



## Draft National Environment Protection (Tyres) Measure

developed pursuant to section 17 of the following:

*National Environment Protection Council Act 1994 (Commonwealth)*  
*National Environment Protection Council (New South Wales) Act 1995*  
*National Environment Protection Council (Victoria) Act 1995*  
*National Environment Protection Council (Queensland) Act 1994*  
*National Environment Protection Council (Western Australia) Act 1996*  
*National Environment Protection Council (South Australia) Act 1995*  
*National Environment Protection Council (Tasmania) Act 1995*  
*National Environment Protection Council (Northern Territory) Act*

and section 16 of:

*National Environment Protection Council Act 1994 (ACT)*

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## Introductory Note

Section 14 of the *National Environment Protection Council Act 1994* (Cwlth) and the equivalent provision of the corresponding Act of each participating jurisdiction provide for the making of measures by the National Environment Protection Council and the matters to which they relate. This Measure relates to re-use and recycling of used materials (paragraph 14 (1) (f)).

The Measure is to be implemented by the laws and other arrangements participating jurisdictions consider necessary (see section 7 of the *National Environment Protection Council Act 1994* (Cth) and the equivalent provision of the corresponding Act of each participating jurisdiction).

## Part 1 Preliminary

### 1 Name of Measure

This Measure is the *National Environment Protection (Tyres) Measure 2008*.

### 2 Commencement

This Measure will commence on the day after registration.

### 3 Definitions

In this Measure, unless the contrary intention appears:

**Agreement** means the Tyres Product Stewardship Agreement between the Environment Protection and Heritage Council, tyre producers, tyre recyclers and other signatories for end-of-life tyres.

**approved scheme** means a scheme approved by the Environment Protection and Heritage Council through which tyre producers will execute their responsibilities that arise under the Agreement.

**end-of-life tyre** means a tyre that is taken to no longer be capable of performing the function for which it was originally made.

**Environment Protection and Heritage Council** means the council comprising Ministers, appointed by first Ministers, from the Australian Government, the Australian Capital Territory, New South Wales, Victoria, Northern Territory, Queensland, South Australia, Tasmania and Western Australia plus others.

**National Environment Protection Council** means the council established under section 8 of the *National Environment Protection Council Act 1994* (Commonwealth) and the equivalent provision of each of the corresponding State and Territory Acts.

**Equivalent Passenger Unit (EPU)** means a standardised measure for the quantity of tyres. One EPU contains as much rubber and other materials as a 'typical' passenger tyre. For the purposes of this Measure, the assumed weight of one new EPU is taken to be 9.5 kg.

**financial year** means the period from July 1 to June 30.

**recycle** means to recover constituent materials from end-of-life tyres and use those materials as raw materials to produce other products or energy. Recycle does not mean to retread tyres.

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**tariff code** means the code provided by the Australian Customs Service as the administrative means by which the concessional rate of duty is applied to the particular good.

**tyre** means a vulcanised rubber product designed to be fitted to a wheel for use on motorised vehicles and non-motorised trailers towed behind motorised vehicles.

**tyre derived product** means a rubber, steel, textile or other product produced from recycling end-of-life tyres.

**tyre producer** means a person or entity that first supplies a tyre to the Australian tyre market, whether by tyre importing, domestic tyre manufacturing, or vehicle importing.

*Note* A number of expressions used in this Measure are defined in section 6 of the *National Environment Protection Council Act 1994 (Cth)* and the equivalent provision of the corresponding Act of each participating jurisdiction, including:

- national environment protection goal
- national environment protection guideline
- national environment protection measure
- national environment protection protocol
- participating jurisdiction

#### **4 Background**

- (1) The framework for the management of end-of-life tyres allows for a combination of voluntary industry measures and government regulatory measures. The framework consists of:
  - (a) the Agreement;
  - (b) all approved schemes; and
  - (c) this Measure.
- (2) This Measure applies to all tyre producers except those participating in an approved scheme or those tyre producers who fall below the application threshold. It is intended to provide a level playing field by ensuring that non-participants in an approved scheme are required to achieve similar environmental outcomes as participants.

## **Part 2 National Environment Protection Goal**

*Note* The purpose of this Part is to set out a goal that relates to the desired environmental outcomes to guide the formulation of strategies for the management of human activities that may affect the environment.

#### **5 National Environment Protection Goal**

The goal of this Measure is to:

- (a) reduce the negative environmental, social and economic impacts arising from end-of-life tyres; and
- (b) to encourage the sustainable consumption of products derived from recycling end-of-life tyres;

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by supporting and complementing the Agreement and approved schemes established under the Agreement.

## **6 Scope**

- (1) This Measure applies to tyre producers.
- (2) Tyres covered by this Measure may be identified by either tariff codes or descriptions in the Agreement.
- (3) This Measure is not intended to capture tyre retreaders who retread tyres that have previously been supplied to the Australian market. However, a tyre retreader who imports tyres into Australia for the purpose of retreading tyres that have not previously been supplied to the Australian market, will be considered a tyre producer and subject to this Measure in respect to those tyres.

## **Part 3 National Environment Protection Guidelines**

*Note* The purpose of this Part is to set guidelines on possible means for achieving desired environmental outcomes.

