

Submission to the ACCC

AA1000409

Tyre Stewardship Australia



January 2018

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of WALGA, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management) as well as a number of Local Government representatives. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate.

This Submission therefore represents the consolidated view of Western Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

This Submission was endorsed by the Municipal Waste Advisory on Wednesday 28 February 2018.

EXECUTIVE SUMMARY

The Association appreciates the opportunity to comment on Tyre Stewardship Australia's (TSA's) application for authorisation to continue delivering a voluntary, Tyre Product Stewardship Scheme. The Association is a member of TSA and has committed to the environmentally sound use of end-of-life-tyres (EOLTs) in its business activities. The Association has also promoted TSA to Local Governments in Western Australia and through its Preferred Supplier Panel.

When the Scheme was first proposed, the Association expressed a range of concerns regarding the potential effectiveness of the Scheme. Particularly, the Schemes' ability to address issues associated with the costs of illegal dumping, transporting material to markets and recycling. The Scheme has now been in operation for five years. The Association considers that its concerns were valid, as there has been no marked improvement in market conditions or increase in the national resource recovery and recycling rate. Tyre management practices continue to be driven by cost, as opposed to commitments to environmentally sound use of tyres within Australia.

In this Submission, the Association identifies a number of issues with the performance of the Scheme in relation to unmet targets, inaccurate data collection and inconsistent reporting. The Association remains concerned as to the overall performance and effectiveness of the Scheme, as it does not incentivise business participation in the Scheme, or penalise those operating outside of the Scheme.

The exemption previously provided by the ACCC placed limitations on the activities of TSA and how levied funds could be used. The Association considers that the limited achievements of the current Scheme do not create a case for a further 10 year exemption to be provided. It is recommended that State and Federal Governments implement either a mandatory or co-regulatory Product Stewardship Scheme that assigns producers with financial or physical responsibility for EOLTs.

BACKGROUND

In November 2009, Environment Ministers agreed to support the development of an industry led Scheme to increase the recycling rate of EOLTs. This decision was made with regard to the market conditions at the time and the absence of a clear case for Government intervention. A Tyre Implementation Working Group was established in May 2010 to progress this initiative. The Working Group was tasked with developing Guidelines for the Scheme. The Association provided feedback on the Guidelines, raising concerns that the proposed Scheme would not be able to address the costs of illegal dumping, transporting material to markets and recycling. At the time, WALGA took the position that the Government must introduce a mandatory or co-regulatory Tyre Product Stewardship Scheme, should the voluntary Scheme fail to address these issues. To support the voluntary approach, WALGA also committed to becoming a signatory of TSA, promoting the Scheme to members and through its Preferred Supplier Panel.

In April 2013, the ACCC authorised the establishment of Tyre Stewardship Australia and the Tyre Stewardship Scheme under strict conditions and specific guidelines for a period of 5 years. The Scheme was officially launched in January 2014. The establishment of this Scheme presented industry with an opportunity to demonstrate that it could work together to address limited markets for tyre recycling in Australia. The structure of the Scheme adopted by industry does not assign producers with financial or physical responsibility for EOLTs.

Tyre Stewardship Australia is seeking authorisation to continue delivering the Scheme for a period of 10 years. As limited evidence has been presented on the benefits and performance of the Scheme, the ACCC must carefully consider how it will proceed. To date, less than \$6 million has been contributed by tyre importers, vehicle manufacturers and importers and miners (voluntarily) to the Scheme. This is much less than the ongoing financial contribution of State and Local Governments in managing and regulating EOLTs. Industry expenditure has focused on advertising/communication, developing an accreditation process for the Scheme, employing staff as well as research and development (Table 1).

In some instances, Local Governments are subsidising the cost of accepting, transporting and recycling tyres as a means of discouraging illegal dumping. One WA example, is the City of Wanneroo which, in 2016/17, collected 1,639 illegally dumped tyres. This rate of illegal dumping has continued, with the City cleaning up approximately 140 Tyres every month. To reduce the costs associated with responding to illegal dumping, the City will be hosting a free drop off weekend for residents seeking to dispose of tyres and other materials. Depending on distance to markets and the size of tyres, Local Governments are paying between \$2 – 100 per tyre for recycling. As an example of State Government expenditure, the costs incurred by the Victorian Environmental Protection Authority in the clean-up of a major tyre stockpile in Stawell, was approximately \$5 million (*Submissions in Support of Application for Authorisation*, pg 33).

Table 1: Contribution of Tyre industry to TSA 2014 – 2016 (*Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia*, pg 38).

Year	Total Revenue	Major Expenditures
2014	\$425,000	\$5,657 (advertising)
2015	\$1,456,459	\$124,546 (advertising) \$564,672 (R&D and professional fees) \$9,166 (employee benefits)
2016	\$3,865,535	\$183,422 (advertising) \$727,619 (R&D and professional fees) \$375,779 (employee benefits)
Total	\$5,746,994	\$313,625 (advertising) \$1,292,291 (R&D and professional fees) \$384,945 (employee benefits)

LIKELY FUTURE WITHOUT

1. Absent the proposed conduct, can you comment on how the tyre stewardship scheme would operate?

In the event that the ACCC does not grant TSA with a 10 year exemption, TSA would no longer be able to raise a voluntary levy of 25 cents/EPU from tyre importers, vehicle manufacturers and importers and miners. As TSA is highly dependent on this revenue stream, it would need to find an alternative source of funding to continue operating. If a levy could no longer be raised, TSA would have to compete with other organisations such as the Australian Tyre Recyclers Association, the Australian Motor Industry Federation and the Australian Tyre Industry Council for members and funding.

