

CONSULTATION ON THE DRAFT INDUSTRY WASTE TYRE MANAGEMENT PLAN
GG No. 46017, 9 March 2022

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1 Background

1.1 Introduction.

Waste tyre management in South Africa has been going backwards since 2017. The current Section 29 process is a further retrogressive step, and fully deserves to be described as irrational.

On 9 March 2022 the 9th draft of an Industry Waste Tyre Management Plan (**IndWTMP**) was published. It was the 3rd draft published for comment, arriving almost two years after Draft 1 dated March 2020, which in turn was more than two years after the first, and so far, only, IndWTMP was officially withdrawn.

In brief, this latest draft fails to live up to its purpose. It is not an IndWTMP, it is not even a framework for creating an IndWTMP. It evidently cannot be implemented as it stands, nor can any plan created according to its terms succeed. Indeed, it leaves the creation of a plan to the eventual “implementer(s)”. It is like specifying that an aeroplane must be built using bricks and mortar, with the implementer(s) having to supply the anti-gravity machine.

It fails on multiple fronts:

- It has internal contradictions
- It is based on data and assumptions that are variously incorrect or distorted
- It ignores history and the facts of what is happening on the ground
- It is frequently vague and lacking substance
- It evinces a lack of practical business and operational experience
- It bows to vested, and conflicted, interests that will thwart its purpose
- It multiplies authority and divides responsibility across so many parties and committees that no-one could ever be held accountable for failure to meet goals

There is evidence of an ideological clash between supremacy of the State and the exclusion of private entrepreneurship when it dictates that no management company can be appointed and all assets must be owned by the State on the one hand, and on the other hand giving an industry-dominated body (the Industry Advisory Committee) pervasive influence and control.

Last, but certainly not least, is that – as states in its preface – it is meant to be subordinate legislation, yet it contains ambiguities, contradictions, shared accountabilities, and open-ended terms that are inadmissible in legislation.

These failings are compounded by the evidently unprofessional presentation: spelling and grammatical errors, layout errors, unresolved references (e.g., “item 0”), lack of paragraph numbering, needless repetition, careless references to committees with multiple versions of a name, inconsistent use of abbreviations (IndWTMP, IWTMP) and ‘almost’ repetitions that contradict one another.

It is hard to credit that, as of May 2021, this IndWTMP had already cost R2.2 million¹ and has been through 9 drafts.

¹ Parliamentary Monitoring Group minutes of meeting of 25 May 2021. Ms Mamagola Musekene, DDG:Chemicals and Waste Management: “*the development of the CSIR’s section 29 IWMP plan had cost around R2.2 million*”.

We provide our commentary under the headings of the major failings, and a detailed analysis spreadsheet as an annexure for the reader wishing to delve deeper into the detail.

1.2 History

It is important to review this latest draft in historical context because the context makes its shortcomings even more inexplicable.

South Africa had a functioning waste tyre management plan, the REDISA Plan. It operated from February 2013 to October 2017, though from February 2017 its funding was cut off, and in June 2017 it was unlawfully placed in provisional liquidation with its directors suspended. The provisional liquidation was finally overturned by the Supreme Court of Appeal in a judgment affirming the unlawfulness of the provisional liquidation and absolving the directors of the baseless accusations of fraudulent and corrupt activity on which the provisional liquidation had been founded.

Chart 1 shows the history of waste tyre management in South Africa. The first three years show steady growth, at a rate that exceeded any comparable waste tyre plan internationally. In 2016, the forces conspiring to break REDISA were having some effect and the threat of funding being removed from 1 February 2017 was affecting operations.

In 2017, the Waste Management Bureau (**WMB**) took over, and there was a precipitous decline.

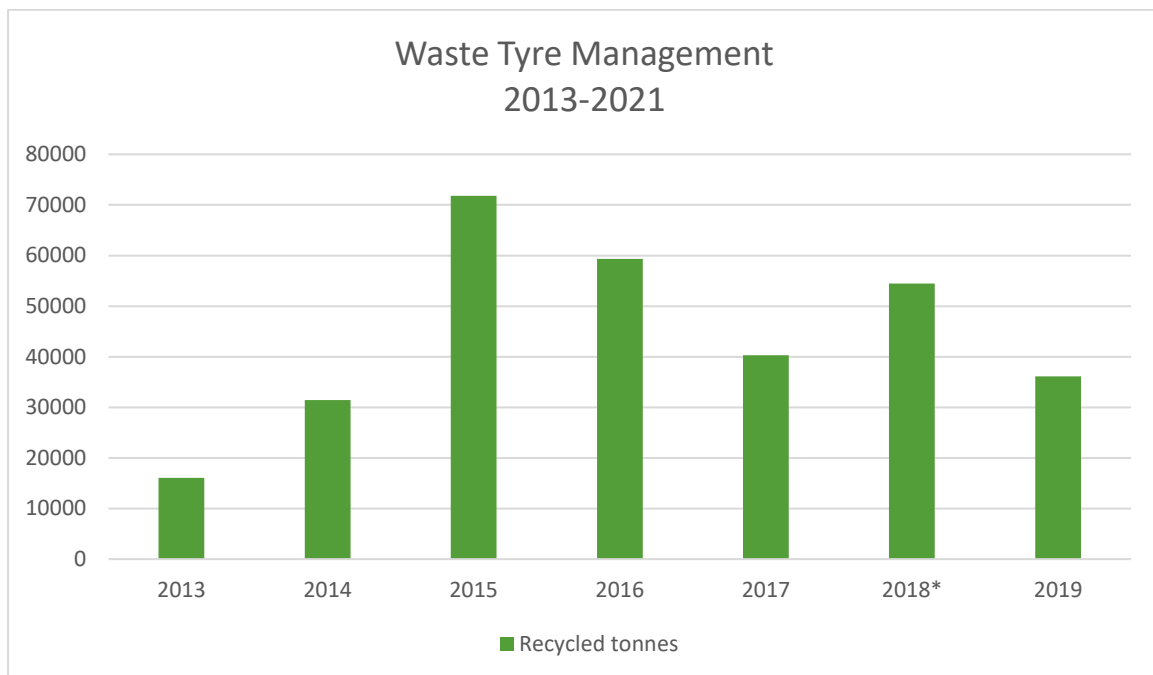


Chart 1: Waste Tyre Management Progress²

² *The 2018 figure is drawn from item 2.6.1 of this Draft 9: “In 2018/19, approximately 54 460 tonnes of waste tyres were processed”. The Department’s 2020/21 Annual Performance Plan (APP) cites 85,133 tonnes (exactly 50% of the estimated 170,266 waste tyre arising), but this is the identical figure for the target set in the 2018/19 APP and appears to be a transcription error.

