



Draft Determination

Application for authorisation AA1000613
lodged by
Australian Bedding Stewardship Council
in respect of
'Recycle My Mattress' Product Stewardship Scheme
Authorisation number: AA1000613

Date: 25 August 2022

Commissioners: Keogh
Rickard
Brakey

Summary

The ACCC proposes to grant conditional authorisation to enable the Australian Bedding Stewardship Council (ABSC), current and future ABSC members and participants in the 'Recycle My Mattress' Scheme, to establish and operate the Scheme to promote recycling of end-of-life (EOL) mattresses for 5 years.

Under the Scheme, the ABSC will impose a levy (initially set at \$10 per mattress) which will be paid by participants in the Scheme and passed through the supply chain to consumers as a visible fee on the sale of a new mattress. Participants in the Scheme will be manufacturers, importers, wholesalers and retailers, including manufacturers and retailers that only sell online or direct to consumers. Participants will be encouraged, but are not required, to only deal with other participants.

The ACCC considers the Recycle My Mattress Scheme is likely to result in environmental, health and safety benefits particularly from encouraging changes in consumer behaviour. By increasing the value of recovered materials from EOL mattresses and pricing mattresses to better reflect the costs of supply and disposal of mattresses it is likely that less mattresses will end up in landfill. Further, by facilitating greater recycling, the Scheme will likely support more employment opportunities for people who experience social disadvantage.

The ACCC considers that the public detriments that are likely to result from the Scheme are limited, because:

- the imposition of the levy is unlikely to impact competition in the supply chain for mattresses
- any increase in the retail prices of mattresses resulting from the levy represents a relatively small proportion of the overall retail prices of mattresses. It is also likely to more closely reflect the full cost of the supply of mattresses (including the costs of proper disposal) and
- participation in the Scheme is voluntary and any limitation on the ability of mattress suppliers to deal with non-accredited collectors and recyclers is not likely to give rise to significant public detriment.

However, the realisation of public benefits is impacted by the level of industry participation and the effective administration of the Scheme by the ABSC, including the adoption of robust monitoring and reporting procedures. The ABSC has indicated that it intends to have public reporting and to review the Scheme during the period of authorisation. However, at this stage no firm commitment or clarity has been provided about this public reporting and when the review will take place.

The ACCC also notes that the design of the Recycle My Mattress Scheme is currently in draft form and is subject to change. There is some uncertainty about how much funding will be raised by the levy and how it will be used on a practical level. The ACCC considers it is important to have a sufficient degree of transparency regarding expenditure and Scheme administration more broadly (as those matters impact on the public benefits). For these reasons, the ACCC proposes to grant authorisation with

conditions relating to annual reporting and an independent review of the Scheme's operation against its objectives and targets.

The ACCC invites submissions in relation to this draft determination by 15 September 2022 before it makes its final determination.

1. The application for authorisation

- 1.1. On 26 May 2022, the Australian Bedding Stewardship Council (**ABSC**) lodged an application for authorisation (AA10006013) with the Australian Competition and Consumer Commission (the **ACCC**). The ABSC seeks authorisation to establish and operate a voluntary, industry-led product stewardship scheme to promote recycling of end-of-life (**EOL**) mattresses¹, named 'Recycle My Mattress'. The ABSC seeks authorisation on behalf of itself, its members (referred to in paragraph 1.10) and participants in the 'Recycle My Mattress' Scheme (referred to in paragraph 1.5) for 5 years.
- 1.2. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). The ABSC is seeking authorisation in respect of the Proposed Conduct (defined in paragraph 1.4 below) to which Division 1 of Part IV and/or section 45 of the Act may apply.
- 1.3. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.

The Proposed Conduct

- 1.4. The ABSC seeks authorisation to establish and operate the Recycle My Mattress Scheme which comprises:
 - the introduction of a Product Stewardship Fee (referred to as the 'levy'), to be paid by participating mattress manufacturers and importers, passed on to participating wholesalers/retailers and ultimately to consumers as a visible fee on the sale of a new mattress. This levy does not completely cover the costs of recycling EOL mattresses, but will contribute to research and development, consumer education and Scheme administration (see paragraph 1.12 below)
 - a series of general and specific requirements on Scheme participants to promote the Scheme, work together to ensure proper reporting of activity, investment and research into improved resource outcomes and recyclability of EOL mattresses
 - communication activities to increase consumer awareness of the environmental issues associated with EOL mattresses and drive industry participation in the Scheme and
 - an accreditation regime for collectors, recyclers/refurbishers, with a potential rebate payable to those service providers in later years.²

(the **Proposed Conduct**).

¹ These include a range of different types of mattresses (ABSC's submission in support of application, 23 May 2022, p 4).

² ABSC's submission in support of application, 23 May 2022, pp 4-7. The ABSC proposes that collectors and recyclers will need to be accredited by the ABSC to receive a rebate.

