant; and encourages TSA to prioritise its efforts in this sector.
- State and territory laws prohibit the illegal dumping of EOLTs<sup>76</sup> and exporting whole (including baled) tyres, and some jurisdictions have landfill levies for EOLTs, which would continue to deter these practices without the Conduct. With or without the Conduct, other government regulation for EOLTs will remain and (in most cases) will act as a disincentive to stockpiling and/or landfilling and contribute to increased recovery. The ACCC considers that some environmental benefits may be achieved due to the Scheme requiring commitments from participants that go beyond what is currently explicitly required by the law. However, the ACCC lacks sufficient information to understand exactly to what extent the Scheme does so, and therefore, to be satisfied of the magnitude of this public benefit. The ACCC invites submissions from TSA and interested parties on this issue.

4.39. The ACCC notes concerns raised by interested parties that further changes to the Guidelines are needed. These are addressed in the public detriments section below.

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<sup>76</sup> *Protection of the Environment Operations Act 1997* (NSW) s 143; *Environment Protection Act 1970* (Vic) s 27; *Waste Reduction and Recycling Act 2011* (Qld) ss 103, 104; *Environmental Protection Act 1986* (WA) s 49A; *Environmental Protection Act 1986* (WA) s 49A; *Environmental Management and Pollution Control (Waste Management) Regulations 2010* (Tas) r 7(1)(a); *Litter Act 2004* (ACT) ss 8 – 10; *Waste Management and Pollution Control Act 1998* (NT) s 83.

## Research and development into end-of-life tyres and tyre-derived products

- 4.40. The Scheme does not directly subsidise tyre recycling; rather a proportion of the levy funds raised by TSA funds research and development into markets for EOLTs. One of the overarching objectives of the Scheme is developing Australia's tyre recycling industry by creating and growing markets for tyre-derived products.<sup>77</sup>
- 4.41. TSA's 5-year National Market Development Strategy for Used Tyres, which was endorsed by all State Environment Ministers in 2017, provides a collaborative framework to maximise market development opportunities to increase the use of locally produced recycled tyre-derived products.
- 4.42. TSA submits that without the Conduct, tyre-derived products are unlikely to meet their potential or be replaced with international volume, exacerbating local issues.<sup>78</sup>
- 4.43. TSA submits that its market development program has directed over \$9m of funding to projects, research, and raising awareness through communication and engagement, including to consumers and the off-the-road sector. Regarding TSA's market development projects, TSA submits that:<sup>79</sup>
- For all tyre types, TSA has invested \$2.9m across 19 market development projects, with 14 completed and 5 active. Projects range from research projects demonstrating performance of products containing recycled rubber in the lab and in application, through to manufacturing infrastructure to produce more recycled rubber products. Examples include the use of tyre-derived materials in roads or concrete road barriers and use of tyre char as an energy source.
  - TSA has invested \$219,000 in 3 market development projects specific to OTR tyres, with 2 projects completed and 1 active. The 2 completed projects prove the use of recycled rubber products from OTR EOLT in asphalt and spray seal applications.
- 4.44. TSA submits it has undertaken other research and development specific to the OTR sector, such as completing 2 reports analysing the Australian OTR sector, including the key challenges with OTR EOLT recovery. It is also conducting further research on the composition of OTR tyres and continuing to use market development funds to support resource recovery options for the mining sector that meet its needs.<sup>80</sup>

### *Interested party submissions*

- 4.45. **VACC, SSROC** and the **Government of Western Australia** note TSA's valuable role in funding and promoting markets for tyre-derived products. For example, SSROC

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<sup>77</sup> TSA, Guidelines for the Tyre Product Stewardship Scheme, 1 March 2019, Section 1.2, p. 8, available at: <https://www.tyrestewardship.org.au/accc-authorisation/>.

<sup>78</sup> Schedule 5 - TSA Submissions in support of application for revocation and substitution at [14.4], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>79</sup> TSA's letter in response to ACCC's request for further information, 5 April 2024, p 6, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>80</sup> TSA's letter in response to ACCC's request for further information, 5 April 2024, p 6, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

cites a project in its council area partly funded by TSA which investigates the effectiveness of asphalt mixes that incorporate rubber from used car and truck tyres.<sup>81</sup>

4.46. The **Arcoona Report** however, found that:

- Participating tyre importers had various ideas about the desired future direction of the Scheme and highlighted the need to work toward circularity in its research and development for EOLTs. Interviewees suggested that TSA could broaden its activities by looking to reduce EOLT through better utilisation of tyres, reuse by re-treading and implementing subsidies to make crumb more affordable.<sup>82</sup>
- Tyre recyclers thought that TSA could do more to encourage the uptake of Australian crumb rubber, such as putting pressure on actors to prioritise the sale of products containing locally produced crumb rubber, advocating for a ban on importing products with recycled rubber, and working with councils to further encourage uptake of recycled materials. It was suggested that the use of rubber in roads was nearly at a plateau point, so TSA could make bigger gains if it explored other options in its research and development.<sup>83</sup>

4.47. **ACOR** submits that tyre recycling has been undermined due to the prioritisation of Scheme administration, over the prioritisation of, and meaningful support for, end markets for recycled materials.<sup>84</sup>

4.48. Some interested parties consider that TSA should refocus its priorities from supply-side to demand-side outcomes.<sup>85</sup> **Tyrecycle** submits that the Guidelines focus on participation and product supply into the Scheme but require measurable targets for market development to adequately focus TSA's energy into creating meaningful market demand.<sup>86</sup>

### **ACCC view**

4.49. The ACCC considers that in the future without the Conduct, TSA's investment in research and development into effective uses for EOLTs and tyre-derived products would likely cease because it would no longer be supported by levy funds.