2. Similarly, please provide any comments on how end of life tyre recycling would operate if the scheme was no longer in place.

From the perspective of Local Government in Western Australia, the Scheme has had little or no influence on those companies or individuals engaging in activities such as illegal dumping, stockpiling, landfill, or export of material for unspecified uses. The accreditation process has does not appear to have generated a significant market pull for material toward environmentally sound use, with the accreditation process only recognising those organisations that already recycle tyres. Based on the figures provided in the *TSA Annual Report 2016/17* (pg 43), there has been limited improvement in the local recycling rate in the last 5 years.

The termination of this Scheme would not have a significant impact on Local Government in Western Australia, with tyre management, transport for recycling and illegal dumping clean-up all ongoing costs. In July 2017, WALGA surveyed Local Governments to determine the current status of used tyre collection, recycling and disposal. 91 responses were received,

with 66% (of 83 respondents) advising they accept tyres from the community and 67% (of 67 respondents) accepting tyres from businesses. Of the 57 respondents that indicated how they were managing tyres:

- 44% recycled tyres
- 37% landfilled tyres
- 19% stockpiled tyres.

Of the Local Governments who advised they were recycling tyres, 25 indicated who their recycler was. Collectively, 80% of tyres from these Local Governments were processed by the following TSA accredited recyclers: Tyrecycle, Elan Energy, Giacci Recycling and Lomwest. Local Governments are committed to using legitimate and credible recyclers, in situations where it is feasible to recycle tyres. None of the responding Local Governments were members of TSA.

3. How would the situation be different with the proposed scheme in place?

As previously stated, the Association does not consider that the Scheme has delivered any measurable change in local markets for tyre resource recovery and recycling. The changes proposed by TSA in the *Application for Authorisation*, do little to mitigate the Association's concern that the design of the Scheme does not address the cost of recycling tyres or illegal dumping. As such, a further exemption should not be provided.

AREAS OF COMPETITION

4. Please provide any comments regarding the area(s) of competition that may be affected by the scheme.

Areas of competition that may be affected by the Scheme, relate to the cost of participation, with a voluntary 25 cent/EPU levy paid on new tyres. As the overall cost of a new tyre is many times more than the levy, very little cost advantage is achieved by the tyre importers that do not participate in the Scheme.

PUBLIC BENEFITS AND DETRIMENTS

5. Please provide any comments on the current operation of the scheme, and its ability to meet its objectives regarding end of life tyres.

As promoted on the TSA website (TSA, *Mission & Objectives*), the objectives of the Tyre Product Stewardship Scheme are to:

- increase resource recovery and recycling and minimise the environmental, health and safety impacts of end-of-life tyres generated in Australia, and
- develop Australia's tyre recycling industry and markets for tyre derived products.

To establish if these objectives have been achieved, the Association examined progress towards performance targets (Table 2), the level of industry participation/adherence to Scheme commitments (Table 3) and the delivery of TSA's corporate objectives (Table 4). From this assessment, the Scheme has not delivered on its objectives.

To establish the effectiveness of this Scheme, in a product stewardship context, the Association has compared the Tyre Product Stewardship Scheme with other national Product Stewardship Schemes.

Mandatory Product Stewardship – Product Stewardship for Oil

The Product Stewardship for Oil Program was established in 2001. A levy of 8.5 cents/litre of oil is used to create an incentive for environmentally preferable processing of used oil (Department of Environment, *Product Stewardship for Oil Program*). Previously, this Scheme also funded the establishment of oil collection infrastructure, with 112 units provided to 62 Local Governments in Western Australia. Following the Scheme's introduction, Local Governments benefited from a reduction in the price of used oil recycling and provision of collection infrastructure. The Scheme has acted as a buffer against fluctuations in the price of used oil recycling (driven by the international price of oil), by providing a direct financial subsidy to used oil recyclers. The Scheme offers a strong financial incentive (a rebate of 50 cents/litre) to companies that recycle oil back into oil in Australia. Over time, this initiative has driven substantial private sector investment in reprocessing infrastructure, shifting the supply of material away from traditional export markets to full reprocessing in Australia.