- 1.5. The participants in the Recycle My Mattress Scheme will be mattress manufacturers, importers, wholesalers, retailers³, collectors/logistics providers, recyclers/refurbishers, local governments, charities and social enterprises.⁴
- 1.6. Scheme participants are expected to actively support and promote the Scheme and prioritise their dealings with other participants. However, they are not required or expected to cease dealing with non-Scheme participants, and the ABSC does not have any enforcement capability to monitor or police their dealings. The ABSC expects that through effective Scheme promotion and consumer education over time, consumers will prefer to deal with Scheme participants, and this will in turn provide a strong incentive for more organisations to join the Scheme. The ABSC may also consider whether to identify brands or businesses which are not participating in the Scheme.⁵

Rationale for the Proposed Conduct

- 1.7. The ABSC submits that the Proposed Conduct is intended to achieve the following objectives:
 - increase resource recovery and diversion of waste from landfill to minimise the environmental, health and safety impacts of EOL mattresses
 - create a standard practice of retailers offering to facilitate collection and recycling of EOL mattresses for customers at the time of delivery of a new mattress (where possible)
 - ensure that EOL mattresses collected by members are efficiently and effectively recycled (including through enforceable recycling standards)
 - develop an efficient and innovative domestic mattress recycling industry for each geographical region
 - create new job opportunities, including jobs for people experiencing social disadvantage
 - foster a circular economy, foster innovation in whole-of-lifecycle management of bedding products and increase the value of (and find markets for) components of EOL mattresses.

The ABSC

- 1.8. The ABSC is a not-for-profit organisation established in 2020. With the support of an Australian Government funding grant, the ABSC is expanding on a previous product stewardship scheme that commenced in 2016.⁶ The new Recycle My Mattress Scheme will cover all states and territories and operate on a larger scale compared to the previous scheme.
- 1.9. The ABSC's Board of Directors currently comprises 9 persons (including the Chair) from various organisations, including mattress manufacturers and retailers,

³ This includes retailers that only sell mattresses online direct to consumers (ABSC's submission in support of application, 23 May 2022, paragraph 3.1(b)).

⁴ ABSC's submission in support of application, 23 May 2022, paragraph 5.4.

⁵ ABSC's submission in support of application, 23 May 2022, paragraph 9.4 (c)-(d).

⁶ The previous scheme is a voluntary scheme established by Community Resources and the bedding industry in partnership with social enterprise recycler, Soft Landing, and covers the ACT, NSW, Vic and WA.

Queensland Department of Environment and Science and the previous product stewardship scheme.⁷

- 1.10. The ABSC's membership is open to mattress manufacturers⁸, importers, retailers, upstream bedding material suppliers, downstream component recyclers, councils, commercial and health accommodation sectors, waste management operators and charities.⁹ Some members may be both ABSC members and Scheme participants, while others will be ABSC members only and not participate in the Scheme.
- 1.11. All ABSC members must abide by the ABSC's Code of Conduct, Constitution and Scheme Guidelines, and pay a membership fee to the ABSC.

Financial operation of the Scheme

- 1.12. The ABSC submits that the Scheme will be funded by the levy and the membership fees and run by industry with low administrative costs. The ABSC Board will make an annual assessment each year and may decide to hold over any excess revenue generated from the levy to the next year or apply it to reduce the levy and/or the membership fees. The funding in the first 5 years of the Scheme is intended to be allocated as follows (after payment of any rebates to collectors and recyclers):
- 45% on research and development and market development activities
 - 33% on marketing and consumer education
 - 22% on fund administration.

The levy

- 1.13. The levy is a fixed fee charged on each mattress sold by a participating retailer. The ABSC submits that the cost of recycling is not directly related to the price, size or type of mattresses (and recyclers do not differentiate their fees based on these criteria); rather the cost is influenced by multiple factors. For this reason, and because a fixed levy is simpler to implement and minimises administration costs, the ABSC has chosen this option.¹⁰
- 1.14. The ABSC proposes to set the levy at \$10 per mattress. This is lower than the levy (at \$17.50 per mattress) initially estimated by the ABSC's consultant, RPS, to be necessary for the Scheme to meet the modelled expenditure requirements (including payment of rebates to collectors and recyclers to partially cover the costs of collection and recycling).¹¹ The ABSC considers a lower levy is appropriate due to following factors:
- the extensive consultation the ABSC has undertaken with industry on the appropriate level of the levy
 - the lower levy will increase industry participation in the Scheme. While the lower levy may delay the Scheme's ability to fund rebates to collectors and recyclers, any such time lag is not expected to be significant if there is a high degree of industry participation. The lower levy should enable the funding objectives of the

⁷ The ABSC's [website](#).

⁸ This includes wholesalers that sell direct to consumers (ABSC's document in support of application, Attachment F, p 2).

⁹ ABSC's document in support of application, Attachment F, p 2.

¹⁰ ABSC's submission in support of application, 23 May 2022, paragraph 9.4(g).