There is little publicly available reporting on the WMB's rates of collection and recycling post 2019, as is evidenced by the lack of data in this Draft 9. Nevertheless, it is clear there has been a progressive worsening of the situation, as documented in the latest IndWTMP draft:

- Storage sites are overflowing yet the WMB is unable to supply processors (Executive Summary, Introduction, item 3.4.2).
- Tyre dealers are not getting collections (Executive Summary).
- Storage site operators are not being paid (item 2.5.5).
- Resource allocation is in chaos (item 2.5.5)

Chart 2: Progression of WMB plans shows the WMB's reported actuals and targets for % diversion of tyres (as extracted from the DFFE Annual Performance Plans). What can be seen is that the reporting is inconsistent (for 2017/18 no information at all was provided), targets are simply decreased and moved out each year, and implementation stutters and declines.

In short, there is a near collapse of the system.

And now, in this draft IndWTMP, the lessons learned from the initial success as well as those learned from the subsequent failure are not being applied. Indeed, much of what made REDISA successful is being explicitly rejected.

1.3 The Future

The parlous state of waste tyre management today is reflected in the lack of ambition in this draft plan. The targets in item 3.4.2 (Objective 1) and Table 6 aim only to achieve "80% by 2035 of the annual inflow of waste tyres" processed/recycled – in another 13 years.

The REDISA IndWTMP achieved 45% after three years³. This IndWTMP aims to get back to that level only in another six years - twice as long as it took to get there the first time from a zero base.

³ REDISA figure for calendar 2016: 78,308 tonnes of an estimated 174,000 tonnes waste tyre arising delivered to processors.

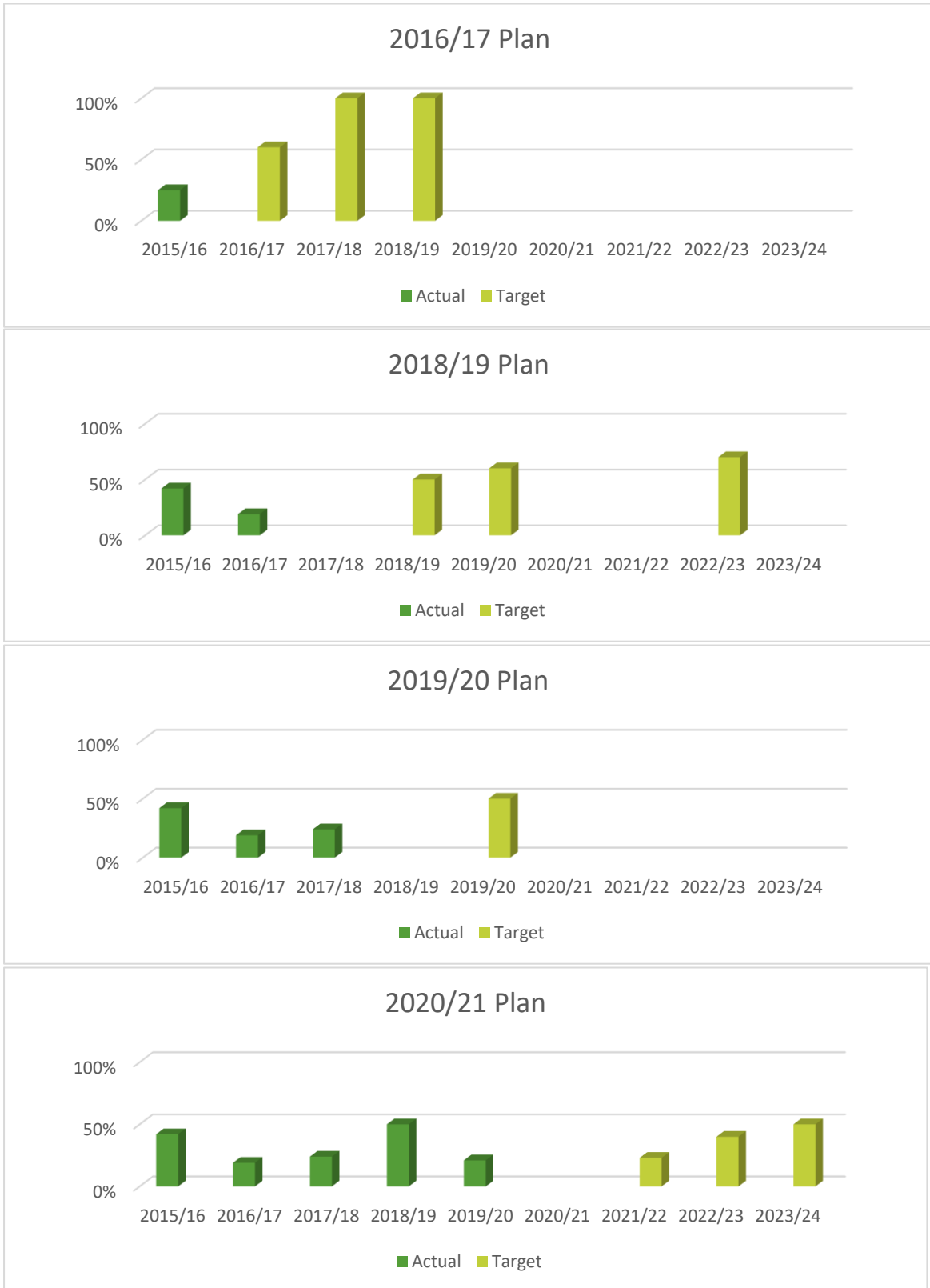


Chart 2: Progression of WMB plans

2 Commentary

An IndWTMP, as its name indicates, must be an actionable plan; one that specifies how and subject to what rules and constraints it will achieve its ends. This Draft 9 fails to do this.

The commentary that follows is regrettably not able to propose remedies but serves to illuminate why on so many fronts this bricks-and-mortar aeroplane will not fly.

2.1 Budget

This IndWTMP's most fundamental omission is a budget: this is a component of the anti-gravity machine that is left for the implementer(s). Despite the lack of any attempt to quantify an overall budget it still proposes a percentage breakdown by functional area. Worse, it also makes clear that any organisation which takes on the implementation of a plan based on this draft must operate under the uncertainty of annual budget allocations from Treasury, which will not ring-fence funds for this purpose. The Annual budgets proposed by the implementer must further be vetted by the WMB and the Department as well as have the blessing of the Industry Advisory Committee (**IAC**). (This last raises further questions that we address later.)

The narrative in the draft gives little reassurance on adequate budget allocations being made, given a history of inadequate funding:

- micro collector collections have been limited by funds available (item 2.5.4)
- storage sites are not able to pay their monthly expenses (item 2.5.5).