Voluntary Product Stewardship – DrumMuster/ChemClear and Paintback

Since the establishment of DrumMuster and ChemClear in 1999 and 2000, a levy of 4 cents/L/kg on participating manufacturer products has been used to fund the collection of empty chemical drums and eligible agvet chemicals from across Australia (ChemClear, *Our Story*). Local Governments often provide sites where drums can be aggregated for collection and recycling by DrumMuster contractors. Paintback is a voluntary Product Stewardship Scheme which levies 15 cents/litre plus GST on eligible products sold in the Australian market (Paintback, *Who We Are*). This Levy funds the responsible disposal and innovative reuse of paint across Australia. In its first full year of operation, Paintback reduced the disposal costs of paint collected through the Western Australian Household Hazardous Waste (HHW) Program by approximately \$400,000 (January – December 2017). This cost saving is expected to increase as further collection sites are made available to the community. Both of these schemes are voluntary and effective in addressing costs associated with managing products at end of life.

In the Association's experience, the design of Product Stewardship Schemes can have both positive and negative impacts on Local Government. However, the most effective Schemes provide funding that covers the costs of managing products, and/or assigns producers with physical responsibility for products at end of life.

Table 2: Performance Targets.

Performance Measures (pg 11, 2012 Guidelines) <i>The performance of the scheme in achieving its objectives is to be measured by the following means:</i>	Performance																																																
The number of Participants in the scheme	<p>The following table has been sourced from the <i>TSA Annual Report 2016/17</i> (pg 42). This performance measure has been consistently reported by TSA.</p> <table border="1" data-bbox="639 824 1524 1088"> <thead> <tr> <th>Category</th> <th>Dec 2014</th> <th>30 June 2015</th> <th>30 June 2016</th> <th>30 June 2017</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Importers</td> <td>6</td> <td>1</td> <td>1</td> <td>0</td> <td>8</td> </tr> <tr> <td>Retailers</td> <td>4</td> <td>434</td> <td>634</td> <td>248</td> <td>1320</td> </tr> <tr> <td>Collectors</td> <td>0</td> <td>2</td> <td>4</td> <td>1</td> <td>7</td> </tr> <tr> <td>Recyclers/Collectors</td> <td>0</td> <td>2</td> <td>16</td> <td>2</td> <td>20</td> </tr> <tr> <td>Fleet</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>4</td> </tr> <tr> <td>Local Government</td> <td>0</td> <td>0</td> <td>0</td> <td>3</td> <td>3</td> </tr> <tr> <td>Mining</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> </tbody> </table> <p>To demonstrate the actual coverage of the Scheme, the following percentages from the <i>Submissions in Support of Application for Authorisation</i> (pg 5) have been included:</p> <ul style="list-style-type: none"> • Importers: Represents >55% of total replacement tyre market • Retailers: Represents more than 50% of Australian retail sales • Recyclers/Collectors: Represents more than 70% of the available EOLT's managed in Australia. <p>There is still a significant portion of the industry which are not members of TSA.</p>	Category	Dec 2014	30 June 2015	30 June 2016	30 June 2017	Total	Importers	6	1	1	0	8	Retailers	4	434	634	248	1320	Collectors	0	2	4	1	7	Recyclers/Collectors	0	2	16	2	20	Fleet	1	1	1	1	4	Local Government	0	0	0	3	3	Mining	0	0	0	0	0
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The percentage of tyre importers and vehicle manufacturers and importers that are Participants in the scheme, the aim being to achieve greater than 90% of tyre and vehicle importers in the scheme within 5 years of commencement	<p>The majority of the statistics promoted by TSA relate to market share, as opposed to the percentage of the entire industry participating – the actual performance measure. The <i>TSA Annual Report 2015/16</i> (pg 34) contains information on industry participation as a percentage, with 27% of Tyre Importers and 0% of new vehicle importers participating in the Scheme. This falls short of the 90% target.</p> <p>Even when data on market share is used in reporting, it shows that only 55% of the total replacement tyre market is captured (<i>TSA Annual Report 2016/17</i>, pg 42 and <i>Submissions in Support of Application for Authorisation</i>, pg 5). Various engagement strategies have failed to garner cooperation and buy-in from this component of the industry.</p> <p>Target not met.</p>																																																
The resource recovery and recycling rates of end-of-life tyres that can be attributed to the scheme	<p>TSA has not directly reported on this performance measure in any of its Annual Reports. This issue is further explored in the 'monitor, audit and report on the development of the scheme' line item of Table 4.</p> <p>Target not met.</p>																																																