¹¹ RPS acknowledges that the Scheme levy will not completely cover the costs of collecting and recycling EOL mattresses.

Scheme to be met, while remaining fair and equitable to the companies that contribute to the Scheme. The lower levy will not disproportionately affect retailers selling mattresses at the lower end of the price range, and will therefore encourage more retailers to participate in the Scheme and

- the ABSC will review the levy annually, and may adjust it based on a range of factors, such as the level of industry participation, the costs of the implementation and administration of the Scheme, investment in education and research and development, and any proposed rebates to be paid.¹²

Consumer education and pass-through of the levy

1.15. To inform consumers about the purposes and benefits of the Scheme, the ABSC will publish promotional materials about the Scheme and its members. Members can also use the Scheme's logo and branding in their own advertising and marketing.

1.16. Currently, when selling new mattresses to consumers, some retailers offer to collect and recycle consumers' EOL mattresses and may charge a fee for the service (commonly \$50-\$75 per mattress¹³). Under the Scheme, retailers may choose to continue to charge a fee for such service, rather than absorb the cost of the service. The ABSC will provide guidance materials to retailers, which will make clear to consumers that the levy will contribute to the achievement of the Scheme' objectives with respect to EOL mattresses but will not cover the whole cost of recycling the mattresses being purchased. However, the ABSC also expects that the recycling costs borne by consumers should decrease over time, as Scheme participation and the value of recovered resources from EOL mattresses increase.¹⁴

1.17. The ABSC submits that when selling new mattresses, retailers are free to decide whether to absorb the levy or pass it through to consumers, provided the total levy they pay to manufacturers or importers is calculated based on \$10 per mattress sold. If they pass through the levy to consumers, the ABSC considers that¹⁵:

- retailers must be transparent about the levy, but each retailer can decide how to do this in a way that best suits its business¹⁶ and
- retailers selling lower-value mattresses may choose to vary the amount of levy passed on to consumers. For instance, they may identify the mattresses they sell as part of the Scheme, but not disclose the actual value of the levy (as this may vary by product).

Accreditation and rebates to collectors and recyclers

1.18. The ABSC will establish an accreditation regime for collectors and recyclers to ensure they meet high standards of collection and recycling practices. The ABSC may also introduce a rebate for accredited collectors and recyclers in later years to provide incentives for regional collection and higher resource recovery rate and offset some/all of the costs of collection and recycling incurred by accredited service providers.

¹² ABSC's submission in support of application, 23 May 2022, paragraph 9.2(a)(iii).

¹³ ABSC's document in support of application, Attachment H, p 21.

¹⁴ ABSC's submission in support of application, 23 May 2022, paragraph 5.3.

¹⁵ ABSC's submission in support of application, 23 May 2022, paragraphs 9.2(c) and 9.3(b)-(c).

¹⁶ For instance, listing the fee on the invoice for the mattress purchased, or publish the fee on its website (see ABSC's submission in support of application, 23 May 2022, paragraph 9.2(d)).

2. Background

- 2.1. The disposal of EOL mattresses is currently managed in various ad-hoc ways, including through council hard waste collection (often at no cost to consumers), third-party collection and recycling arranged by consumers or retailers (at a cost borne by consumers or retailers), drop-off at waste transfer stations by consumers, illegal dumping by consumers, and disposal by sale or donation.
- 2.2. Analysis commissioned by the ABSC estimates that the 2 million mattresses purchased in 2019 would result in 1.8 million EOL mattresses being disposed of. It estimates that 800,000 whole mattresses go into landfill each year instead of being recycled. This puts cost pressures on councils, creates capacity constraints and structural instability for landfills (due to the bulkiness of mattresses) and leads to potential environmental pollution (through release of hazardous biological materials in mattresses). The ABSC submits that the majority of 'recycling' currently involves a degree of shredding with minimal materials recovery in EOL mattresses. In some cases, the materials are sent offshore to be incinerated or used in cement kilns.
- 2.3. Prior to lodging the application for authorisation, the ABSC consulted on the design of the Recycle My Mattress Scheme with 29 parties, including mattress manufacturers, importers, retailers, upstream/downstream material suppliers, recyclers, a State government agency, waste and resource recovery groups and local councils.¹⁷ The ABSC advised that most provided letters indicating in-principle support for the Scheme in its draft form. However, 3 parties raised issues in response to the ABSC's consultation, which are summarised below.
- 2.4. The Greenlit Brands Group submitted that:¹⁸
 - a uniform levy (regardless of the price and other characteristics of the mattresses) will exclude manufacturers and retailers of lower-value mattresses from participating in the Scheme, and will not encourage positive changes in consumer behaviour
 - the Scheme's requirement for retailers to pay a membership fee for all retail premises operated, despite the limited geographical coverage of the Scheme and that some retailers already facilitate recycling of EOL mattresses, will discourage retailers' participation
 - the Scheme does not appear to require all stores within a franchise to become members before each of them can individually promote their association with the Scheme
 - the ABSC should accelerate accreditation of recyclers, and address the issue of lack of recycling operations in regional areas
 - the Scheme should leverage existing collection pathways rather than duplicate them, and the proposed rebate to collectors is unnecessary and should be redirected to other uses (unless there are insufficient contractors to collect and transport EOL mattresses to recyclers) and

¹⁷ The ABSC has provided letters from these 29 parties and its response to the issues raised by the Greenlit Brands Group in a document in support of its application, Attachment C, pp 1-33.