4.50. The ACCC recognises the investment TSA has made in market development projects. However, while the number of completed projects has grown annually in accordance with TSA's performance target, the number of committed or contracted projects has either remained stagnant or declined since 2018-19. The ACCC also notes that the performance targets in respect of research and development do not track the outcomes of these projects.

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<sup>81</sup> Submission from South Australian Environmental Protection Authority and Green Industries SA, 29 January 2024; Submission from Victorian Automotive Chamber of Commerce Inc., 7 February 2024; Submission from Southern Sydney Regional Organisation of Councils, 29 January 2024. available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>82</sup> Arcoona Report, Schedule 3 to application, p. 62, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>83</sup> Arcoona Report, Schedule 3 to application, p. 67, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>84</sup> Submission by Australian Council of Recycling, 31 January 2024, p 2, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>85</sup> Submission by Australian Council of Recycling, 31 January 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>86</sup> Submission by Tyrecycle, 2 February 2024, p. 5, Submission by Australian Council of Recycling, 31 January 2024, p 2, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

- 4.51. However, the ACCC considers that to the extent the Conduct, via TSA's research and development activities, will further grow demand for tyre-derived products and therefore contribute to sustaining or increasing the volume of EOLTs being recovered, it would contribute to the achievement of the first public benefit outlined above.
- 4.52. For the reasons in paragraph 4.38 above, the ACCC considers that while there is limited scope for any research and development activity to further improve overall collection levels in respect of passenger, bus and truck EOLTs, there is greater scope to contribute to improving their recovery levels. However, considering the low participation rates and significant impediments that still exist in relation to OTR EOLTs, to the extent the Conduct can grow the collection and recovery rates of OTR EOLTs via investing in relevant research and development over the next 3 years, this would have the potential to significantly increase TSA's ability to achieve the claimed environmental public benefit.

### **Promotion of tyre-derived products**

- 4.53. TSA submits that the estimated increase of almost 50% in the production and use of recycled rubber derived from EOLTs can be partially attributed to TSA's \$9m investment in campaigns promoting products using tyre-derived materials.
- 4.54. The ACCC considers that the Conduct, by enabling TSA to promote tyre-derived products, is likely to result in increased production and use of tyre-derived products and lead to sustaining or increasing the volume of EOLTs being recovered – therefore also contributing to the achievement of the first public benefit outlined above.
- 4.55. However, given it is difficult to determine the degree to which such an outcome will be attributable to TSA's promotion activity, the extent to which it will likely contribute to this public benefit is unclear.

### **Transitioning to a Co-Regulatory scheme**

- 4.56. TSA submits that authorisation over the next 3 years will ensure the Scheme continues to operate while TSA assists with the re-design and overall improvement of the Scheme in the context of transitioning to a Regulated Scheme.<sup>87</sup> TSA also submits that a key public benefit is to provide continuity for the operation of the Scheme, and thus stability for the tyre recovery sector, during the period of government review.<sup>88</sup>
- 4.57. A number of interested parties expressed support for the continuation of the Scheme while Government is considering whether to transition to a Regulated Scheme.<sup>89</sup>
- 4.58. The ACCC considers that in the event Government does decide to transition to a Regulated Scheme, it is possible that it would be simpler and involve lower costs to transition from the current Scheme rather than from no scheme.
- 4.59. However, based on the information before it, the ACCC considers it is unlikely that any such transition will occur within the 3-year period for which authorisation is sought. As

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<sup>87</sup> Schedule 5 - TSA Submissions in support of application for revocation and substitution at [13.5], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>88</sup> TSA's response to interested party submissions, 27 April 2024, p 2, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>89</sup> Submission by the Australian Local Government Association, 19 January 2024; joint submission by South Australian Environmental Protection Authority and Green Industries SA, 29 January 2024; submission by the Victorian Automotive Chamber of Commerce, 7 February 2024; submission by the Waste Management & Resource Recovery Association of Australia, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

a result, the Proposed Conduct is unlikely to result in any additional public benefit of this nature.

### **ACCC conclusion on public benefit**

4.60. The ACCC considers that the Conduct is likely to result in environmental and public health and safety benefits from sustaining or increasing the volume of tyres being recovered – including through TSA’s research and development into effective uses for EOLTs and its promotion of tyre-derived products.