<p>The national resource recovery and recycling rates of end-of-life tyres</p>	<p>In reporting on this performance measure, local energy recovery, local material reuse and recycling, and local civil applications are included in the definition of resource recovery and recycling.</p> <p>There is disparity between the documentation provided to the ACCC in the <i>Application for Authorisation</i>, as to what the current national resource recovery and recycling rate is in Australia. This could be caused by differences in data collection methodologies, and how tyres are converted to EPU's. Another issue relates to the lack of a 'confidence rating' for this data. That is, the level of confidence in the data's accuracy.</p> <table border="1" data-bbox="639 443 1445 723"> <thead> <tr> <th>Domestic recycling rate</th> <th>Year</th> <th>Reference</th> </tr> </thead> <tbody> <tr> <td>16.0%</td> <td>2009/10</td> <td rowspan="3"><i>National Market Development Strategy for Used Tyres 2017-2022</i> (Figure 22, pg 38)</td> </tr> <tr> <td>5.0%</td> <td>2013/14</td> </tr> <tr> <td>10.0%</td> <td>2015/16</td> </tr> <tr> <td>16.4%</td> <td>2009/10</td> <td rowspan="2"><i>Hyder 2013-14 Study into Stocks & Fate of End of Life Tyres</i> (pg 1)</td> </tr> <tr> <td>5.1%</td> <td>2013/14</td> </tr> <tr> <td>5.0%</td> <td>2014/15</td> <td rowspan="3"><i>TSA Annual Report 2016/17</i> (pg 43)</td> </tr> <tr> <td>5.7%</td> <td>2015/16</td> </tr> <tr> <td>7.8%</td> <td>2016/17</td> </tr> </tbody> </table> <p>It is concerning that improvements to data capture systems have only recently been pursued by TSA. This issue is further explored in the 'monitor, audit and report on the development of the scheme' line item of Table 4.</p>	Domestic recycling rate	Year	Reference	16.0%	2009/10	<i>National Market Development Strategy for Used Tyres 2017-2022</i> (Figure 22, pg 38)	5.0%	2013/14	10.0%	2015/16	16.4%	2009/10	<i>Hyder 2013-14 Study into Stocks & Fate of End of Life Tyres</i> (pg 1)	5.1%	2013/14	5.0%	2014/15	<i>TSA Annual Report 2016/17</i> (pg 43)	5.7%	2015/16	7.8%	2016/17
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<p>Increase in the percentage of end-of-life tyres that are going to an environmentally sound use</p>	<p>The target for this performance measure is to increase the percentage of EOLTs that are going to an environmentally sound use from 16% to 50% in 5 years.</p> <p>The national resource recovery rate is much less than the 2009 rate of 16%. TSA has been able to report that it has met or come close to the 50% target by including data on tyre derived products and fuels from both local and international markets, even though TSA's data collection systems cannot confidently verify if exported material has been processed in an environmentally sound manner (<i>TSA Annual Report 2015/16</i>, pg 35, <i>TSA Annual Report 2016/17</i> pg 44 and <i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i>, pg 14).</p> <p>Target not met.</p>																						
<p>Volume of tyre derived products sold or otherwise provided for environmentally sound use</p>	<p>As above.</p>																						
<p>Number of users of TSA's website</p>	<p>This information is provided in the <i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i> (pg 15).</p>																						

Table 3: Industry participation/adherence to commitments.

<p>General commitments (pg 13, 2012 Guidelines) <i>All participants in the scheme commit to:</i></p>	<p>Performance</p>
<p>Support the objectives of the scheme</p>	<p>The Scheme objectives have not been achieved, as there has been no consistent improvement in the national resource recovery and recycling rate, or the conditions facing the local recycling industry.</p>
<p>Deal transparently and ethically with others involved in the tyre supply chain, including consumers</p>	<p>It is not clear if this commitment has been adhered to by all participants in the tyre supply chain. Current market realities provide those with unwanted tyres the opportunity to 'shop around' for the best collection and/or recycling price. This reduces collection and recycling fees and diverts material from environmentally sound uses (e.g. crumbing for local reprocessing) to lowest cost solutions (e.g. baling for export). The TSA has done little to alter this practice (<i>National Market Development Strategy for Used Tyres</i>, pg 54 and 93).</p>