¹⁸ ABSC's document in support of application, Attachment C, pp 34-41.

- under the Scheme, retailers should be able to identify the levy on a consumer's invoice and charge a fee to the consumer for the collection/recycling of EOL mattresses (where they provide this service).
- 2.5. Soft Landing, a not-for-profit recycler operating in several states, submitted that there was lack of clarity regarding the end-to-end administration of the Scheme rebate system.¹⁹
- 2.6. Incredible Ltd, a charity operating recycling services in Mackay, considered the levy was "one-size-fits-all" and did not appear to take into account the higher logistics costs it incurs as it services a regional area with low population density.²⁰
- 2.7. In documents provided as part of its application for authorisation,²¹ the ABSC addressed these issues as follows:
- a fixed-fee levy is appropriate (for the reasons discussed in paragraph 1.13). The ABSC has already lowered the proposed levy to \$10 per mattress, which is not an unreasonable burden on manufacturers and retailers of lower-value mattresses. The Scheme will change consumer behaviour through education and promotion of the Scheme
 - the Scheme is focussed on expanding coverage to new areas, but will only be able to do so if the levy is applied to more mattresses to fund the Scheme
 - it will provide guidelines to ensure that if not all stores within a franchise participate in the Scheme, that this is made clear to consumers
 - it is addressing the issue of lack of recycling in regional areas as part of the Scheme (which were not dealt with under the previous scheme). This is the reason it proposes to offer a rebate to recyclers using Scheme funding
 - the Scheme envisages a rebate to incentivise regional collection of EOL mattresses and address pressure on local councils to collect the mattresses. This rebate is still a possibility, but will be considered later in the Scheme's development once the sustainable level of participation and impact on collectors is known
 - retailers can decide to list the levy on the invoice (as mentioned in paragraph 1.17 above) and may charge a fee to consumers for providing any collection/recycling service (as mentioned in paragraph 1.16 above) and
 - it will continue to consult with recyclers during the implementation phase of the Scheme to determine the appropriate rebates system and structure for collection and recycling to minimise administration costs and unnecessary complexity.

3. Consultation

- 3.1. The ACCC invited submissions from a range of potentially interested parties including mattress manufacturers, importers, retailers, recyclers, charities, local councils and State and Commonwealth Government agencies. The ACCC received 2 submissions.

¹⁹ ABSC's document in support of application, Attachment C, p 30.

²⁰ ABSC's document in support of application, Attachment C, p 16.

²¹ ABSC's document in support of application, Attachment C, pp 42-61; ABSC's submission in support of application, 23 May 2022, paragraphs 9.4(f) and (g) and paragraphs 11.3(c) and (e).

- 3.2. St Vincent de Paul Society Victoria (Vinnies Victoria) supplies new and refurbished²² mattresses at a low cost to consumers. While it supports the Scheme, it submits that manufacturers and charities should be exempt from the levy if the mattress is constructed as a hybrid or recycled product (as the original mattress would have attracted the levy) or is given to persons who are experiencing disadvantage.
- 3.3. Launceston City Mission provided a similar submission to Vinnies Victoria regarding the need for an exemption for manufacturers and charities assisting persons who are experiencing disadvantage. It also considers the levy should be proportional to the mattress price, so that it is more equitable for disadvantaged members of the community.
- 3.4. In response to these issues, the ABSC notes that the Scheme is voluntary, but it agrees in-principle to allow manufacturers and charities who are seeking to participate in the Scheme to be exempt from the levy if they supply refurbished mattresses to consumers (where the original mattresses were subject to the levy) or supply new or refurbished mattresses to persons who are experiencing disadvantage. The ABSC proposes to consider such exemption requests during the membership application process on a case-by-case basis. It will seek information regarding the refurbishing operation (including any sanitation applied during refurbishing) and the process used by the charities to provide the mattresses to persons experiencing disadvantage in order to ensure transparency and integrity of the Scheme. The exemption will only be granted if the relevant refurbishing suppliers are also a member of the Scheme. The ABSC submits that it intends to develop an accreditation process (including standards) for refurbishing suppliers in the future.
- 3.5. The submissions are available on the ACCC's [public register](#).

4. ACCC assessment

- 4.1. The ABSC seeks authorisation for the Proposed Conduct with respect to Division 1 of Part IV and/or section 45 of the Act. Therefore, the relevant authorisation test provides that the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.