### **Public detriments**

4.61. The Act does not define what constitutes a public detriment. 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.<sup>90</sup>*

4.62. TSA submits that the Scheme is unlikely to generate any significant public detriment because:

- Participation in the Scheme is voluntary.
- 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.
- The levy charged under the Scheme represents a minimal proportion of the total retail cost of new tyres for consumers.

4.63. The ACCC has considered the following potential public detriments:

- restrictions on supply
- imposition of the levy
- lack of sufficiently broad industry representation on the board
- risk of impacts on competition from information sharing or coordination beyond that authorised.

### **Restrictions on supply**

4.64. 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. Specific commitments require that:

- Fleet operators and local governments deal only with accredited manufacturers, retailers or importers when purchasing or replacing new tyres.
- Fleet operators, local governments and retailers only deal with accredited collectors or recyclers when disposing of EOLTs or deal with non-accredited

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



collectors only when contractual arrangements are in place specifying that all EOLTs go to an accredited recycler.<sup>91</sup>

- 4.65. Non-compliance with these commitments may result in participants having their membership suspended for a period of time or cancelled for a minimum of 12 months.
- 4.66. TSA does clarify, however, that on the infrequent occasion a retailer or local government applying for accreditation is proposing to use a non-accredited collector, they must demonstrate why using an accredited collector is not a viable option. Then, if approved by TSA, they must report monthly on who is collecting their EOLTs and comply with audits, which include verifying whether downstream customers are accredited.<sup>92</sup>
- 4.67. An Interested Party submits that TSA encouraging participants to deal exclusively with other TSA members is not appropriate because TSA members need to maintain their rights to choose who they deal with. They note that many businesses choose not to become TSA members but still hold all the relevant licences and permits required to operate.<sup>93</sup>

### ACCC view

- 4.68. 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 dealing with non-accredited recyclers. This could have a greater impact in regional and remote areas where access to accredited collectors and recyclers is limited or not at all available. The ACCC considers that the more participants that join the Scheme, the greater the competitive disadvantage for non-accredited businesses.
- 4.69. However, 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 only one interested party raised concerns in relation to this issue, which it considers were broader, in-principle concerns about removing the right of businesses to choose who they deal with.
- 4.70. The ACCC does not consider the Conduct is likely to result in a significant detriment by restricting supply and that the magnitude of any public detriment will be partly mitigated because participation in the Scheme is voluntary and because there are exceptions to these trading restrictions. Specifically, accredited retailers and local governments can deal with non-accredited collectors in circumstances where they enter into contractual arrangements which are consistent with the objectives of the Scheme, and which ensure that EOLTs are provided to accredited recyclers.<sup>94</sup>
- 4.71. TSA also submits that the Guidelines allow TSA to consider the limited availability of accredited recyclers when assessing a collector's compliance with the Scheme. The ACCC considers that this is likely to alleviate concerns in rural and remote regions

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<sup>91</sup> Tyre Product Stewardship Guidelines, pp 24-29 available at: <https://www.tyrestewardship.org.au/accc-authorisation/>.

<sup>92</sup> TSA's response to ACCC request for further information, 5 April 2024, p 9, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>93</sup> Submission by an Interested Party, 25 March 2024, p 2 available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>94</sup> Schedule 5 - TSA Submissions in support of application for revocation and substitution at [12.5(d)], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.



where the number of TSA accredited tyre collectors and recyclers, for example, may be limited.

### **Imposition of the levy**

- 4.72. 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.
- 4.73. TSA submits that it does not consider that the levy would have the effect of fixing, controlling or maintaining the price of tyres. It submits that the quantum of the levy is not so high that participants would be required to necessarily include it in their pricing, and overall, is negligible having regard to the retail price of tyres.<sup>95</sup>
- 4.74. ACOR submits that to enhance the Scheme, and to better capture ‘free riders’, which has been a concern of TSA, the imposition of a mandated import levy may be useful.
- 4.75. The ACCC considers that it is difficult to determine what proportion of the levy (a minimum of \$0.25 per EPU) is ultimately passed through to consumers in the form of higher prices, as this will depend on a range of factors including competition in the market. However, it considers it likely that any resultant price increases will be small given that the levy comprises a small proportion of the price of a tyre and hence would result in negligible public detriment.<sup>96</sup> That is, even if passed through in full, the \$0.25 levy would represent a very small proportion of the overall retail price (0.5% for a low cost \$50 tyre). As a matter of principle, while increased prices would typically be considered detrimental, to the extent that imposition of the levy means consumers pay closer to the full cost of EOLT disposal, the price increase is likely to signal a more (rather than less) efficient allocation of resources in the economy. However as noted, any resultant price increases will be small. The ACCC also considers that any detriments will be mitigated by levy-payers’ voluntary absorption of the extra costs.
- 4.76. In terms of the structure of the levy, TSA submits that a key limitation of the design of the current voluntary Scheme is that it does not apply a levy structure across all types of tyres using a standard measurement, such as weight.<sup>97</sup> The ACCC notes that the Arcoona report recommended that TSA should consider amending its Guidelines to replace the current method with a weight-based method,<sup>98</sup> suggesting that such a change appears to be within TSA’s power. The ACCC invites TSA’s views on this issue.

