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Monday, 23 May 2022

Australian Competition & Consumer Commission
23 Marcus Clarke Street
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Dear Commission

**APPLICATION FOR AUTHORISATION FOR PROPOSED CONDUCT:
RECYCLE MY MATTRESS PRODUCT STEWARDSHIP SCHEME**

I act for the Australian Bedding Stewardship Council Limited (**Council; ABSC**).

This application is made for authorisation to establish and operate a voluntary, industry-led stewardship scheme in Australia aimed to increase resource recovery and the diversion of waste from landfill, minimise the environmental, and health and safety impacts of End-of-life (EOL) mattresses. The scheme is proposed to be named the Recycle My Mattress product stewardship scheme and will be referred to in this application as the Scheme.

This Application comprises the following components:

1. Application Letter:

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2. Attachments:

- (a) **Attachment A:** Scheme Design document prepared by the ABSC.
- (b) **Attachment B:** ABSC CEO Briefing Letter.
- (c) **Attachment C:** Letters of support from Scheme initiators and participants.
- (d) **Attachment D:** Consultation summary and engagement pack.
- (e) **Attachment E:** Constitution of the ABSC.
- (f) **Attachment F:** ABSC Membership Application and Code of Conduct
- (g) **Attachment G:** Pollinate research findings on consumer behaviour/preferences.
- (h) **Attachment H:** Mattress Recycling Study: Stocks flows and feasibility.

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The Council hereby applies under subsection 88(1) of the *Competition and Consumer Act 2010 (Act)* for an authorisation to:

- (a) make a contract or arrangement, or arrive at an understanding, where a provision of which would be, or might be:
 - (i) a cartel provision within the meaning of Division 1 of Part IV of the Act which would also be, or might also be, an exclusionary provision within the meaning of section 45 of the Act
 - (ii) a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act)
 - (iii) an exclusionary provision within the meaning of section 45 of that Act.
- (b) to give effect to a provision of a contract, arrangement or understanding that is, or may be:
 - (i) a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act
 - (ii) an exclusionary provision within the meaning of section 45 of that Act.
- (c) to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- (d) to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

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A PARTIES TO THE PROPOSED CONDUCT**1. Details of the Applicant**

1.1 Applicant's details	<p>Australian Bedding Stewardship Council Limited ACN: 642 101 933</p> <p>Registered Office: Suite 01, Level 11, 60 Castlereagh Street, SYDNEY NSW 2000</p> <p>Telephone: 02 8076 9325</p>
1.2 Contact person	<p>Name: Tim Schaafsma Position: Chairman, Australian Bedding Stewardship Council Telephone: [REDACTED] Email: secretary@beddingstewardship.org.au</p>
1.3 Description of business activities:	<p>Australian Bedding Stewardship Council (ABSC) is a not-for-profit company limited by guarantee which was established to administer the Recycle My Mattress product stewardship scheme.</p> <p>ABSC is registered as a charity by the Australian Charities and Not-for-Profits Commission (ACNC)</p>
1.4 Email address for service of documents in Australia	[REDACTED]

2. Details of any other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought

- (a) The proposed conduct will be, or is likely to be engaged in, by a range of organisations across the bedding supply chain, as explained in section 3 below.
- (b) The Australian Bedding Stewardship Council (ABSC, Council) has been engaged in extensive consultation with participants in the Australian bedding industry and organisations throughout the supply chain. At the time of this application, support has been provided for the Scheme, based on the Scheme Design.
- (c) Please refer to Attachment C for a summary of the supporters and initiators of support.

B THE PROPOSED CONDUCT

3. Details of the Proposed Conduct

3.1 Description of conduct

- (a) The ABSC proposes that an industry-led product stewardship scheme be established to enable responsible management of all types of EOL mattresses,¹ to be named the Recycle My Mattress product stewardship scheme (Scheme).
- (b) Members of the Scheme will be accredited participants including manufacturers, importers, wholesalers, retailers and online pure-plays².
- (c) The types and condition of mattresses and bedding products to be managed under the Scheme may change as technology and recovery options advance in this area, however, the initial focus is on the largest component of EOL mattresses, being consumer mattress products which are no longer required upon the purchase of a new mattress.
- (d) The objectives of the Scheme are to:
 - (i) increase resource recovery and the value of components to maximise recycling and minimise the environmental, health and safety impacts of EOL mattresses in Australia;
 - (ii) create a standard practice of retailers offering consumers solutions to facilitate the efficient recycling of EOL mattresses;
 - (iii) ensure that EOL mattresses collected by its members or accredited service providers are efficiently and effectively recycled with the goal of eliminating whole mattresses from entering landfill;
 - (iv) increase the total resource recovery through enforceable recycling standards;
 - (v) develop an efficient and innovative domestic mattress recycling industry suitable for each geographic region;
 - (vi) create new job opportunities, including jobs for people experiencing social disadvantage;
 - (vii) foster a circular economy where mattresses are recovered for recycling and reused to make other products or materials; and
 - (viii) foster innovation in design and materials used to reduce environmental impacts across the product lifecycle for bedding products and to increase value of (find markets for) materials contained in EOL mattresses.

¹ Includes memory foam and plain foam mattress, pocket sprung mattress, coil sprung mattress, latex mattress, ensemble bases, orthopaedic mattress, pillow top mattress, and futon mattress

² Retailers which only sell mattresses/ bedding online, direct to consumers.