Relevant areas of competition

- 4.2. The ACCC considers the areas of competition relevant to the assessment of the Proposed Conduct are²³:
 - the manufacturing/importation, wholesale and retail supply of mattresses and
 - the collection, recycling and disposal of EOL mattresses.

Future with and without the Proposed Conduct

- 4.3. The ABSC submits that the previous voluntary scheme (referred to in paragraph 1.8 above) provides members with a discount on recycling with a service provider; however, that discount is not sustainable and will cease once the Recycle My Mattress

²² A refurbished mattress a second-hand mattress with some components replaced and sanitised before it is supplied to another mattress user.

²³ However, the ACCC considers it is not necessary to precisely define the relevant markets for the purpose of considering the application for authorisation.

Scheme is established, existing members are transferred to the new Scheme and additional recyclers are accredited. The ABSC submits that absent the Proposed Conduct, there will be no nationally coordinated entity supported by industry to coordinate the expansion of the Scheme and the current problems associated with EOL mattresses will continue to exist. The ABSC submits that a small number of retailers may individually facilitate the recycling of their customers' EOL mattresses; however, those would be small-scale which would not contribute to finding an industry-wide solution to the current problems.

- 4.4. In the future without the Proposed Conduct, the ACCC considers that, at least in the medium term, there would be no nationally coordinated product stewardship scheme to promote recycling of EOL mattresses.

Public benefits

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

...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.²⁴

- 4.6. The ABSC submits that the Proposed Conduct will result in the following public benefits:

- priority environment protection measures
- marketing and consumer education leading to increased public awareness of the impact of EOL mattresses, the Scheme's objectives and the importance of and pathways to mattress recycling
- research and development to improve the recovery value of materials and pathways for recycling and manufacturing of mattresses for product lifecycle enhancement
- industry development and jobs by supporting new entrants to the market due to innovations in recycling and the increased value of EOL mattress components
- employment outcomes for people experiencing social disadvantage, where possible.

- 4.7. The ACCC has considered the following public benefits:

- environmental, health and safety benefits
- pricing that better reflects the cost of supply and disposal of mattresses
- employment opportunities for people that experience social disadvantage.

²⁴ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

Environmental, health and safety benefits

- 4.8. The ABSC submits that the Recycle My Mattress Scheme is aimed at increasing resource recovery and diversion of waste from landfill to minimise the environmental, health and safety impacts of EOL mattresses.
- 4.9. The ACCC understands that the claimed environmental benefit will be delivered through changes in consumer behaviour (e.g. more consumers choosing to recycle their mattresses or buy from Scheme participants) as a result of the ABSC's public education and Scheme promotion activities. The benefit will also be delivered through more research and development activities aimed at increasing the value of recovered materials from EOL mattresses and providing accreditation and rebates to incentivise more collection in regional areas and higher standards of recycling practices. To the extent that the Scheme reduces the volume of EOL mattresses entering landfill or being shredded, or mattress materials being exported overseas to be incinerated, the ACCC considers there is a clear and significant public benefit likely to result from the Scheme, through the reduction of the environmental impacts and health and safety hazards associated with such disposal methods.
- 4.10. However, the ACCC notes that the Scheme design is still in draft form, with some elements of the Scheme yet to be determined (for instance, the level and structure of any rebates). The ACCC considers that the achievement of this public benefit will ultimately depend on the level of participation by the industry and the effective administration of the Scheme by the ABSC, including the adoption of robust monitoring and reporting procedures.
- 4.11. In that regard, the ACCC understands that the ABSC will set annual targets on a range of matters at the commencement of the Scheme including: membership, collection and recycling/material recovery rate, geographical coverage and environmental performance.²⁵ The ABSC also intends to provide public reporting on the operation and performance of the Scheme during the period of authorisation, so that it can keep participants and stakeholders apprised of the progress of the Scheme.²⁶ That is, the ABSC intends to apply for Voluntary Accreditation under the Product Stewardship Act²⁷, which will likely lead to certain mandatory reporting and review obligations for the Scheme. The ABSC also intends to have a review of the Scheme after an initial period of Scheme implementation and authorisation.
- 4.12. The ACCC notes that the Scheme design is not yet in its final form and is subject to change. There is some uncertainty about how much funding will be raised under the Scheme and how the funds will be used on a practical level. The ACCC notes that the ABSC intends to report publicly and review the Scheme. However, there is no firm commitment or clarity as to when the public reporting and review will take place, and what form these mechanisms will take. For the ACCC to be satisfied that the public benefits are likely, there needs to be a sufficient degree of transparency regarding the collection and use of funding and the Scheme administration more broadly. For this reason, the ACCC proposes to impose conditions which require the ABSC to provide an annual report and commission an independent review of the Scheme (these proposed conditions are set out in paragraph 4.39 below).
- 4.13. The ACCC considers that the proposed conditions also provide a mechanism to identify any issues with the operation of the Scheme and create an opportunity for the ABSC to address them.

²⁵ ABSC's submission in support of application, 23 May 2022, paragraph 3.2(h).