### **Lack of sufficiently broad industry representation on the board**

- 4.77. In response to interested parties’ concerns, the ACCC’s 2018 determination stated that strong engagement with industry participants along the entire tyre supply chain was important to ensure participation in the Scheme and its ongoing effective administration, and it expected that TSA would continue to take genuine steps to appoint a recycling director to its Board as soon as practicable. TSA has since established an Industry Consultative Group. TSA has also amended its Constitution to require the Board to include one or 2 tyre recyclers, or representatives with knowledge

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<sup>95</sup> Schedule 5 - TSA Submissions in support of application for revocation and substitution at [12.2(d)], available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>96</sup> See, for example Authorisation Number AA1000429; Authorisation Number AA1000537; Authorisation Number AA1000536, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register>.

<sup>97</sup> TSA’s response to interested party submissions, 27 March 2024, Annexure A, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>98</sup> Arcoona Report, Schedule 3 to application, p. 40, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

and experience in the circular economy; although there is currently no tyre recycler on the TSA Board.<sup>99</sup>

- 4.78. A number of interested parties have again raised concerns in relation to insufficient industry representation on the TSA board, particularly in relation to the tyre recycling sector and that this reduces the effectiveness of the Scheme.<sup>100</sup>
- 4.79. ATRA notes that a lack of recycler representation on TSA's board inhibits TSA's ability to operate in a transparent and inclusive manner and in best interests of the entire end of life tyre supply chain.<sup>101</sup>
- 4.80. This sentiment is also reflected in the findings of the Arcoona Report, which found that:
- TSA Directors shared a desire to move away from the representative model of the Board to a skills-based Board; though some supported the representative model for the time being.<sup>102</sup>
  - Accredited tyre importers who were interviewed generally considered that the Board's make-up was unsatisfactory as it was not reflective of the skills needed to govern TSA. However, interviewees also pointed out the need to retain at least some industry experience on the Board.<sup>103</sup>
  - All tyre recyclers interviewed felt that the recycling sector had been wrongfully excluded from the Board and that the Board lacked crucial market knowledge. One recycler interviewee perceived TSA as only supporting the interests of vehicle manufacturers/importers and tyre retailers.<sup>104</sup>
- 4.81. The Federal Chamber of Automotive Industries submits that TSA has consistently fallen short in meaningfully engaging with the automotive industry and communicating the practical benefits from increased participation in the Scheme. It submits that TSA must go beyond expressing frustration in external communications about the automotive industry's lack of voluntary participation and instead reframe its engagement with them.<sup>105</sup>

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<sup>99</sup> TSA's letter in response to ACCC's request for further information, 30 April 2024, p 1, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>100</sup> Submission by Australian Council of Recycling, 16 April 2024; Submission by Australian Council of Recycling, 31 January 2024; Submission by Tyrecycle, 2 February 2024; Submission by Complete Tyre Solutions Tyre Recycling, 2 February 2024; Submission by Australian Tyre Recyclers Association, 2 February 2024; Submission by an Interested Party 25 March 2024; Submission by an Interested Party, 3 April 2024, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>101</sup> Submission by Australian Tyre Recyclers Association, 2 February 2024, p 15, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>102</sup> Arcoona Report, Schedule 3 to application, p. 59, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>103</sup> Arcoona Report, Schedule 3 to application, p. 62, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>104</sup> Arcoona Report, Schedule 3 to application, p. 68, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>105</sup> Submission by Federal Chamber of Automotive Industries, 2 February 2024, pp 1-2, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

4.82. In response to interested party submissions, TSA submits that:<sup>106</sup>

- TSA's Board has an independent Chair.
- Regarding the desirability of a skills-based board, the 3 most recent appointments have experience in circular economy matters, independent retailing, government, mining and energy.
- Regarding consultation, the Board seeks regular presentations and engagement with industry representatives and attends and presents at meetings as requested by industry associations, government departments, and independent organisations including research organisations.

4.83. Regarding tyre recyclers specifically, TSA submits that it has received advice 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. It notes that recycling industry expertise has been represented on the TSA board for years via 2 appointments. Neither of these individuals held active roles in the recycling industry at the time of their appointment.<sup>107</sup>

4.84. TSA submits that the inclusion of other participants on the Board – tyre importers/manufacturers, vehicle importers/manufacturers and tyre retailers – does not amount to an actual conflict of interest. This is because these parties do not directly financially gain from levy funds provided to industry and decisions made that advance the consumption and sale of tyre-derived products or from the results of 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 they represent.<sup>108</sup>

4.85. TSA advises that it has been unable to secure further appointments of individuals who have recycling industry experience but do not hold active roles, but it continues to seek such appointments.<sup>109</sup>

### **ACCC view**

4.86. The ACCC recognises that there may be some greater potential for an actual or potential conflict of interest issue to arise in respect of tyre recycler representation on the Board, compared to other categories of participants that have less, indirect benefits from TSA's activities.