The proposed percentage allocation by functional area (Table 7, p. 40) is presented unsupported by any calculations. In a presentation to selected stakeholders on 5 April 2022 the rationale given was that the drafters reviewed all plans submitted in the past to arrive at these figures. It is highly questionable why anything should be based on plans which were all – with the exception of the REDISA plan, assuming that was included – rejected. The numbers are not even closely aligned to the only approved and proven workable plan (REDISA's) with an actual operational history.

The percentages are supplied as “*guidance*” without any evidence of underlying substantiation and with no attempt to say what amount the percentages are percentages of, rendering the table meaningless. It is in any event moot what role ‘guidance’ plays in subordinate legislation. Is it of any force? If not, why include it?

2.2 Imprecise language

There are many instances where the drafters, rather than applying their minds to set out fully what is to be done, use imprecise open-ended phraseology:

Item 3.4.3⁴, p.29 “*Performance indicators for waste tyre processing **must include but are not limited to***”⁵”

⁴ There are unfortunately no paragraph/item numbers in the body of the IndWTMP, so we use the paragraph numbers (called ‘items’ in the IndWTMP) drawn from the table of contents, and for ease of reference include the page numbers.

⁵ The bold text used in this commentary is for our added emphasis.

- Item 3.7.2, p.33 *“Incentive schemes developed for the waste tyre industry must therefore include, but not be limited to:”*
- Item 3.7.4, p.33 *“Issues that must be considered when waste tyre storage sites are identified include, but are not limited to”*
- Item 4.2, p.36 *“Members of the IAC must include, but not be limited to:”*
- Item 4.7.3, p.41 *“Performance indicators should include, but not be limited to:”*
- Item 4.7.4, p.41 *“Suitable progress and performance indicators that will be monitored and reported on relate to amongst others”*
- Item 4.7.4, p.41 *“Reporting must include, but not be limited to:”*
- Item 5.1, p.43 *“The implementer(s) is the administrator of the implementation of the IndWTMP and therefore must, amongst others:”*
- Item 5.4, p.46 *“The functions of the IAC include but are not limited to”*
- Item 6.2, p.50 *“The migration process must include, but not be limited to the following:”*

The IndWTMP correctly states in its Preface that it will be subordinate legislation. Legislation must be clear and unambiguous. It is not possible to comply with an 'amongst others' or 'not be limited to': this is evidence of a half-baked job, attempting to cater for anything not considered by using imprecise open-ended phrases.

2.3 Black Economic Empowerment and Transformation

It should be recognised that waste management, especially in the context of the Circular Economy, represents a special opportunity for Black Economic Empowerment and Transformation. The Circular Economy is mentioned in the IndWTMP in the first objective in the Executive Summary, it is at the heart of the Mission Statement (item 3.2), and features in the primary objective (item 3.4.1). Despite this focus, there is only one further mention, in the introduction to item 4, *Waste tyre management model adopted by this IndWTMP*. Unfortunately, that is where it stops, and the topic is abandoned.

The Circular Economy is a nascent field in South Africa, one where Government could support and encourage BBBEE in a green field, driving transformation by 'baking a new cake' instead of fighting to take a share from established interests. This opportunity has been totally ignored, other than one reference to incentive schemes having to include *“Black economic empowerment ... to support increased participation of previously marginalised citizens and regions”* (item 3.7.2(a), p.33) and the token inclusion of the Black Business Council in the Industry Advisory Committee.

Black Economic Empowerment and Transformation, and the Circular Economy, have been thrown in as a garnish to improve the appearance of the dish without adding to the meat of it.

2.4 Factual Errors and Distortions

A plan that presents wrong or misleading information is suspect. This draft has several examples.

- pp.3,4,5,35 There are multiple references to the inception date of the original waste tyre plan being 30 November 2012. This is incorrect: the plan was gazetted on that date to be effective from 1 February 2013.

- Item 1, p.5 *"The recycling rate for waste tyres in South Africa is approximately 20%".* This may be correct, but it is a dereliction not to note that the recycling rate, which had been climbing from 2012 (4%) to 2016 (45%) fell dramatically in 2017 and has still not recovered. Understanding the reasons for this is surely very important when attempting to draft a new IndWTMP.
- Item 2.1, p.10 *"The **estimated** total weight of these new tyres is 300 000 tonnes."* The draft points out in item 2.4, p.15 *"tyre producers must submit declarations on the quantities of tyres produced and imported to the WMB on a quarterly basis"* yet fails to explain why the total weight of new tyres is only 'estimated'. In terms of NEM:WA S29(5) *"An organ of state contemplated in subsection (1), may, by written notice, require any person to provide such information as may be necessary to prepare the industry waste management plan."* These figures should be accurate, whether obtained from the WMB or from SARS.
- Item 2.2, p.11 The tables (Table 1 and Table 2) showing the state of storage sites clearly have errors which can be seen without even checking the state on the ground. Glen Austin and Midrand are listed as two depots of almost the same size (9 400 m² and 9 500 m²), and according to Table 1 both are at 100% capacity. However, according to Table 2 Midrand has on average more than 20 times as many tyres as Glen Austin. This is not credible. One site must be 5% full, or the other 2000% full. Or the data is simply unreliable. This is underscored by the implicit acknowledgement that the WMB does not have reliable data, as the urgent need for an audit of stockpiles is stated and variously assigned to the WMB (who arguably should have done this already) and the implementer(s).
- Item 2.5, p.15 *"The WMB reported a year-on-year increase in waste tyre processing between 2017/18 and 2018/19".* This is highly selective reporting that gives an impression of progress. A look at the history in prior years and post 2018 (see our Chart 1 and Chart 2 above) raises questions that this IndWTMP should be addressing. The history of earlier years was not unknown to the draft authors as it is indeed shown in item 2.6.1, p.20, although without commentary. There are further questions if one tries to correlate the data presented here with the figures reported in the DFFE's Annual Performance Plans (see footnote 2 on page 3 of this commentary).

2.5 Vague Language

Subordinate legislation requires precision. This draft has many imprecise, ill-defined, or ambiguous areas.

- Item 3.4.3, p.28-29 Objective 2 sets out targets and performance indicators without stating clearly who is accountable. Some are broad, such as a performance indicator for waste tyre processing: *"Percentage contribution of waste tyre processing to the South African economy"*. Who exactly must answer for this? The WMB? The Implementer(s)? The waste tyre processing industry as a collective? Even if the accountable party is identified, how will it be measured? Will it include evaluation of the avoided costs of pollution, landfill, and waste management? It is a grand-sounding objective, but it floats unsupported in the air.