²⁶ ABSC's response to ACCC questions, 4 July 2022, paragraph 3.2.

²⁷ This Act has been repealed by the *Recycling and Waste Reduction Act 2020* (Cth).

Pricing that better reflects the cost of supply and disposal of mattresses

- 4.14. Prior to the application for authorisation, the Greenlit Brands Group provided feedback to the ABSC on the Scheme Design. The Greenlit Brands Group raised concerns that consumers who choose to have their EOL mattresses collected and recycled by a third party (or through their retailers) would usually be charged over \$70. It submitted that as the proposed levy does not cover that cost, it will not incentivise consumers to take steps to enable their EOL mattresses to be properly recycled. It submitted that the ABSC should consider alternative approaches to more effectively achieve its aims.²⁸
- 4.15. In response, the ABSC noted that the voluntary nature of the Recycle My Mattress Scheme means that it can only contribute to rather than cover the whole cost of recycling EOL mattresses. The ABSC submitted that many consumers are not currently aware of the costs and options of recycling EOL mattresses and the environmental issues associated with the disposal of whole mattresses in landfill (as mattress purchases are an infrequent event). The ABSC submitted that the levy will enable it to undertake public awareness campaigns about the Scheme which will drive industry participation in the Scheme. The ABSC also stated that as Scheme participation and the value of recovered resources from EOL mattresses increase over time, the recycling costs borne by consumers should decrease.²⁹
- 4.16. The ACCC notes that, in general, competition can be relied on to deliver the most efficient market outcomes. However, in circumstances where there is market failure (for example, from externalities) the outcome of a competitive market will not be the most efficient.
- 4.17. The ACCC considers that externalities exist in the supply and disposal of mattresses in Australia. In particular, the costs of improper disposal and insufficient recycling accrue primarily to external parties (e.g. local councils) and are not faced by the people making decisions about disposal. Similarly, the benefits from recycling EOL mattresses accrue predominantly to the public at large rather than to those people that decide whether to recycle their mattresses or dispose of them in landfill or illegally dump them.
- 4.18. The ACCC considers that the imposition of the levy by the ABSC means that prices for new mattresses are likely to be somewhat closer to their full social cost, which includes the negative externalities associated with improper disposal and insufficient recycling of EOL mattresses, than would otherwise be the case. The ACCC has had regard to the Greenlit Brands Group's feedback to the ABSC on the draft Scheme that the proposed levy does not cover the costs of collecting and recycling EOL mattresses. While the levy will not fully correct the externalities, the ACCC notes the ABSC's submission that a lower levy will encourage more industry participation and this, together with ongoing research and development into recovered materials from EOL mattresses, are expected to narrow this gap over time.³⁰
- 4.19. The ACCC therefore considers that the Scheme is likely to result in some public benefit due to the levy resulting in prices of mattresses being more reflective of their full social cost.

²⁸ ABSC's document in support of application, Attachment C, p 7.

²⁹ ABSC's document in support of application, Attachment C, p 61; ABSC's submission in support of application, 23 May 2022, paragraph 5.3.

³⁰ ABSC's submission in support of application, 23 May 2022, paragraph 5.3.

Employment opportunities for people that experience social disadvantage

- 4.20. The ABSC submits that recycling of EOL mattresses which maximises the recovery of resources cannot currently be solely carried out by machinery. The ABSC submits that as part of the Recycle My Mattress Scheme, it will seek to support employment opportunities to be provided to people who experience social disadvantage.³¹
- 4.21. The ACCC understands that Soft Landing and Incredible, both of which are social enterprises that currently employ people that experience social disadvantage, have indicated provisional support for and interest in the Scheme.
- 4.22. The ACCC considers that, to the extent that the Scheme facilitates more employment opportunities in collection or recycling of EOL mattress for people who experience social disadvantage, this is a public benefit.

Public detriments

- 4.23. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*³²

- 4.24. The ACCC has considered the following public detriments:

- impact on competition between participants in the Scheme
- increased prices for mattresses
- limiting mattress suppliers' ability to deal with non-accredited collectors and recyclers.

Impact on competition between participants in the Scheme

- 4.25. The ABSC submits that as the levy is the same, irrespective of mattress size, composition, quality or source of manufacturing, the Recycle My Mattress Scheme should not alter the level of competition between participating Scheme members.³³
- 4.26. Generally, an agreement among competitors in relation to price is likely to lessen competition relative to a situation where each business individually makes its own pricing decisions.
- 4.27. In this case, the ACCC considers that an agreement to impose the levy is unlikely to materially impact competition between participating manufacturers, importers or retailers on price and other areas in which they compete, or materially increase the likelihood of broader price or non-price coordination between them. The levy is determined by the ABSC reflecting the cost of operating the Scheme, rather than impacts on wholesale or retail profits. Each Scheme participant individually sets its own mattress prices and then applies the levy. Similarly, retailers must set their prices and decide the extent to which they pass the levy through to consumers.