	<p>As highlighted in the <i>National Market Development Strategy for Used Tyres 2017-2022</i> (pg 54), <i>Submissions in Support of Application for Authorisation</i> (pg 24) and the <i>Hyder 2013-14 Study into Stocks & Fate of End of Life Tyres</i> (pg 68), concerns remain that only a fraction of the recycling fees charged to consumers are passed through to the collection and recycling industry. “<i>In some cases, consumers pay disposal or recycling fees of up to \$10 per tyre yet only a fraction of this, around \$2.00 - \$2.50 is passed on to the tyre collector</i>” (<i>National Market Development Strategy for Used Tyres</i>, pg 54).</p> <p>Documentation provided to the ACCC clearly outlines these issues. If the ACCC provides a further exemption to TSA with full knowledge of these issues, it must play a role in policing transaction costs. An alternative approach, would be for retailers to also fund TSA’s activities. These interventions would allow recyclers/collectors to begin operating on a level playing field.</p>																												
<p>Promote the scheme to the community, other businesses and organisations, including through the development and implementation of an individual Action Plan (a template Action plan is included in the application form)</p>	<p>As a member of TSA, the Association has promoted the Scheme to its member Local Governments. The Association is not privy to information on how the remainder of the tyre supply chain is promoting the Scheme.</p>																												
<p>Use the scheme’s branding and logo and adhere to the conditions that apply to that use, as set out in Part B of the Guidelines</p>	<p>As above.</p>																												
<p>Comply with relevant laws and practices, including those that apply to the environment and occupational health and safety</p>	<p>Illegal dumping and stockpiling of tyres continues to occur, demonstrating there is an element of this industry that does not comply with relevant laws and practices. The existence of TSA has not driven a notable reduction in the percentage of tyres whose fate is listed as ‘unknown’ (<i>TSA Annual Report 2016/17</i>, pg 43). It should be noted, that there are potentially three different organisations auditing recycling facilities – State Environmental Regulators, TSA and ATRA.</p>																												
<p>Co-operate with surveys that are undertaken from time to time, and with random or risk based audits as instigated by TSA. This includes retaining and, on request, providing to TSA the documentation specified in the relevant guidance on documentation in these Guidelines</p>	<p>The Association is not in a position to comment on how industry interacts with TSA during audits. It is concerning that TSA does not publically report on the level of compliance obtained by individual members (<i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i>, pg 36). Further commentary on this issue is provided in the ‘Monitor, audit and report on the development of the scheme’ part of Table 4.</p>																												
<p>General commitments (pg 13, 2012 Guidelines) <i>All Participants in the scheme also commit to contribute to:</i></p>	<p>Performance</p>																												
<p>The environmentally sound use of end-of-life-tyres</p>	<p>As previously discussed, the Scheme has not driven a significant increase in the environmentally sound use of tyres. The following table is adapted from the <i>TSA Annual Report 2016/17</i> (pg 43):</p>																												
<p>Elimination of the inappropriate export of baled tyres from Australia</p>	<table border="1" data-bbox="639 1671 1516 2040"> <thead> <tr> <th>End-of-life Destination</th> <th>2014/15*</th> <th>2015/16</th> <th>2016/17</th> </tr> </thead> <tbody> <tr> <td>Energy recovery (local)</td> <td>0.6%</td> <td>0.0%</td> <td>0.0%</td> </tr> <tr> <td>Material reuse & recycling (local)</td> <td>3.6%</td> <td>3.5%</td> <td>5.6%</td> </tr> <tr> <td>Civil applications (local)</td> <td>0.8%</td> <td>2.2%</td> <td>0.4%</td> </tr> <tr> <td>Steel recycling</td> <td>n/a</td> <td>n/a</td> <td>1.8%</td> </tr> <tr> <td>Exported (TDF, baled & casings)</td> <td>32.6%</td> <td>47.7%</td> <td>38.7%</td> </tr> <tr> <td>Landfilled</td> <td>48.7% (landfilling/stockpiling)</td> <td>36.61%</td> <td>6.7%**</td> </tr> </tbody> </table>	End-of-life Destination	2014/15*	2015/16	2016/17	Energy recovery (local)	0.6%	0.0%	0.0%	Material reuse & recycling (local)	3.6%	3.5%	5.6%	Civil applications (local)	0.8%	2.2%	0.4%	Steel recycling	n/a	n/a	1.8%	Exported (TDF, baled & casings)	32.6%	47.7%	38.7%	Landfilled	48.7% (landfilling/stockpiling)	36.61%	6.7%**
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<p>Elimination of the illegal dumping of end-of-life-tyres</p>																													
<p>Elimination of disposal of end-of-life-tyres 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)</p>																													

Operational Stockpiles	n/a	n/a	2.9%
Mining/Landfill			33%**
Unknown destination	13.6%	10.0%	10.9%

*2014/15 data sourced from external consultant reports.
**2016/17 data was included on tyres landfilled in the mining industry. In previous years this was reported as Landfilled. If these were not separated the percentage would be 39.7% landfilled.

The *TSA Annual Report 2016/17* (pg 47) states that “*data collected by TSA estimates that approximately 6.8 million EPUs are potentially being disposed to landfill (shredded and/or whole), dumped, or inappropriately exported where their end destination is unknown. It is estimated that a further 17.2 million are being disposed of via current mining industry practices of leaving EOLTs onsite*”.

This statement may not be accurate, as the TSA Annual Report includes two Tables where the percentages of ‘unknown destination’ differ. Table 2 (and the information used in this Submission) shows 10.9% of tyres go to an ‘unknown destination,’ whereas Table 5 (and the source of the EPU’s quoted), shows only 3.4% go to an ‘unknown destination.’

It is concerning that TSA’s data collection systems cannot confidently verify if exported material has been processed in an environmentally sound manner (*Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia*, pg 14).

Local Governments continue to report that tyres are illegally dumped. TSA’s data shows there has been limited reduction in the percentage of tyres whose fate is listed as ‘unknown.’ Similarly, data on percentages of tyres landfilled remains consistent.

Table 4: Delivery of TSA’s Corporate Objectives.

Governance – TSA (pg 15, 2012 Guidelines) ...The principal objectives to be included in the constitution of the company are to:	Performance
Implement the product stewardship scheme for end-of-life-tyres	TSA appears to be operating within the limits provided by the previous ACCC Determination.
Administer the accreditation of Participants in the Scheme	The Association obtained TSA accreditation in 2017. TSA staff were very helpful throughout the application process. The Association cannot comment on how TSA administers accreditation for other members of the Scheme.
Monitor, audit and report on the development of the scheme	<p>TSA has consistently audited 100% of its accredited recyclers and collectors. Collectively, these accredited operators handle more than 70% of available EOLTs in Australia. As such, audits of retailers that may be using disreputable recyclers/collectors is important. The annual target for audits of retailers is set at 10% (i.e. 120) of total accredited retailers. As of 30 June 2017, 68 retailers had been audited with a remaining 52 to be completed in the first quarter of the 2017/18 year (<i>TSA Annual Report 2016/17</i>, pg 6).</p> <p>The Guidelines proposed for the Scheme state that, “<i>participants’ compliance with the commitments is enforced via a regime of random and risk based audits; failure to adhere to the commitments may lead to revocation or suspension of a Participant’s accreditation</i>” (<i>Application for Authorisation</i>, pg 8).</p> <p>It is not clear what level of rigour has been applied during these audits, or how TSA has responded to the (greater than) 25 instances of high-risk non-compliance identified (<i>National Market Development Strategy for Used Tyres</i>, pg 44). Additionally, there is no public reporting on the level</p>