- Item 4.1, p35 "c) *Industry must be involved in the implementation of the IndWTMP on an ongoing basis through the IAC established by the WMB;*" How must 'be involved in' be interpreted in a piece of subordinate legislation?
- Item 4.6, p.38 "*The IndWTMP must be reviewed at least every five years*" Who must review the IndWTMP is not specified. Stating that something must happen without identifying who is responsible is pointless. Presumably in this case it is not the WMB, since item 4.7.5 stipulates that the WMB must do a detailed evaluation annually.
- Item 4.7, p.45 "*The WMB may at any time, require information into the monitoring and reporting data used or generated whether that data was generated by the Implementer(s) or by any of the role-players in the management of waste tyres or received from any other role player or service provider.*" This is extremely broad and very unclear as to who must produce the reports. It should set out clearly which role players must report, and what they must report on.
- Item 4.7.5, p.42 "*The IndWTMP must be evaluated by the WMB on an annual basis in terms of the following:*
i. *Informed by the IAC, an evaluation of the practicality and efficiency of administrative processes, logistics, and operations associated with the implementation of the IndWTMP;*" This raises many questions.
- Foremost, this Draft 9 purports to be an IndWTMP, although we submit it is not even a proposed framework for creating a plan. The wording and context here tacitly admit that, and it appears it is up to one or more implementers to create an IndWTMP.
 - What does '*informed by the IAC*' mean? If the IAC is to contribute meaningfully to any evaluation it must carry out detailed inspections and monitoring for its opinion to be '*informed*'.
 - Why is this responsibility being at least partially delegated to the IAC?
 - What expertise and competencies will the IAC bring that qualifies it to play this role? None of the parties designated as comprising the IAC have special experience in waste tyre management.
- "iii. *Recommendations for improvements of the IndWTMP.*" Whose recommendations? How can a plan be '*evaluated ... in terms of ... [unspecified] recommendations*'? What does this mean in practice?
- Item 5.1, p.44 The implementer(s) must:
- "i) *Coordinate the waste tyre logistics and technical advice provided by the IAC;*" What does this mean? How are logistics and advice to be coordinated?
- "j) *Ensure that depots have some form of value adding to create a competitive base for profit seeking.*" This is too vague for legislation, nor does it explain why receiving, storage and despatch of waste tyres do not constitute value add. These activities certainly add value to the waste tyre management chain.

"l) Ensure that all the role players fulfil their role in accordance to this of the IndWTMP [sic];"

"n) Put measures in place to ensure that no waste tyres end up in illegal markets or in the environment;" These requirements make the implementer(s) responsible for wide-ranging investigative and policing actions that require levels of authority and powers of enforcement that it is surely beyond the authority of the IndWTMP to assign to them.

"o) Collaborate with the waste tyre sector on an ad-hoc basis but at least on a quarterly basis through scheduled meetings with the IAC (refer to item 4.6.3) to achieve the objectives of the IndWTMP". This is very lacking in specifics. Mandating 'collaborate' in legislation is difficult if not impossible, let alone when qualified by 'ad hoc'.

Item 5.3, p.46 The WMB must:

"e) Assist with the development of award criteria for surety of supply contracts;" Too vague to be in legislation, but in any event in contradiction with item 4.3 which states "the WMB must play a monitoring/oversight role and not an operational role in waste tyre management in South Africa". This is an operational matter.

2.6 Contradictions, Inconsistency or Unimplementable

There are many instances where Draft 9 contradicts itself or is inconsistent. It is poorly organised, with the same or similar points repeated, often with competing import.

Executive Summary The unnumbered Table in the Executive Summary gives responses to items "d) Measures or programmes to minimise the generation of waste and the disposal of waste" and "f) The phasing out of the use of specified substances" (dismissed as "not practical at this stage to address these") which are contradicted by the response to item "g) Opportunities for the reduction of waste generation through change to packaging, product design or production processes" which refers to R&D and innovation as an answer, which would indeed address d) and f).

Executive Summary In item l) is stated: "The approval notice of the plan will specify the intervals at which the plan must be reviewed." This is pre-empted in the plan:

Item 4.6, p.38 "The IndWTMP must be reviewed at least every five years" which restricts the Minister's powers.

Item 3.4.2, p.27 This is the first mention of "an independent evaluation committee". What appears to be the same committee has this and two variations of the name, two different entities assigned to establish it (the Department and the WMB), and two different versions of the required membership. This is careless drafting that is unacceptable in subordinate legislation. (See Table 1: Committee confusion in paragraph 2.11 below for details.)

Item 3.4.3, p.29 "Number of permanent employment positions created per thousand tonnes of waste tyres processed." This is listed as a KPI for the WMB which is referenced again in 5.3, but without specifying the direction of the aim. Must the WMB aim to achieve efficient, cost-effective operations (low jobs per tonne), or labour-intensive operations even if they are more costly? It seems likeliest that the

IndWTMP is proposing that the WMB will get high marks for being very labour-intensive, which risks it becoming confused with an EPWP.

- Item 3.5, p.31/32 The implementer(s) must:
"Ensure that no waste tyres end up in illegal markets or in the environment;"
"Ensure that tyre manufactures [sic] and dealers conduct awareness-raising campaigns targeting consumers on the proper care and efficient use of tyres to extend their useful life;"
"Monitor and report non-compliances of the different role players of the IWMP"
 These are very broad responsibilities that require the implementer(s) to police all role players, including the general public. The implementers(s) would need to be given enforcement powers to carry out these duties. See also our comments in paragraph 2.5 against item 5.1 where similar obligations are set out.
- Item 3.7.4, p.33 *"The Implementer(s) must conduct an audit of existing waste storage sites".*
 Item 4.5, p37 *"The WMB must undertake an audit of stockpiles of waste tyres "*
 Item 6.2, p.50 *"b) The Implementer(s) must conduct an audit of equipment, and the current stockpiles of waste tyres".* The IndWTMP provides for multiple implementers, so potentially multiple implementers and the WMB must all undertake stockpile audits.
- Item 4.2, p.36 *"the IAC must be a voluntary, consultative and discretionary forum with no legal powers."* This is contradicted by the pervasive influence given to the IAC, who amongst other points must review the implementer(s) budgets and reports before they are submitted to the WMB. See items 3.4.3, 4.1, 4.6, 4.6.3, 4.7.5, 4.7.7, 5.1, 5.2, 5.4 and 6.2. In fact, in at least five places the IAC does have legal powers: certain steps must be taken *"in consultation"* with the IAC (items 3.4, 4.1, 4.6, 5.2 and 6.3). Consultation means that concurrence is required.
- Item 4.3, p36 *"the WMB must play a monitoring/oversight role and not an operational role in waste tyre management in South Africa"* This is contradicted by the following points:
- Item 4.4, p37 *"The Department must in collaboration with the Implementer(s) and WMB design suitable incentives for such pre-processing."*
- Item 4.4, p.37 *"the Department and the WMB through strategic engagements with other government departments and agencies must initiate and pursue the development of incentives for the development of the waste tyre processing market."*
- Item 4.6.1, p39 *"The WMB will oversee the implementation of the IndWTMP, through:*
...b) Development of incentives and management of incentive schemes
c) Disbursement of incentives and funds for the implementation of the waste hierarchy throughout the waste tyre value chain"
- Item 5.3, p46 The WMB must:
"e) Assist with the development of award criteria for surety of supply contracts"
 These are all matters that directly affect operations.
- Item 4.4, p.37 *"Compulsory on-site pre-processing **must** be done at waste tyre storage sites",*
 but then:

- Item 5, p.43 *"It should be noted that pre-processing of waste tyres **may** be done at any waste tyre storage site, pre-processing facilities or at waste tyre processors."* Is it 'must' or 'may'?
- Item 4.6.3, p.39 *"The reporting by the tyre industry must include; the amount [sic] of waste tyres recovered, recycled, treated, or disposed of."* How can the amorphous "tyre industry" be obliged to do this reporting? How would a representative from the tyre industry, if one were appointed and tasked with this, be able to aggregate this information? What does 'amount' mean? Mass, or units? Elsewhere in the IndWTMP they refer variously to quantity, number, and 'number and types'. The confusion of ways of measuring compounds the ambiguity here.
- Item 4.7.3, p.41 *"All role players ... monthly reports must ... be submitted by the 7th of the month"* but immediately after:
- Item 4.74, p.41 Implementers must *"iii. submit all progress reports by the 15th of the month following the reporting period."* The term "All role players" must include implementer(s). Which then is the implementer(s) due date: the 15th or the 7th of the month?
- Item 4.7.8, p.43 *"the primary objective of the IndWTMP is to reduce waste tyre stockpiles"*. In the Executive Summary, where the three main objectives are stated, there is no mention of waste tyre stockpiles. How can an objective be the primary objective but not be mentioned in the Executive Summary?
- Item 4.7.8, p.43 *"The Implementer(s) must establish a benchmark for job opportunities that should be realised per tonne of waste tyres processed."* But then:
- In item 5.3, p.46 The WMB must *"Establish a benchmark for job opportunities that should be realised per tonne of waste tyres processed to qualify for incentives;"*. Is this the implementer(s) task or the WMB's? If there are multiple implementers, must they all do it?
- Item 5.1, p.44 *"The Implementer(s) may not appoint a management company or any other company to manage the duties, obligations and responsibilities of the Implementer(s) on its behalf;"* This stricture is inserted with no rationale and nothing to identify if it is there for operational, ideological, or political reasons. It is arguably irrational.
- Item 5.1, p.44 The responsibility for research and development is multiply assigned. A responsibility of the implementer(s) is to *"Support research in new viable and environmentally sustainable technologies in respect of the processing of or the utilisation of waste tyres and secure investment for the implementation thereof, if financially viable"*.
- Item 5.3, p.46 The WMB must:
But on the next page:
The WMB must:
"k) Ensure and/or undertake research and development to support the implementation of the IndWTMP."
And earlier we have additional oversight stipulated:

- item 4.7.7 *“Each project must be guided by a Project Steering Committee convened by the Implementer(s). Members of the IAC, among others, must be invited to serve on every Project Steering Committees”.*
- Item 5.2, p.45 The Department must:
“h) Establish an independent evaluation committee to evaluate Eol submitted by tyre processors;
i) Oversee the coordination of waste tyre logistics;” The distinction between the Department and the WMB is never made sharp, but we see here a very much operational role being taken by the Department.
- Item 5.7, P.47 Persons in control of a collection point must:
“b) Keep record of the number and types of mutilated waste tyres;
c) Report the number and types of mutilated tyres to the WMB and to the Implementer(s);” This is stipulated here, but not in item 5.6 for Tyre Dealers. Why are tyre dealers and collection points dealt with separately when the definition of a collection point includes tyre dealers? Must tyre dealers do this, or not?
- Item 4.7.6, p.41 *“the new implementer must negotiate with the contracting party to have the contract ceded.”* It is not clear whether this can be made a legal obligation on both parties. There is also a contradiction: in item 5.9 it is made the responsibility of the waste tyre processor rather than the implementer(s) to contract with the implementer(s) who must *“Enter into an agreement with the Implementer(s)”*.
- Item 5.13, p. 49 The duties of *“Tyre Consumers”* are badly defined. Tyre consumers themselves are not well-defined, though according to 2.5.8 they would comprise:
 - General public
 - Government services
 - Mining
 - Agriculture
 - Transport
 - Manufacturing (OEM vehicles)

Assuming this context, then the first duty, *“manage all waste tyres in his or her possession or control, or cause such waste tyres to be managed in accordance with the IndWTMP”*, is a circular reference: it just leads the tyre consumer back to itself.

The second duty, *“prevent such waste tyres from being dumped or disposed of in a manner that has the potential to cause environmental pollution or ecological damage”*, is too broad to apply to the general public who do not have policing powers.
- Item 6.2, p.50 The implementer is required to take over the systems of the WMB *“to remain [emphasis added] operational, current and efficient for the management of waste tyres”*, and *“The WMB must train and support the Implementer(s) on the running of the system”*. This is stipulated despite the IndWTMP itself setting out the dismal state of the WMB systems. Why must an implementer perpetuate a failed system?

Incentives	The bodies responsible for developing incentives are set out in three places, but with different constituents in each:
p.28	Department, WMB, DTIC, National Treasury, implementer
p.37	Department, WMB, implementer
p.45	Department, WMB, DTIC, National Treasury, implementer, IAC

2.7 Poor Business Sense

Much of the IndWTMP makes stipulations that are blind to the real world of business.

2.7.1 Budget and Contract timescales

The need for long-term contracts (7 to 10 years) to make investment in Waste Tyre Processing Companies (**WTPCs**) viable is acknowledged, yet the implementer(s):

- Must submit annual budgets for approval (and so cannot have a planning horizon longer than one year).
- Will only be appointed for 5 years.

The various stipulations around budget cycles, authorisations and obligations listed below are mutually incompatible:

Item 3.3, p.26 *"the Implementer(s) must submit an annual business plan and budget to the WMB and the Department, which annual business plan and budget must be approved by the WMB and the Department before implementation."* This must be followed by *"a budgetary allocation from National Treasury"*.