4.87. However, as it did in its 2013 and 2018 determinations, the ACCC maintains that strong engagement with industry participants along the entire tyre supply chain is important to maximise participation in the Scheme and its ongoing effective administration. It considers that without sufficient representation from a cross-section of Scheme participants on the Board, there is a risk that Board decisions and the

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<sup>106</sup> TSA, Response to interested party submissions, 27 March 2024, p 7, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>107</sup> TSA, Response to interested party submissions, 27 March 2024, p 7, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>108</sup> TSA's letter in response to ACCC's request for further information, 30 April 2024, pp 5-6, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>109</sup> TSA's letter in response to ACCC's request for further information, 30 April 2024, p 6, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

administration of TSA may not adequately consider the interests of all industry participants.

- 4.88. The ACCC recognises that TSA has previously had recycling industry representation on the Board when possible. The ACCC also has limited evidence before it that suggests a lack of recycling industry representation on the Board has resulted in significant problems to date.
- 4.89. Nevertheless, the ACCC encourages TSA to find ways to enable greater involvement from all sectors of the industry in the strategic direction of the Scheme, whether by appointing additional Board representatives who hold no active industry roles or via other means, such as targeted consultation.
- 4.90. Further, these kinds of potential conflicts of interest in board representation are quite common for broad industry arrangements. The ACCC encourages TSA to look at other similar industry organisations and try to find ways to appropriately manage potential conflicts, rather than just avoiding them entirely.

### **Risk of impacts on competition from information sharing or coordination beyond that authorised**

- 4.91. The ACCC considers that where commercially sensitive information is shared amongst competitors, there is a risk that this could result in public detriment – particularly by impacting competition. Such information sharing creates a risk of collusion or coordinated conduct beyond what has been authorised.
- 4.92. An Interested Party submits that they have been told that parties joining the Scheme are asked to provide confidential and sensitive business information that competitors could use for their commercial advantage. For this reason, they consider that this sensitive information should only be reported directly to DCCEE, as it already is, which would also remove duplication.<sup>110</sup>
- 4.93. In response to these concerns, TSA submits that:<sup>111</sup>
  - The types of information collected through application forms is available on TSA’s website and includes: the types of tyres managed, who tyres are picked up by or sent to, and evidence of approvals to operate as a recycler. Information collected/assessed during accreditation and compliance audits includes: dealing with TSA accredited participants, data reporting matches business records, procedures in place to meet regulatory requirements.
  - The TSA Board receives a limited subset of information collected through accreditation forms (and accreditation audits for collectors and recyclers) to enable them to approve or reject an application for *recycler* or *collector* accreditation. TSA’s Board does not approve or suspend tyre *retailer* accreditation; this function is performed at a TSA management level.
  - No levy contributor has access to any other competitor’s data. The process of collecting data to determine levy payments is conducted by a third-party auditing firm, who only provides TSA with aggregated data.

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<sup>110</sup> Submission by an Interested Party, 30 March 2024, p.1, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>111</sup> TSA’s letter in response to ACCC’s request for further information, 30 April 2024, pp 7-8, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

- Individual data reported monthly by accredited participants as part of their accreditation commitments (including the type, amount and destination of EOLTs managed) is kept confidential and not shared outside of TSA.

### **ACCC view**

4.94. The ACCC considers the type of information collected by TSA appears limited to information necessary for TSA to administer the Scheme. Further, TSA's use of an independent firm to collect and aggregate information needed to calculate levy payments, as well as limits on to whom this information is provided and how it is used substantially mitigates the risk of competitors having access to each other's commercially sensitive information and therefore of collusion or coordinated conduct beyond that authorised, including price or non-price factors.

4.95. However, given there remains an increased risk of collusive conduct beyond that authorised, the ACCC strongly encourages TSA to remind attendees of their obligations under competition law at the start of each meeting involving industry participants, including that it is not appropriate to discuss pricing (other than the levy) or other market sensitive information.

### **ACCC conclusion on public detriment**

4.96. The ACCC considers that the Conduct is likely to result in minimal public detriment because:

- Any detriment arising from restrictions on supply imposed on accredited participants is partly mitigated by the voluntary nature of the Scheme and participants' ability to deal with unaccredited businesses in certain circumstances.
- The levy charged under the Scheme represents a minimal proportion of the total retail cost of new tyres for consumers.
- A number of factors mitigate the risk that participation in the Scheme will lead to broader coordination or collusion between participants on matters beyond the scope of the authorisation.

4.97. To address other concerns raised by interested, the ACCC encourages TSA to consider ways to enable greater involvement from all sectors of the industry in the strategic direction of the Scheme, particularly tyre recyclers.

### **Balance of public benefit and detriment**

4.98. The ACCC considers that the Conduct is likely to result in environmental and public health and safety benefits from a sustained or increased volume of EOLTs being recovered.