	<p>of compliance that has been achieved by individual businesses (<i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i>, pg 36).</p> <p>As highlighted in the <i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i> (pg 36), potentially non-compliant businesses were allowed to sign up under a grace period. It is not clear how non-compliance past the grace period has been policed. In viewing the Board's response to the review, it appears that TSA has been 'flexible' on matters such as reporting to encourage participation (<i>TSA Response to the Scheme Review</i>, pg 4). This is problematic, as this information is used to demonstrate the success, or otherwise, of the Scheme.</p>												
Undertake education, awareness and information activities to promote the Scheme and value of end-of-life-tyre utilisation	<p>TSA has implemented education and awareness campaigns to the community and industry, in line with the ACCC Determination. The Association is concerned that this activity will become the main focus of the Scheme, as opposed to direct interventions that drive change in the tyre management and recycling industry. This concern is based in the increasing percentage of levy funds provided to education and awareness activities, as reported in the <i>TSA Annual Report 2016/17</i> (pg 24):</p> <table border="1"> <thead> <tr> <th></th> <th>2016</th> <th>2017</th> </tr> </thead> <tbody> <tr> <td>Total Revenue</td> <td>\$3,865,535</td> <td>\$4,358,058</td> </tr> <tr> <td>Major Expenditure</td> <td></td> <td></td> </tr> <tr> <td>- Advertising</td> <td>\$183,422</td> <td>\$845,464</td> </tr> </tbody> </table>		2016	2017	Total Revenue	\$3,865,535	\$4,358,058	Major Expenditure			- Advertising	\$183,422	\$845,464
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Support market development and early stage research in the field of end-of-life tyre utilisation for the benefit of the industry	<p>TSA's website (<i>TSA, Summary</i>) states TSA has "funded 18 projects to a total of over \$2 million through the Tyre Stewardship Research Fund."</p> <p>This achievement could potentially have been undermined because a mechanism was not in place to assess the effectiveness of funded projects (<i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i>, pg 3). While the Association acknowledges that TSA has committed to addressing this issue, it is concerning that the metrics used to assess effectiveness, and the actual tonnes diverted as a result of funded projects, are not publically reported.</p> <p>The documentation provided to the ACCC contains limited evidence that projects have been funded and/or partnerships entered into with potential end users of tyres in Western Australia.</p>												

6. TSA is seeking authorisation for specific clauses within the Guidelines, to allow for greater flexibility in administering the scheme. If possible, please comment on any changes to the public benefits and detriments that might arise given the greater flexibility.

The Scheme is governed by the *Guidelines for the Tyre Product Stewardship Scheme*, which have been amended to 'allow for greater flexibility' in the administration of the Scheme. As this Scheme has not been able to demonstrate it has effectively improved market conditions, it is not appropriate that the level of ACCC oversight is reduced. Table 5 provides comment on the proposed changes to the Guidelines.

Table 5: Proposed changes to the Scheme Guidelines.

Proposed Change (2017 Application for Authorisation)	Comment
<p>1.2 About the Scheme Expansion of the corporate objects (pg 8)</p> <p>Administration of the Scheme (pg 8/9)</p>	<p>The expansion of TSA's corporate objects are supported, in that the suggested amendments clarify its role in market development and research. The Association is concerned that reference to a 'well resourced' regime of random and risk based audits has been removed. Reference to 'performance measures and targets' for the purpose of measuring the efficiency of the Scheme have also been removed. If these items are not reinstated, there is a risk that the quality of the audit regime and information publically reported on the performance of the Scheme could suffer.</p>