Item 3.4.2(a), p.27 Objective 1 includes *"increase surety of supply contracts to waste tyre processors to support investment in the sector;"* Longevity of contracts is central to this.

Item 3.4.3, p.27 Objective 2 includes *"c) providing binding supply contracts (7-10 year) between the Implementer(s) and waste tyre processors to support investment in the sector;"* Agreed, but it cannot be done given the other stipulations.

Item 4.1, p.35 *"d) Waste tyres must be made available free of charge to WTPCs (i.e. the Implementer(s) may not charge for waste tyres as delivery will initially be subsidised). **This situation must be reviewed on an annual basis** [emphasis added] in consultation with the IAC;"* The concerns of the WTPCs over longevity of contracts will be heightened by this indication that their input costs will be subject to annual review and require the IAC's agreement.

Further, the reviewing parties are not specified: reviewed by whom? This item only adds that whoever does it must do so *"in consultation with the IAC"*. In legislation, this means that the IAC must concur with decisions made. The lack of clarity on who must review – save for the unjustified special role of the IAC – is not only concerning for WTPCs but also unacceptable wooliness for subordinate legislation.

Item 4.6.3, p.39 *"The Implementer(s) must submit the required budget to implement the IndWTMP in line with the Department budget cycle, together with the updated business plan, to the WMB to facilitate its application for a budgetary allocation."*

Item 6.1, p.49 *"It is desired that ... the appointment of the Implementer(s) be limited to 5 years in the contract with the WMB, with the option of renewal or extension thereof, provided that National Treasury agrees to such renewal or extension."* The phrase 'it is desired' is out of place in subordinate legislation: is this a stipulation, or is it not? Either way, it introduces timescales shorter than the 7-10 years in Objective 2. We note that item 4.1(f) stipulates fixed term contracts, but without specifying a term.

These stipulations are mutually incompatible. An implementer cannot make long-term commitments, neither to third parties nor to its own infrastructure, under these conditions.

A further critical stumbling block is that the entire implementation is to be subject to the Public Finance Management Act (**PFMA**):

Item 4.1, p.35 *"e) Implementer(s) of the IndWTMP must be appointed on contract following a tender- based approach by the Department; the procedures must be governed by the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000) and the Public Finance Management Act, 1999 (Act No. 1 of 1999)"*

Although this relates only to the appointment of the implementer(s), it becomes clear that the PFMA will continue to be applicable:

Item 4.7.6, p.42 *"The systems developed, the moveable property procured, material developed, intellectual property obtained by the implementer and the equipment procured as part of the implementation of the IndWTMP, must form part of the asset register and must form part of the property of the state."* The wording here is confused: "the asset register" is not defined – whose asset register? But if all must be property of the State, then it is presumably the State's asset register which only the State can manage.

There are significant consequences of mandating that all IP and equipment is to be State property:

1. The PFMA must be followed for all such purchasing. PFMA processes are notoriously lengthy and subject to challenge, which will slow down implementation of the IndWTMP considerably. Even ancillary issues like arranging insurance and maintenance are the State's responsibility which, even if delegated, must be carried out within the PFMA framework.
2. The accounting complications of managing a complex implementation without ownership or control of any assets are immense.
3. The ability to create models to support transformation involving eventual transfer of assets to Black entrepreneurs becomes difficult, if not impossible.

It is noted that in the last publicly available draft (Draft 2, 16 July 2020), the difficulties of operating under these conditions were recognised. In that draft it stated:

"The limitations on Government to contract with small businesses serves as evidence that Government should not be involved at the current level of the WMB in the operations of an Industry Management Plan." (paragraph 1.3.4)

and

“... examples of a government-managed tax or levy, such as in the case of plastic bags and tyres, have been less successful in contributing towards improved management of these products at end of life. The WMB taking over management of the tyre plan under a government managed scheme did not result in improved waste tyre management in South Africa.” (paragraph 5.2)

These insights have been removed in the current draft. Surely some explanation of what prompted such a reversal is necessary.

2.7.2 Overlapping Responsibilities

A basic business principle is the need for clear lines of responsibility and authority. When multiple parties have a say, a bad decision triggers a round of finger-pointing and no-one accepting or being able to be firmly landed with responsibility. This IndWTMP has many examples of this.

Item 3.3, p.26 *“The WMB, the Implementer(s), and obligated industry (manufacturers and importers) are coresponsible [sic] for monitoring and surveillance of this IndWTMP.”* With three co-responsible parties, who ultimately is accountable?

Item 3.7.2, p 33 *“applications [for waste tyre processors] evaluated by an incentive evaluation Committee established by the WMB”* and in 3.4.3 *“The incentives evaluation committee will comprise of representatives from the following organisations: if) 2 officials from CWM branch of the Department; ii) 1 official from WMB; iii) 1 official from DTIC; iv) 1 representative from the IAC”*. With all these parties involved, the responsibility to develop a waste tyre processing industry will not be able to be squarely placed on any party, and no-one will be able to be held accountable.

Item 4.7.3, p.41 Performance indicators applied to *“all role players with reporting duties”* include *“b) Adherence to waste tyre mutilation guidelines by tyre dealers; “c) Adherence to mandatory collection of mutilated Waste Tyres by waste collectors;”*
Who is being measured and held accountable for these? Who has the authority, and the policing capacity, to be held accountable? It cannot be assigned to *“all role players”*. This lack of legal clarity leads to the proverbial reason for nothing being achieved:

Everybody thought Somebody would. Anybody could, but Nobody did.

Item 4.1, p.41 *“c) Industry must be involved in the implementation of the IndWTMP on an ongoing basis through the IAC established by the WMB;”* No rationale is provided for industry to be 'involved', nor is 'involved' defined. If it is anything other than consultative, then it is another case of divided authority.

Item 5.1, p.44 The implementer(s) must *“Ensure the establishment of a viable waste tyre processing industry in South Africa in coordination with the independent evaluation incentive committee”*. The implementer is given a responsibility but *“in coordination”* with a committee. This is unspecific wording that generates divided accountability.

- Item 5.1, p.44 The implementer(s) must “Support research in new viable and environmentally sustainable technologies in respect of the processing of or the utilisation of waste tyres and secure investment for the implementation thereof, if financially viable”, but do so “guided” by a Project Steering Committee and subject to National Treasury approval. Who is accountable for the outcome?
- Item 6.2, p.50 The implementer is responsible for “Implementing incentives developed by the WMB to upscale pilot plants where feasible.” How can an implementer be held responsible for implementing the WMB’s decisions?
- Item 5.3, p.46 The WMB must: “b) Manage the Implementer(s) through the contract that includes the imposition of penalties for failure to meet set targets;” The multiple parties and committees involved in multiple aspects of the implementer(s) operations, as pointed out in this section, will make it impossible to enforce penalties. The problem is multiplied if there are multiple implementers: how will accountability be apportioned?
- Item 6.2, p.49 “the current contracts should be adhered to. Further to that the new implementer(s) must negotiate with the current contracting party to have the contract ceded.” Apart from the questionable validity of mandating this, if effected it makes the implementer(s)’ success at least partially dependent on inherited contracts which may not be fit for purpose.