4.99. It considers that the Conduct is likely to result in minimal public detriment.

4.100. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied that the Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Conduct.

### **Sufficient transparency in data reporting**

4.101. However, the ACCC considers that ongoing realisation of the public benefits will to some extent depend on the level of accuracy of reporting by TSA and the effective communication of its achievements against key performance indicators. In this

respect, some interested parties raised concerns about a perceived lack of transparency and accuracy in how TSA is representing its data.<sup>112</sup>

- 4.102. Tyrecycle and ATRA submit that they have recently observed changes in how TSA presents EOLT data and consider that consistent and transparent reporting will likely improve confidence in the Scheme. They raise specific concerns that TSA's 2022-23 data now combines what were previously 2 separate categories (landfilling, with illegal dumping or stockpiling) under the category of 'not recovered', when many of those EOLTs labelled 'not recovered' are being legally landfilled as permitted under the Scheme. ATRA also raises concerns that other TSA publications have potentially inaccurately claimed an increase in dumping of EOLTs. These parties are concerned that such actions underrepresent the value that tyre recyclers provide.<sup>113</sup>
- 4.103. Two interested parties submit that TSA should be audited by an independent third party who is approved by the ACCC to ensure honest and accurate assessment of TSA's performance and maintain public and industry trust.<sup>114</sup>
- 4.104. In response to interested parties' concerns, TSA submits that:
- TSA's method for data collation and analysis was last substantially reviewed in 2019 and TSA has made small refinements to the method to improve confidence in the results.
  - Annually, TSA issues a fact sheet and an Annual Report that communicate industry data, the fates of used tyres and progress against its key performance indicators. The data in these public reports comes from a variety of sources, including Scheme participants.
  - TSA has commenced a third-party peer review of its data management which is expected to be published in mid-2024.
  - TSA has always reported 'landfilling' as 'not recovered', which is standard for waste reporting in Australia. TSA submits its reporting of increased illegal dumping is backed by credible data and information from external sources, including direct engagement with local governments and data sets.<sup>115</sup>
- 4.105. The ACCC considers that currently, TSA's data reporting may not be sufficiently transparent and consistent to enable stakeholders and the ACCC to adequately understand the outcomes of the Scheme. The ACCC notes that it has needed to make additional data requests to TSA to obtain a fulsome understanding of outcomes from the Scheme (see **Attachment B**).
- 4.106. The ACCC considers that the metrics set out in **Attachment B** would be a more appropriate dataset for TSA to report against to ensure there is sufficient (and

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<sup>112</sup> Submission by Tyrecycle, 2 February 2024; Submission by Australian Tyre Recyclers Association, 2 February 2024; Submission by an Interested Party, 25 March 2023, p. 2, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>113</sup> Submission by Tyrecycle, 2 February 2024, pp. 3-4; Submission by Australian Tyre Recyclers Association, pp 10-11, available at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>114</sup> Submission by an Interested Party, 25 March, p 1; Submission by an Interested Party, 3 April 2024, p. 1, available at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>115</sup> TSA's response to interested party submissions, 27 March 2024, pp 6-8, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.



consistent) transparency and clarity of outcomes. The ACCC invites views from interested parties on this, and whether there is additional information that TSA could include in its reports and/or any changes to the way in which it is presented, to achieve this. For example, whether it could include metrics in respect of research and development that provide more specificity about the outcomes of projects undertaken.

4.107. Additionally, the ACCC notes interested parties' submissions that the ACCC should appoint an independent third party to audit TSA's performance. On the information before it, the ACCC does not consider this necessary. There is nothing to suggest that TSA would not adhere to the statement in the Guidelines that an independent review of the efficiencies and operation of the Scheme will be undertaken in or around 2026, or to suggest that the reviewer would not be genuinely independent. The ACCC will closely examine the outcomes of this review if and when TSA seeks further re-authorisation in the future. The ACCC will also review the outcomes of TSA's upcoming data management report.

### Length of authorisation

4.108. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>116</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the likely public 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.

4.109. In this instance, TSA seeks re-authorisation for 3 years. TSA expects that it will take at least 3 years for the proposed transition from a voluntary Scheme to a Co-Regulatory Scheme to be fully implemented.

4.110. The ACCC considers that any process to regulate stewardship outcomes is a decision for government, which will draw on appropriate consultation, policy consideration and cost-benefit analysis of possible options.

4.111. It notes that DCCEEW considers it prudent for the ACCC to consider an authorisation period more consistent with the previous authorisation (a period of 6 years), rather than the 3 years requested by TSA. Similarly, DWER recommends that to allow for its work on developing national principles for product stewardship for tyres to be completed and any potential delays, re-authorisation be granted for a longer period than sought by TSA.