<p>1.4 Commencement, duration and review (pg 9) Mechanism for review</p>	<p>Continued ACCC oversight of the review process is required to ensure that audits are completed by an ‘independent, external consultant.’ The current ACCC Determination contains a requirement that: <i>“C3: The TSA Board must</i> <ul style="list-style-type: none"> - <i>implement the recommendations arising from the review prescribed in C2; or</i> - <i>in the event that the TSA Board decides it is not appropriate to implement any particular recommendation, publish written reasons for this decision on the TSA website.”</i> <p>Unfortunately, some of the recommendations from the <i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i> on how to improve the performance of the Scheme have not been adopted. For example, the review recommended that outcome focussed targets should be established to measure both domestic and export destinations. This recommendation was initially accepted by the Board, but did not translate across to the <i>Application for Authorisation</i> that was submitted to the ACCC.</p> </p>				
<p>2.1 Objectives (pg 9)</p>	<p>No changes have been proposed to the Scheme’s objectives. The Association does not object to the wording of these objectives, but rather the scope of the activities permitted to deliver the objectives.</p>				
<p>2.2 Principles (pg 9)</p>	<p>No substantial changes are proposed to the Scheme’s principles. Unfortunately these principles do not reflect the market reality that cost determines how tyres are managed at end of life. One of the main problems with the current Scheme, has been the level of competition between collectors / recyclers over collection and recycling fees. This has resulted in a race to the bottom in terms of environmental outcomes and market development, with large volumes of material baled for export.</p>				
<p>2.5 Performance measures and aspirational targets (p12)</p>	<p>The Scheme’s performance measures are now framed in aspirational terms. The Scheme must be structured in such a way that it delivers tangible outcomes. Improvements to TSA’s reporting platform, and data collection processes are required, so that more useful information on the Scheme’s performance can be collected (<i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i>, pg 1).</p> <p>The following comparison of performance targets is sourced from the <i>Submissions in Support of Application for Authorisation</i> (pg 12):</p> <table border="1" data-bbox="491 1211 1495 1995"> <thead> <tr> <th data-bbox="491 1211 970 1238">Original performance measures</th> <th data-bbox="979 1211 1495 1238">Amended performance measures</th> </tr> </thead> <tbody> <tr> <td data-bbox="491 1240 970 1995"> <ul style="list-style-type: none"> 1. the number of participants in the Scheme 2. the percentage of tyre importers and vehicle manufacturers and importers that are participants in the Scheme – the aim being to have 90 per cent of tyre and vehicle importers in the Scheme within 5 years; 3. the resource recovery and recycling rates of end of life tyres that can be attributed to the Scheme; 4. the national resource recovery and recycling rates of end of life tyres; 5. the increase in the percentage of end of life tyres that are going to an environmentally sound use – the Scheme’s performance target is to increase this percentage from 16 per cent (currently) to 50 per cent of tyres going to an environmentally sound use by the end of 5 years; 6. the volume of tyre derived products sold or otherwise provided for an environmentally sound use; and 7. the number of users of TSA’s website. </td> <td data-bbox="979 1240 1495 1995"> <ul style="list-style-type: none"> 1. 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	<p>4. The percentage of EOLTs that are going to an environmentally sound use increases to 50% by 2020, 75% by 2023 and 90% by 2028.</p> <p>5. Users seeking accreditation through the TSA website and general website traffic increases annually.</p> <p>6. The market capacity of Australian tyre derived products associated with market development activities promoted, funded and/or supported by TSA increases annually.</p> <p><i>Need for outcome and output focused targets</i> As recommended in the <i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i> (pg 16), there is a need for clearly delineated:</p> <ul style="list-style-type: none"> • outcome focussed targets (i.e. targets that measure results of TSA’s activities relevant to its objectives); and • output focussed targets (i.e. targets that measure the success of TSA’s activities and programs), including in particular new targets relating to communications activities and R&D programs. <p><i>Definition of environmentally sound use</i> One of the issues with the Scheme, has been the broad definition of environmentally sound use. This definition is potentially misleading for consumers. The Association supports the findings from the <i>Review of the Tyre Stewardship Scheme and Tyre Stewardship Australia</i> (pg 16), that: “The terms ‘resource recovery’, ‘recycling’ and ‘environmentally sound use’ are not clearly defined and are used interchangeably, creating uncertainty as to what targets 3,4, 5 and 6 are seeking to achieve and giving the impression that they are duplicative. It is recommended, therefore, that separate and explicit performance targets be developed for environmentally sound use and recycling (a subset of environmentally sound use), with both terms being clearly defined”.</p> <p>There is a need for targets that clearly delineate between local and international uses, with a view to increasing the number of tyres used locally. The inclusion of incremental targets on the quantity of EOLTs going to an environmentally sound use is supported. However, the dates for achieving these targets should align with those of scheduled reviews. It is worth noting that the proposed target for environmentally sound use is 50% by 2020. A more ambitious target is required, as TSA is already close to meeting this target.</p> <p><i>Targets based on ‘market share’</i> Amending targets to better reflect market share is largely an administrative process, and is unlikely to drive improvements in what the Scheme delivers. The inclusion of incremental targets on the level of participation is supported. However, achievement dates should align with those of scheduled reviews. The Association does question why targets for 2020 are so low, with some already met or exceeded.</p> <p><i>Reporting on market capacity</i> In reporting on the market capacity that is linked to TSA’s activities, the Association requests that the actual market demand is reported, as opposed to the potential market demand.</p>
<p>3.1 General commitments (pg 14)</p>	<p>The Association is concerned that the contribution TSA should previously have made to rural and remote areas did not occur, and has been removed from the Guidelines. Specifically, “It is anticipated that TSA will make a contribution to this issue by collaborating with other product stewardship schemes and industry on campaign clean-ups in rural and remote areas from time to time” (2012 Guidelines for the Tyre Product Stewardship Scheme, pg 13).</p> <p>With regards to enterprise to enterprise agreements and other forms of contractual arrangements (<i>Application for Authorisation</i>, pg 15), any reference to recovering the full cost of disposal has been removed. Likewise, there is no mention of the importance of supporting local markets, as opposed to export markets. These are key issues that need to be addressed in agreements.</p>