³¹ ABSC's submission in support of application, 23 May 2022, paragraph 3.3 (g).

³² Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

³³ ABSC's submission in support of application, 23 May 2022, paragraphs 6.3 and 8.2.

- 4.28. The Greenlit Brands Group suggested that the levy should only be payable when most industry participants have become members, so that those who elect to join the Scheme early are not at a competitive disadvantage to their peers.³⁴ Similarly, ABSC members also expressed concerns that participants who contribute to the funding of the Scheme may end up covering the costs of non-participants who become ‘free-riders’³⁵ (e.g. retailers refusing to pay and pass on the levy to consumers but still benefitting from the Scheme). The Greenlit Brands Group also submitted that the levy may disproportionately affect the competitiveness of suppliers of lower-value mattresses.³⁶ In response to the first issue, the ABSC stated that the success of the Recycle My Mattress Scheme depends on sufficient support from the industry; and as the government is encouraging the whole industry to participate in the Scheme, this should preserve (rather than change) the relative positions of market participants. The ABSC also submitted that strong consumer education campaigns and Scheme marketing (including promoting participants and potentially identifying non-participants) should incentivise more participants to join the Scheme and discourage ‘free-riders’.³⁷ In response to the second issue, the ABSC stated that the current proposed levy at \$10 per mattress is not likely to impose an unreasonable burden on suppliers of lower-value mattresses.³⁸
- 4.29. The ACCC considers the ABSC’s approach to applying the levy to all relevant participants at the commencement of the Recycle My Mattress Scheme, together with its use of Scheme branding and consumer education activities to address the free-riding issue, will encourage more industry participants to join the Scheme. The ACCC considers the proposed levy is still a relatively modest proportion of the retail prices of mattresses and is therefore not expected to disproportionately affect the competitive position of suppliers of lower-value mattresses. The ACCC therefore considers an agreement between industry participants to impose the \$10 levy is unlikely to result in a significant public detriment by reducing competition between participants.

Increased prices for mattresses

- 4.30. The ACCC considers that the imposition of the proposed levy at \$10 per mattress is not likely to result in significant public detriment. While there is a range of prices for mattresses, the levy is relatively modest and it is not yet clear the extent to which retailers will pass the levy through to consumers.
- 4.31. To the extent that consumers pay closer to the full social cost of mattresses (that includes the costs of proper disposal), the price increase that may occur due to the levy is likely to signal a more efficient allocation of resources in the economy. In particular, the levy (at least in part) internalises the costs associated with mattress disposal.
- 4.32. The ACCC also considers that without the imposition of the levy, the significant costs of proper disposal of mattresses are more likely to be assumed by local councils and the community as a whole.
- 4.33. Overall, the ACCC accepts that the levy is likely to represent a relatively small increase in the overall retail prices of mattresses. This limited increase in prices, directed at promoting proper disposal and recycling of EOL mattresses, is unlikely to constitute a material public detriment.

³⁴ ABSC’s document in support of application, Attachment C, p 5.

³⁵ ABSC’s submission in support of application, 23 May 2022, paragraph 9.1(a).

³⁶ ABSC’s document in support of application, Attachment C, pp 3-4.

³⁷ ABSC’s submission in support of application, 23 May 2022, paragraphs 9.4(b) and (d).

³⁸ ABSC’s submission in support of application, 23 May 2022, paragraph 9.2(ii).

Limiting mattress suppliers' ability to deal with non-accredited collectors and recyclers

- 4.34. Participants in the Scheme are encouraged (but are not required) to exclusively deal with other participants. However, it is expected that only collectors and recyclers accredited by the ABSC would be able to receive rebates from the Scheme (if rebates are provided in the future). To the extent that this restricts the ability of mattress suppliers to deal with non-accredited collectors and recyclers, the ACCC considers this could generate some public detriment, particularly in regional areas where access to accredited collectors or recyclers may be more limited.
- 4.35. The ACCC considers that because participation in the Scheme is voluntary, any restriction on the ability of mattress suppliers to deal with non-accredited collectors and recyclers under the Scheme is unlikely to give rise to significant public detriment.

Balance of public benefit and detriment

- 4.36. The ACCC considers that the introduction of the Recycle My Mattress Scheme is likely to result in public benefits in the form of:

- environmental, health and safety benefits
- pricing that better reflects the cost of supply and disposal of mattresses
- employment opportunities for people that experience social disadvantage.

- 4.37. The ACCC considers the proposed Scheme is unlikely to generate significant public detriment because:

- the imposition of the levy is unlikely to impact competition in the supply chain for mattresses
- any increase in the retail prices of mattresses resulting from the levy represents a relatively small proportion of the overall retail prices of mattresses. It is also likely to more closely reflect the full cost of the supply of mattresses (including the costs of proper disposal) and
- participation in the Scheme is voluntary, and any restriction on the ability of mattress suppliers to deal with non-accredited collectors and recyclers under the Scheme is not likely to give rise to significant public detriment.