4.112. Although there is uncertainty about whether, and if so, when, a Regulated Scheme might be introduced, the ACCC does not consider it necessary to depart from the period of authorisation sought by TSA. If this uncertainty is not resolved within 3 years and TSA is minded to lodge a subsequent application for authorisation to continue the Scheme, the ACCC would conduct an assessment based on the information available at that time. In particular, the ACCC considers that it would closely examine the outcomes of the 2026 independent review of the Scheme, as well as the level of participation by mining companies and vehicle manufacturers and importers.

4.113. Accordingly, the ACCC is proposing to grant authorisation for the Conduct for 3 years.

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<sup>116</sup> Subsection 91(1).



## 5. Draft determination

### The application

- 5.1. On 4 December 2023, the Applicant lodged an application to revoke authorisation AA1000409 and substitute authorisation A1000655 for the one revoked. Application AA1000655 for revocation and authorisation in substitution was made under subsection 91C(1) of the Act.
- 5.2. The Applicant seeks authorisation for specific provisions of the Guidelines of the Scheme (as defined in paragraph 1.11 above) to allow for the continuation of the national Tyre Product Stewardship Scheme (**Scheme**) pursuant to the Guidelines for the Scheme. The Scheme is a voluntary, industry-led program with the primary aim of increasing the recycling rate of end-of-life tyres.
- 5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

### The authorisation test

- 5.4. The ACCC must not make a determination revoking an authorisation and substituting another unless satisfied that it would not be prevented from making a determination granting the substituted authorisation, if it were a new authorisation sought under the Act.<sup>117</sup> Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the conduct.
- 5.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the conduct would 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, including any lessening of competition.
- 5.6. Accordingly, the ACCC proposes to revoke authorisation AA1000409 and grant authorisation AA1000655 in substitution.

### Conduct which the ACCC proposes to authorise

- 5.7. The ACCC proposes to grant authorisation AA1000655 to TSA and current and future participants of the Scheme to agree and give effect to the specific provisions of the Guidelines for the Scheme (as at the date of the Application) identified in Table 2 below and defined as the 'Proposed Conduct' to enable them to continue to operate the Scheme pursuant to the Guidelines:

**Table 2: Conduct which the ACCC proposes to authorise**

<b>Provisions of the Guidelines (the Proposed Conduct)</b>	<b>Description</b>	<b>Provision(s) of the Act which would or might apply</b>
<b>General commitments for all Participants (Part A, Section 3)</b>	Entering into and giving effect to enterprise to enterprise agreements and contractual arrangements in furtherance of Participants'	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47) Anti-competitive agreements (s 45)

<sup>117</sup> See subsection 91C(7) of the Act.

	general and specific commitments.	Concerted practices (s 45)
<b>Funding (Part A, section 4.3); Tyre importers and vehicle manufacturers - Specific commitments (Part C, section 1.2); Miners - Specific commitments (Part 1, section 1.2)</b>	Imposition of a levy on tyre importers, vehicle manufacturers and miners, of a minimum of \$0.25 per EPU imported into Australia.	Cartel conduct (Division 1 of Part IV) Anti-competitive agreements (s 45) Concerted practices (s 45)
<b>Market development and research (Part A, Section 4.4)</b>	Allocation of levy funds to support initiatives and projects regarding the use and disposal of EOLTs.	Anti-competitive agreements (s 45) Concerted practices (s 45)
<b>Application and accreditation process (Part A, Section 5.1)</b>	Accreditation of Participants on the basis of a: <ul style="list-style-type: none"> <li>• current capacity to meet the general and specific commitments under the Scheme; or</li> <li>• demonstrated capacity to meet the general and specific commitments under the Scheme.</li> </ul>	Cartel conduct (Division 1 of Part IV) Anti-competitive agreements (s 45) Concerted practices (s 45)
<b>Enforcement - Suspension and revocation of accreditation (Part A, Section 5.3)</b>	Suspension or revocation (for a period of 12 months) for Participant non-compliance with general and/or specific commitments under the Scheme.	Cartel conduct (Division 1 of Part IV) Anti-competitive agreements (s 45) Concerted practices (s 45)
<b>Retailers - Specific commitments (Part D, Section 1.2)</b>	Retailers to prioritise dealings with accredited tyre importers.  Retailers to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs.	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47)
<b>Fleet operators - Specific commitments (Part E, Section 1.2)</b>	Fleet operators to prioritise dealings with accredited tyre importers.  Fleet operators to deal only with retailers accredited by TSA when disposing of EOLTs.	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47)
<b>Local Government - Specific commitments (Part F, Section 1.2)</b>	Local governments to deal only with accredited retailers when replacing the EOLTs generated by their fleets.	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47)

	Local government to deal only with collectors and recyclers accredited by TSA when disposing of EOLTs.	
<b>Collectors - Specific commitments (Part G, Section 1.2)</b>	Collectors to ensure all EOLTs collected from retail and other outlets are passed on to accredited recyclers.	Cartel conduct (Division 1 of Part IV) Exclusive dealing (s 47)

5.8. The ACCC proposes to grant authorisation for the specified Proposed Conduct in relation to Division 1 of Part IV of the Act, and sections 45 and 47 of the Act as outlined in the table above.