All the above points make a mockery of:

- Item 3.7.5, p.34 “Efficient waste tyre management as envisaged in the IndWTMP can only be achieved through holistic planning.” Agreed. Unfortunately, the Draft 9 IndWTMP fragments planning, oversight, responsibility, and authority across multiple entities with conflicting interests.

A secondary but significant concern is the cost implications of the many parties and entities involved in these overlapping responsibilities. Which, if any, will be unpaid voluntary roles?

2.8 Needless Bureaucracy and/or Impracticality

There are stipulations that are impractical:

- Item 3.7.5, p.34 “The Implementer(s) must develop annual human capacity building programmes within one year of the appointment of the Implementor with targets covering aspects of training, mentoring and practical experience at all stages of the waste tyre value chain. A national skills development framework for waste tyre management must be developed by the Implementor, covering the entire waste tyre value chain targeting skills development to facilitate career and business growth.” This is a far bigger task than can reasonably be achieved in one year, especially if the ‘guidance’ on administration costs of 10% (Table 7) is considered.

Requirements have been stipulated that serve no obvious purpose. Most of these have been noted in our commentaries on earlier drafts, yet there is still no rationale provided:

- Item 4.4, p.37 “In the case of tyre-dealers, the invoice issued to clients must indicate that an environmental levy is charged on their tyre bill.” This is not clear at all. Must it show

the quantum? If so, this for no clear purpose creates administrative overhead for everyone in the tyre sales chain, especially when the levy changes. Further, in future as producers make changes to improve recyclability, different tyres may carry different levies. This is manageable at the producer level but becomes very messy at retail level. If a simple statement on the invoice that a levy is charged is all that is required, then that should be made clear.

Item 6.1, p.47 Tyre dealers must: "d) *Keep record of the number and types of mutilated waste tyres;*" To what end? It does not specify that this information must be reported, or to whom, or what the receiving party (if any) must do with the data. If it is an enforced requirement that all waste tyres are mutilated, then the collection figures collated by the implementer(s) will in any event automatically contain this data.

2.9 Vested and Conflicted Interests

EPR places an onus on producers that hitherto has not been there. End-of-life costs (waste management, landfill exhaustion, environmental harm, loss of amenity) have been externalities. EPR internalises these costs, making them a cost of production. Producers see this as a cost they must bear, though in reality it is the end-user who pays as the EPR costs are inevitably passed on to them. Our commentary on Draft 2 addressed this squarely:

"The Draft [Draft2, July 2020] itself (section 1.3.5) identifies many more stakeholders with a greater interest in the plan than the producers, which is reinforced by the list of participants to be consulted (Manufacturers & Importers; Mines, Retailers & Fitment centres; Micro collectors; Depots & Transporters; Processors & Previous tyre plan proponents; Provinces).

"It is inappropriate to let one group, the producers, have control over the plan. They are for-profit entities whose interests are not aligned to the interests of the other stakeholders and society in general. Indeed, operating a PRO would require them to take some steps that are against their interest.

"It should be noted that the Competition Commission reviewed the REDISA plan and the fact that it would be a single plan, and gave the opinion that it was acceptable provided the management of the plan was independent of the industry⁶." [emphasis added]

It is unavoidable that an EPR implementation will have areas of conflict with the tyre producers.

This Draft 9 of the IndWTMP proposes an Industry Advisory Committee: item 4.2 is titled "*The need for an Industry Advisory Committee*", but it provides no substance beyond "*The role of the IAC is to collaborate with the Implementer(s) to ensure the effective management of waste tyres in line with the objectives of the IndWTMP and the achievement of the targets.*" If that is indeed the only support for the asserted need then there is no explanation for why the actual role, powers and influence given to the IAC go well beyond collaboration.

The IAC, which looks to have heavy representation from tyre producers, is gratuitously inserted it into multiple areas of operation:

- The incentives evaluation committee (item 3.4.3, p.28)
- The vaguely stated "implementation of the IndWTMP" (item 4.1, p35)
- Review of WTPCs input subsidies (item 4.1, p.35)

⁶ Competition Commission Redisa Plan Submission 31 August_ 2011.pdf

- Implementer(s) budget submission to WMB (item 4.2, p.40)
- Evaluation of the implementer(s) IndWTMP (item 4.7.5, p.42)
- All R&D Projects (item 4.7.7, p.42)
- Vaguely defined “collaborate with the waste tyre sector” (item 5.1, p.44)
- Review of implementer(s) progress reports before submission to WMB (item 5.4, p.46)
- Prioritisation of implementation (item 6.2, p.50)

There is no reason to suppose that the IAC has any special expertise to bring to all these areas. Indeed, it is contradictory that Industry involvement through the IAC is strongly promoted as a guiding principle (point 7 in item 3.3) even though the industry’s attempts at putting forward their own IndWTMPs have been rejected. This is hardly grounds for ensuring their involvement in establishing a new IndWTMP.

It seems apparent that this IndWTMP has gone to great lengths to accommodate the IAC and the tyre industry, heedless of the conflicts of interest that should be apparent.

2.10 Multiple Implementers

In its guiding principles (item 3.3, p.25) the IndWTMP explicitly contemplates that “*one or more implementer, depending on the feasibility thereof*” could be appointed and underlines this by using the term ‘implementer(s)’ throughout. It is an omission verging on dereliction to propose this without even attempting to address the fleeting reference to feasibility.