- 4.38. However, the ACCC considers that realisation of the public benefits will ultimately depend on the level of participation by the industry and the effective administration of the Scheme by the ABSC, including the adoption of robust monitoring and reporting procedures. So the ACCC proposes to grant authorisation with conditions to provide greater transparency through reporting and review arrangements to ensure that the Scheme is effectively administered.

- 4.39. The ACCC proposes to grant authorisation with the following conditions:

C1: Each year, the ABSC publishes on its website an annual report on the operation of the Recycle My Mattress Scheme over the year ending 30 June (or an alternative annual reporting period as agreed in writing with the ACCC). The report must be published no later than 3 months after the end of each annual reporting period. The report must, at the least, include:

- its annual targets (see paragraph 4.11 above)

- the number of participants in the Scheme
- the percentage of mattress manufacturers, importers, wholesalers and retailers that are participants in the Scheme
- the number of accredited collectors and recyclers/refurbishers
- the resource recovery and recycling rates of EOL mattresses that can be attributed to the Scheme
- the national resource recovery and recycling rates of EOL mattresses
- the increase in the percentage of EOL mattresses that are properly disposed of and recycled, compared to when the Scheme commenced
- the volume of materials recovered from EOL mattresses
- the total levy funds collected under the Scheme
- a breakdown of how levy funds were spent during the period
- an explanation of how the funds being spent are contributing to achieving the Scheme's objectives, and
- to the extent possible, data on the volume of EOL mattresses or mattress materials not being properly disposed of (broken down into the proportion of EOL mattresses or mattress materials being illegally dumped or going into landfill).

C2: The Board of the ABSC must appoint an independent, external consultant to conduct a full review of the operation of the Recycle My Mattress Scheme, to commence no later than the fourth anniversary of the commencement of the Scheme. The review is to be completed within six months and a report published on the ABSC's website that must cover, at the least:

- the success of the Scheme in meeting its annual targets
- the level of industry participation in the Scheme
- quality of data collected under the Scheme
- financial transparency
- recommendations for any improvements to the Scheme's operation.

C3: The ABSC Board must:

- implement the recommendations arising from the review prescribed in C2, or
- in the event that the ABSC Board decides it is not appropriate to implement any particular recommendation, publish written reasons for this decision on the ABSC's website.

4.40. For the reasons outlined in this draft determination and with the proposed conditions of authorisation specified in paragraph 4.39 above, the ACCC considers that the likely benefit to the public would outweigh the detriment to the public including the detriment constituted by any lessening of competition that would be likely to result.

4.41. Accordingly, the ACCC considers that the relevant authorisation test is met.

Length of authorisation

- 4.42. The Act allows the ACCC to grant authorisation for a limited period of time.³⁹ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.43. The ABSC seeks authorisation for the Proposed Conduct (described in paragraph 1.4) for 5 years. The ABSC expects that it will take at least 3 years for the Recycle My Mattress Scheme to be fully implemented and to see the impact of the Scheme on EOL mattress recycling.
- 4.44. With the proposed conditions of authorisation (set out in paragraph 4.39) above, the ACCC considers the Proposed Conduct is likely to result in a net public benefit. Accordingly, the ACCC proposes to grant authorisation for 5 years with conditions.

5. Draft determination

The application

- 5.1. On 26 May 2022, the ABSC lodged an application for authorisation AA1000613 to engage in the Proposed Conduct as described in paragraph 1.4. This application for authorisation was made under subsection 88(1) of the Act.
- 5.2. The ABSC seeks authorisation on behalf of itself, its members (referred to in paragraph 1.10) and participants in the Recycle My Mattress Scheme (referred to in paragraph 1.5) with respect to the Proposed Conduct to which Division 1 of Part IV and/or section 45 of the Act might apply, for 5 years.
- 5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 5.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct.
- 5.5. For the reasons outlined in this draft determination and with the proposed conditions of authorisation (set out in paragraph 4.39), the ACCC considers that the Proposed Conduct would be likely to result in a benefit to the public, and that benefit would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct.
- 5.6. Accordingly, the ACCC proposes to grant authorisation.

Conduct which the ACCC proposes to authorise

- 5.7. The ACCC proposes to grant authorisation AA1000613 to enable the ABSC, current and future ABSC members (referred to in paragraph 1.10) and participants in the

³⁹ Subsection 91(1) of the Act.

Recycle My Mattress Scheme (referred to in paragraph 1.5)⁴⁰ to engage in the Proposed Conduct (as defined in paragraph 1.4), with the proposed conditions set out in paragraph 4.39.

- 5.8. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act and/or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 5.9. This draft determination is made on 25 August 2022.

6. Next steps

- 6.1. The ACCC now invites submissions in response to this draft determination by 15 September 2022. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

⁴⁰ Sub-section 88(2)(c) of the Act provides for authorisation to extend to any particular persons or classes of persons as specified in the authorisation who become engaged in the conduct the subject of the authorisation.