5.9. The ACCC proposes to grant authorisation AA1000655 for 3 years.

5.10. This draft determination is made on 7 June 2024.

## 6. Interim authorisation

6.1. The ACCC has decided to suspend the operation of authorisation AA1000409 and has granted interim authorisation in substitution for the authorisation suspended.

6.2. Authorisation AA1000409 is due to expire on 15 June 2024. As the ACCC has required additional time to consider a number of issues that have been raised by interested parties or the ACCC in respect of TSA's application, it is now likely that the ACCC will be unable to release its final determination before 15 June 2024.

6.3. To ensure that legal protection remains in place pending consideration of the current application, the ACCC has decided to grant interim authorisation to TSA to continue to operate the Scheme. Specifically, the ACCC grants interim authorisation in relation to the specific provisions of the Scheme Guidelines identified in Table 2 above and defined as the Proposed Conduct.

6.4. The ACCC considers it appropriate to grant interim authorisation because doing so will maintain the status quo pending consideration of the current application. Without legal protection, it is likely the Scheme would have to cease operating, which would cause significant disruption to TSA and industry participants. In deciding to grant interim authorisation, the ACCC's consideration was also informed by the view expressed in the draft determination that, based on current information, the Proposed Conduct is likely to result in a net public benefit.

6.5. Interim authorisation commences on 7 June 2024 and remains in place until it is revoked or the date the ACCC's final determination comes into effect or when the application for re-authorisation is withdrawn.

## 7. Next steps

7.1. The ACCC now invites 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.

## Attachment A

The below data has been extracted from TSA's response to the ACCC's information requests of 5 April 2024 and 30 April 2024,<sup>118</sup> which TSA states shows its performance against the key performance indicators, as set out in paragraph 62 of the ACCC 2018 determination. TSA notes that underlying figures have been rounded, meaning percentages may not exactly align. The 2020, 2023 and 2028 'targets' reflect the targets set out in TSA's Guidelines<sup>119</sup> and have been added by the ACCC for comparison. The ACCC does not assume any responsibility regarding the accuracy of the underlying data.

Key performance indicator	Metric	18/19	19/20	2020 target	20/21	21/22	22/23	2023 target	2028 target
<b>1) The number of Participants in the Scheme increases as follows:</b>	-	-	-	-	-	-	-	-	-
<b>1a) Tyre Importer Market Share</b>	<b>% of market share of all imported tyres (% of EPU)</b>	27%	25%	75%	25%	49%	57%	85%	90%
<b>1b) Vehicle Manufacturer/Importer Market Share</b>	<b>% of market share of total new vehicle Sales</b>	0%	5%	50%	8%	7%	7%	75%	90%
<b>1c) Tyre Retailer Market Share</b>	<b>% of market share of total tyre sales (% of EPU)</b>	66%	71%	65%	56%	65%	47%*	75%	90%
<b>1d) Tyre Recycler Market Share</b>	<b>% market share of EOLT (tonnes)</b>	95%	95%	80%	96%	95%	86%	85%	95%

<sup>118</sup> Tyre Stewardship Australia, letter in response to ACCC's request for further information, 5 April 2024, pp 7 and 8; Tyre Stewardship Australia, letter in response to ACCC's request for further information, 30 April 2024, pp 14 and 15, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<sup>119</sup> Tyre Stewardship Australia, Application for revocation and substitution, 4 December 2023, Schedule 2, p 12, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.

<b>2) Volume of EOLT collected by Scheme accredited participants, increases annually</b>	<b>Tonnes</b>	238,000	220,000	-	246,000	235,000	250,000	-	-
<b>3) Volume of EOLT exported via TSA accredited tyre recyclers and collectors that have been verified as going to environmentally sound use increases annually</b>	<b>Exported by scheme participants (tonnes)</b>	177,000	162,000	-	189,000	143,000	156,000	-	-
<b>4) Percent of EOLT that are going to environmentally sound use</b>	<b>% of tonnes</b>	66%	68%	<b>50%</b>	68%	63%	58%	<b>75%</b>	<b>90%</b>
<b>5) Users seeking accreditation through the TSA website and general website traffic increases annually</b>	<b>Organic and direct visitors to TSA website</b>	37,271	25,012	-	26,819	48,194	144,000	-	-
<b>6) Growth of the demand for Australian tyre-derived material associated with market development activities promoted, funded and/or supported by TSA</b>	<b>Number of completed market development projects funded</b>	12	20	-	36	44	54	-	-

\* TSA, in its response of 5 April 2024, states that the method for calculating the retailer market share KPI was refined in 22/23 FY based on improved data from retailer.

## Attachment B

The below data has been extracted from TSA's response to the ACCC's information request of 30 April 2024.<sup>120</sup>

	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 feels 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%

<sup>120</sup> Tyre Stewardship Australia, letter in response to ACCC's request for further information, 30 April 2024, p 14, available at : <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/tyre-stewardship-australia-limited-0>.



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

\*\* TSA, in its 30 April 2024 response, states that 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.