4.1 Governance TSA (pg 15)	The Association notes that a number of changes are proposed to the structure of the Board, based on the Review's recommendations.
4.3 Funding (pg 16)	The current approach to funding does not address barriers to increasing recycling and markets for tyre derived products in Australia. The scope of activities that can be funded through TSA needs to change, with funding provided to reduce illegal dumping, subsidise the cost of recycling and stimulate local recycling markets.
4.4 Market development and research funding (pg 18)	The Association supports the inclusion of information as to what underpins the development of funding criteria. The Association also supports the removal of restrictions that prohibit TSA from contributing funds to companies to support commercialisation activities (<i>Submissions in Support of Application for Authorisation</i> , pg 15).
5.1 Application and accreditation process (pg 20)	The Association supports the removal of the application forms from the Guidelines and agrees that the inclusion of information explaining how TSA completes an assessment, should meet the needs of future participants.
5.3 Enforcement – Suspension and Revocation of accreditation (pg 22)	The Association is concerned that the proposed amendments do not address an inherent conflict with the Scheme, where TSA must be 'flexible' with their audit process to retain members. This is a direct consequence of the design of performance targets.
General commitments	The Association is not convinced that the act of prioritising dealings with accredited tyre importers and manufacturers has delivered measurable improvements in tyre resource recovery and recycling. The design of the Scheme does not provide tyre importers with a commercial incentive to participate.

7. Please provide any other comments regarding the public benefits claimed by the applicants or other public benefits of the proposed guidelines clauses.

The *Submissions in Support of Application for Authorisation* (pg 31) states that the public benefits of the Scheme are:
"As is outlined in the Guidelines, benefits to the public include:

- *addressing the current 'market failures' outlined in sections 21 and 23;*
- *increased use of a resource stream currently being disposed of as waste;*
- *reduction in the number of tyres not going to an environmentally sound use;*
- *an enhanced Australian recycling industry and sustainable markets for EOLTs and TDPs;*
- *increased capacity to handle EOLTs in Australia;*
- *the enhancement of competition in markets for EOLTs and TDPs through research and development;*
- *an improved business environment particularly for tyre collectors and recyclers;*
- *increased consumer awareness of the impacts of EOLT disposal;*
- *enhanced credibility for the tyre industry through demonstrated leadership in environmental management and adoption of corporate social responsibility strategies".*

The Association does not consider that the public benefits outlined in the *Submissions in Support of Application for Authorisation* have been realised. As detailed in this Submission, the structure and scope of the Scheme have not addressed market challenges with EOLT management and disposal. While the Scheme has brought a renewed focus to the state of the local recycling market, and issues with collecting data on EOLTs, it is important to realise that the Scheme was established to address these issues - not just raise awareness of their existence.

There has been no improvement in the national resource recovery and recycling rates of EOLTs, or the percentage of tyres diverted to environmentally sound uses (refer to Table 3 of this Submission). TSA's data collection systems cannot verify if exported material has been processed in an environmentally sound manner. There also remains a degree of uncertainty as to the actual benefits that will be delivered by TSA's investment in research and development, as opposed to projected benefits.

The Scheme has had limited impact on those companies or individuals that engage in activities such as illegal dumping, stockpiling, landfill, or export of material for unspecified uses. The accreditation process only recognises those organisations that are invested in the future of the industry. Other than the use of commitments across the tyre supply chain that environmentally sound use of materials will occur, there is no mechanism to incentivise business participation in the Scheme.

The environmental benefits of the Scheme identified in the *Submissions in Support of Application for Authorisation* (pg 32) are somewhat misleading. For example, the document states “only 6.7% of tyres were disposed directly to landfill by Participants”. This information has been taken from *TSA Annual Report 2016/17* (pg 43). When the percentage of tyres landfilled as part of mining operations is included (as reported in previous years), performance actually decreased, with 39.7% of tyres landfilled across the entire industry.

8. Please provide any other comments regarding the public detriments claimed by the applicants or other public detriments arising from the Guidelines clauses.

As identified in this Submission, the structure of the Scheme has not delivered a measurable improvement in the way tyres are managed at end of life. The Scheme’s primary focus is to accredit reputable operators within the tyre supply chain and undertake market development activities. The current Scheme does not contain mechanisms to incentivise or penalise those organisations that are not recycling tyres in Australia. TSA’s approach to market development involves providing funding to individual research and development projects. It is unlikely that this approach will deliver a lasting economic solution to the cost of tyre recycling. The proposed modifications to the Scheme will not address these issues.

Nationally, State Governments have identified the need for market development and are collectively undertaking this activity with TSA through the *National Market Development Strategy for Used Tyres 2017-2022*. The Association considers that Federal and State Governments should examine the focus of the Tyre Scheme and seek to implement a mandatory or coregulatory approach to Product Stewardship which assigns producers with either financial or physical responsibility for EOLTs.

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