## **7 Guidelines for imposing obligations**

- (1) Participating jurisdictions must require tyre producers in their jurisdictions to:
  - (a) undertake or assure the collection and recycling of end-of-life tyres of a similar type supplied by the tyre producer to the Australian market for the first time, and in similar proportion if more than one type; and
  - (b) collect, maintain and report information according to protocols in clause 12.
- (2) For the collection of end-of-life tyres mentioned in paragraph (1)(a), it is intended that participating jurisdictions work collaboratively to ensure tyre producers undertake or assure the collection of tyres in all the jurisdictions in which the tyres were supplied.
- (3) For the collection and recycling of end-of-life tyres mentioned in paragraph (1)(a), participating jurisdictions must require tyre producers to meet the following annual performance targets and timeframes:
  - (a) 20% of all tyres supplied per financial year by the tyre producer to the Australian market for the first time, by the end of the first year this Measure applies to the tyre producer;
  - (b) 60% of all tyres supplied per financial year by the tyre producer to the Australian market for the first time, by the end of the fifth year this Measure applies to the tyre producer;
  - (c) 80% of all tyres supplied per financial year by the tyre producer to the Australian market for the first time, by the end of the seventh year this Measure applies to the tyre producer;

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- (d) 90% of all tyres supplied per financial year by the tyre producer to the Australian market for the first time, by the end of the tenth year this Measure applies to the tyre producer.
  - (4) The annual recycling performance of a tyre producer is to be measured as a percentage of the quantity of end-of-life tyres (in EPU) recycled during the year compared with the quantity of tyres (in EPU) that the tyre producer supplies to the market for the first time during the same period.
  - (5) For the purposes of this Measure, an end-of-life tyre EPU is considered to weigh 16% less than the EPU of a tyre supplied to the Australian market for the first time.
  - (6) For the purposes of this Measure, participating jurisdictions may develop guidelines for tyre recycling, taking into account the recycling outcomes achieved under the Agreement.

## **8 Application threshold**

The application threshold for this Measure is .... EPU of tyres supplied to the Australian market for the first time per financial year *[to be inserted following public consultation]*

## **9 Exemptions and enforcement of obligations**

- (1) Participating jurisdictions must ensure that a tyre producer is exempt from the obligations imposed under clause 7 if:
  - (a) a tyre producer falls below the threshold in clause 8; or
  - (b) a tyre producer is a participant in an approved scheme.
- (2) Participating jurisdictions must not penalise a tyre producer for failure to discharge the tyre producer's obligations unless the tyre producer has first been notified of the need to comply with the obligations and the tyre producer fails to comply.
- (3) Participating jurisdictions must establish offences carrying substantial financial penalties for tyre producers that fail to comply with the obligations under clause 7 or provide false or misleading information.
- (4) Participating jurisdictions must allocate sufficient resources to enforce compliance with this Measure.
- (5)

## **10 Dependence on Agreement**

Participating jurisdictions must ensure that the obligations imposed pursuant to this Measure have no effect if the Agreement ceases to be in force.

## **11 Review of this Measure**

This Measure must be reviewed simultaneously with reviews of the Agreement.

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## Part 4 National Environment Protection Protocols

*Note* The purpose of this Part is to set out protocols for the process to be followed to enable participating jurisdictions to assess the achievement of the goal of this Measure.

### 12 Information from tyre producers

- (1) Subsequent to clause 7(1)(b), tyre producers must collect the following information for each financial year and report it by 30 September:
  - (a) the type and quantity of tyres (by number of tyres and EPU) supplied to the Australian market and the jurisdictions in which they were first supplied (imported or manufactured) and the jurisdictions in which they were supplied to consumers;
  - (b) the type and quantity of tyres (by number of tyres and EPU) collected by or on behalf of the tyre producer and the jurisdictions from where the tyres are collected;
  - (c) the type and quantity of tyres (by number of tyres and EPU) recycled by or on behalf of the tyre producer, and the jurisdictions in which the tyres are recycled; and
  - (d) the type and quantity of tyre derived product produced as a result of the recycling.
- (2) A participating jurisdiction must require each tyre producer in its jurisdiction to:
  - (a) keep records of the information for a period of eleven years; and
  - (b) make the records available for inspection by the participating jurisdiction.
- (3) A participating jurisdiction may make arrangements to periodically audit the records kept by tyre producers in its jurisdiction under this clause.
- (4) A participating jurisdiction must maintain the confidentiality of commercially sensitive information given to it by tyre producers under subclause (1) and must not publicly release any information relating to a tyre producer unless:
  - (a) the tyre producer consents to the release of the information; or
  - (b) the participating jurisdiction is legally compelled to release it; or
  - (c) the information is aggregated with other information so as to conceal its source.

### 13 Supporting data

- (1) The Commonwealth must, for each financial year, collect the name and address of each importer of tyres, the number and type of tyres imported, and the jurisdiction and port of the import.

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- (2) The Commonwealth must provide this information in an electronic format on a periodic basis, to each participating State and Territory to assist those jurisdictions in identifying tyre producers who are not participating in an approved scheme and the flow of tyres in the market.
  - (3) Participating jurisdictions must agree to share with each other information on the name and address of each domestic manufacturer of tyres in their jurisdiction that are not exempt from this Measure and the number and type of tyres manufactured.

#### **14 Information supplied to the National Environment Protection Council**

- (1) For each financial year the National Environment Protection Council must publish an annual statement of overall national performance of the tyre recycling sector, including all approved schemes.
- (2) The statement must be published as soon as practicable after 30 September following the end of each financial year.
- (3) For the National Environment Protection Council to be able to publish a statement of overall national performance for the tyres sector as soon as practicable after 30 September each year, each participating jurisdiction must provide to the National Environment Protection Council, as soon as practicable after 30 September each year, the following information:
  - (a) information gathered from tyre producers under clause 12;
  - (b) information related to complaints received, investigations undertaken and prosecutions mounted pursuant to this Measure;
  - (c) an analysis of the information.
- (4) For the National Environment Protection Council to be able to publish a statement of overall national performance for the tyres sector as soon as practicable after 30 September each year, the Commonwealth must provide to Council, by 30 September each year, the information in clause 13(1).