Assuming more than one implementer, here are immediate problem areas:

- Who will be responsible for paying and managing storage depots? Or will each implementer have its own dedicated depots? Will transporters and storage depots be grouped by implementer and forbidden to cross over?
- Will WTPCs have to contract separately with each implementer?
- How will their joint responsibilities imposed in item 3.5, p.31, wherein implementers must ensure no waste tyres end up in illegal markets and that tyre manufacturers and dealers conduct awareness campaigns, be managed? How will this be measured?
- How will they jointly manage the audit of waste tyre stockpiles? Two items make this the implementers responsibility (items 3.7.4, p.33 and item 6.2, p.50), although another one (item 4.7 p.37) assigns it to the WMB (whether it is as well or instead is not addressed).
- How will implementers divide the responsibility of developing human capacity building programmes and a national skills development framework (item 3.7.5, p.34)?
- How are multiple implementers consistent with “*the aim to simplify logistics while limiting duplication of functions and costs*” (item 4.3, p.37)?
- Which implementer will take over which contracts (item 4.7.6, p42 and elsewhere)?
- Must the implementers jointly convene Project Steering Committees (item 4.7.7, p42)?
- Is it a joint activity to “*establish a benchmark for job opportunities per thousand tonnes processed*” (item 4.7.8, p43)? What if they disagree?
- Item 5.1, pp.43 & 44 nominates the implementers as the (presumably joint) administrators of the IndWTMP and assigns to them, amongst others, the following obligations:
 - “**Overarching** [our emphasis] *operational management of waste tyre in South Africa*” (how can ‘overarching’ responsibility rest with multiple independent entities?).
 - The responsibility to take over waste tyre management from the WMB.

- Implementation of the IWTMP [sic] and adherence to targets for processing and stockpile reduction.
- Ensuring the creation of an electronic monitoring system of tyre collections and processing.
- Ensure a viable waste tyre processing industry.
- Creating markets for waste tyres and waste tyre processing products.
- R&D.
- Surety of supply to WTPCs.
- Depot value add processes.
- Ensure all role players fulfil their role.
- Record and report all movements of waste tyres.
- Devise a waste tyre transport payment structure.

There is no discussion of the feasibility of sharing these obligations across multiple implementers.

- The WMB is required to impose penalties for failure to meet targets (item 5.3, p.46), which are generally global targets that are the joint responsibility of the implementers. How will those penalties be apportioned? Much litigation is sure to ensue as the implementers blame one another for any failures.
- *"Databases and equipment handed-over to the Implementer(s) must be maintained, upgraded, and/or updated, as the case may be, to remain operational, current and efficient for the management of waste tyres"* How will the separate activities of the implementers be coordinated and/or combined?

It is patent that the commitment in the guiding principles to “one or more” implementer, and the cosmetic use of ‘implementer(s)’ throughout, are no more than sops to a dogma of multiple implementers, in the face of all impracticality and impossibilities. It is incomprehensible that although the topic was addressed at length in the REDISA plan approved by the Department and must have been referenced by the drafters of this IndWTMP, still no attention has been paid to the practical absurdities listed above.

2.11 Repetitive

The Draft 9 IndWTMP is replete with repetitions that make the document overly wordy and make for unnecessary work should revisions be needed.

Example 1: It states that the IAC, implementer(s) and WMB must have quarterly meetings five times, on pages 31, 37, 38, 40 and 44. If the meeting frequency were changed to semi-annual, for example, it would need to be amended in five places.

It is worse where the same topic is addressed more than once but with contradictory wording.

Example 2: Incentives must be developed by:

- p.28 Department, WMB, DTIC, National Treasury, implementer
- p.37 Department, WMB, implementer
- p.45 Department, WMB, DTIC, National Treasury, implementer, IAC

Example 3: Tyre producers must report quarterly on tyres manufactured or imported. This is stated on pages 24, 41 and 46.

Example 4: in item 3.5, implementers must:

“Ensure that no waste tyres end up in illegal markets or in the environment;”

And in item 5.1 they must:

“Put measures in place to ensure that no waste tyres end up in illegal markets or in the environment;”

Example 5: A committee must be established to evaluate applications for WTPCs. This is stated in seven places:

Table 1: Committee confusion

page	Name	By whom established	Membership
27	independent evaluation committee	Department	DTIC representation
28	incentives evaluation committee	WMB	2 officials from CWM branch of the Department, 1 official from WMB, 1 official from DTIC, 1 representative from the IAC
32	independent evaluation incentive committee		
33	incentives evaluation committee	WMB	Undefined
44	independent evaluation incentive committee		
45	independent evaluation committee	Department	Undefined
46	incentive evaluation committee	WMB	Undefined

There are three versions of its name, two versions of its composition, and five references to who must establish it but with two different entities (the WMB and the Department) named. If it is argued that the WMB and the Department are effectively the same body, then we must ask: why are the implementation responsibilities of the Department and the WMB listed separately in two consecutive paragraphs (items 5.2 and 5.3)?

3 Conclusion

This Draft 9 IndWTMP does not meet any of the standards expected of a draft subordinate legislation published for comment.

Presentation: The IndWTMP fails as a professional document at the basic level of being properly proofread for layout, grammar, spelling errors, and, with paragraphs being numbered in the table of contents but not in the body (making the cross-references almost unusable), it is very difficult to read.

Structure: The structure of the document is poor. The Executive Summary bears little relation to the body of the document. Concepts are revisited multiple times. Definitions overlap (e.g., collection points and tyre dealers).

Internal consistency: There are multiple contradictions, documented earlier in this commentary.

Legal precision: This document is draft subordinate legislation. It cannot have contradictions, ambiguous wording, poorly defined terms, multiply assigned responsibilities, unassigned responsibilities, and open-ended wording of obligations, mandates,

and restrictions (“amongst others”, “including but not be limited to”). The lack of clear paragraph numbering further disqualifies it.

- Accuracy:** There are errors of fact and failures of completeness that cast doubt on the depth and thoroughness of the background research informing the draft.
- Business sense:** This draft is far from being an implementable plan. This is clear firstly by its own admission, as issues are left for future implementer(s) to resolve. Thereafter there are the impracticalities arising from overlapping definitions of scope of authority and responsibility; irreconcilable budget cycles and contractual periods; vaguely defined obligations (“must be involved”, “must coordinate”, “guided by”); impossibly tight monthly reporting cycles; needless additional bureaucracy; responsibilities assigned to amorphous groups (“all role players”, “the tyre industry”); state ownership of all assets (with the implicit invocation of the PFMA in all operations); and obligations assigned to multiple parties.
- Impartiality:** There is an evident strong bias to giving the IAC, in which tyre producers dominate, a disproportionate say in the operation of an IndWTMP. Tyre producers serve their shareholders first and are inevitably conflicted with the goals of an EPRO operating an IndWTMP. There is no sound basis for giving them special influence and control; certainly not on the basis that they carry the costs. Tyre producers are only a convenient and efficient collection mechanism for tyre levies: in practice, and quite correctly, end-users ultimately carry the cost. The major players in the operation of an IndWTMP are the transporters, depot operators and waste tyre processors, not the tyre producers.

This is not an implementable IndWTMP. It is not even a framework for an IndWTMP. To the extent that it sets parameters for an IndWTMP it is so defective that any plan based on it is destined to fail.

The consequence is that the timetable for getting a working IndWTMP has not even begun.