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- (e) The Scheme Design at **Attachment A** sets out how the Scheme will work in detail. The Scheme has 3 essential foundations:
- (i) the introduction of a Product Stewardship Fee on mattress manufacture/importation at a standard rate which will be passed through the supply chain to the consumer as a visible fee on the sale of a new mattress;
 - (ii) implementation of communication activities to increase consumer awareness and drive the level of industry participation in the Scheme; and
 - (iii) a rebate to offset some or all of the costs of collection and recycling of EOL mattresses by accredited collectors/recyclers.
- (f) The proposed commitments that will be required from Members of the Scheme are in the Scheme Design and documented in a Code of Conduct (**Attachment F**) for all Members to adhere to. The commitments aim to ensure Members of the Scheme work together to ensure proper reporting of activity as well as investment in research and development into improved resource outcomes and recyclability of EOL mattresses, in line with the Scheme Design.

3.2 Relevant provisions of the Act which might apply to the Scheme

- (a) The operation of the Scheme involves conduct which may fall under the following prohibited conduct in the Act:
- (i) cartel conduct (Division 1 of Part IV)
 - (ii) contracts, arrangements or understandings that restrict dealings or affect competition (s45);
- each of which are outlined briefly below
- (b) Cartel conduct:
- (i) Division 1 of Part IV of the Act provides that corporations that are or would otherwise be in competition with each other must not make or give effect to a contract arrangement or understanding that contains a cartel provision.
 - (ii) As far as relevant to the Scheme, a cartel provision is one that relates to price-fixing and/or restricting outputs in the production or supply chain.
- (c) Under s45 of the Act, a Corporation must not:
- (i) make or give effect to a contract or arrangement, or arrive at an understanding; or
 - (ii) engage with one or more persons in a concerted practice;
- if that conduct has the purpose or likely to have the effect of substantially lessening competition.

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- (d) A wide range of businesses or organisations can join the Scheme. Their commitments to the Scheme may vary, depending on what role the business or organisation has in the supply chain. Some of those commitments, as set out below, may have fall within the conduct prohibited by Division 1 of Part IV and/or s45 of the Act.
- (e) To become a Member of the Scheme, each organisation will be required to make a series of general commitments relevant to all supply chain participants, and a number of specific commitments relevant to the particular role it has in the supply chain. Those commitments are set out in full at Attachment F.
- (f) The commitments of Members which may fall within Division 1 of Part IV and/or s45 of the Act are extracted below:
- (i) actively support and promote the Scheme's purposes as set out in the Scheme Guidelines;
 - (ii) Participate in a range of product stewardship activities;
 - (iii) Promote/encourage recycling of mattresses and bedding products according to the Scheme Guidelines;
 - (iv) Subject to any legal requirements, to encourage customers (retailers, commercial, wholesalers) to participate in the Scheme with a view to maximising the recycling of bedding products (Manufacturers and Importers only);
- (g) In addition to the Member Code of Conduct Requirements, the Scheme Design, which will form the basis of the Scheme Guidelines, require specific conduct from Members performing specific roles in the supply chain which may fall within Division 1 of Part IV and/or s45 of the Act:
- (i) Importer and Manufacturers:
 - A contribute to funding the Scheme through payment of a Product Stewardship Fee based on the number of mattresses supplied to retailers who are Members. The Product Stewardship Fee is currently proposed at \$10 per mattress (discussed further at 9.4 below).³
 - B The Product Stewardship Fee will be passed at the same rate to Retailers, or when an Importer or Manufacturer sells directly to consumers, the consumer.

³ Attachments A at 2.3; 5.1.

- (ii) Retailers:
 - A Facilitate recycling of an EOL mattress by the customer, which may include promoting Member(s) who are Recyclers;
 - B Reimburse the Manufacturer or Importer Member for the Product Stewardship Fees charged as part of the purchase of applicable mattresses, pursuant to item 3.2(g)(i) above; and
 - C Where the Manufacturer or Importer has charged the Product Stewardship Fee to the Retailer, pass the Product Stewardship Fee on to consumers in respect of those mattresses in addition to the sale price of the mattress. For avoidance of doubt, the Retailer may choose to absorb part or all of the Product Stewardship Fee in respect of mattresses sold, based on the nature of the mattress or the promotional activity of the Retailer.
- (h) Finally, as identified in Table E-1 of the Scheme Design⁴, components of the Scheme designed to support the integrity of the Scheme will include a requirement for fee pass-through, annual targets for membership, collection rate, material recovery rate, geographical coverage and environmental performance and accreditation of recyclers and collectors, which could result in prohibited conduct.

3.3 Rationale for the Scheme – EOL mattresses

- (a) EOL mattresses are currently managed in a largely ad-hoc manner that is not regulated and is without specific co-ordination in regard to industry participation, overall material recovery rates, occupational health and safety performance and environmental performance.
- (b) Studies have found that significant volumes of whole mattresses are disposed of into landfill⁵, that recycled mattresses have poor levels of resource recovery⁶ and generate pollution⁷. Mattresses are undesirable as content for landfill due to their volumetric inefficiency, creating significant air pockets and structural instability in landfill, as well as the potential of leaching of hazardous biological material present in EOL mattresses.

⁴ Attachment A page 5

⁵ Options to increase the recycling of mattresses, Department of Conservation and Environment Western Australia. BMWMS, 2012

⁶ Mattress Recycling in Melbourne and greater Geelong, Metropolitan Waste and Resource Recovery Group, Mobius Environmental Consulting, 2015

⁷ Mattress Recycling and Disposal, Boomerang Alliance, 2016

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- (c) A material flow analysis commissioned by the ABSC and completed in January 2021 estimated that 1.8 million EOL mattresses were expected to be disposed of as a result of the 2.0 million new mattresses estimated to have been sold in 2019. While some estimates have been made about the proportion landfilled, the data may not be very accurate, as there is no consistent recording or reporting of this information. Subject to that qualification, it is estimated that about 800,000 whole mattresses are going to landfill each year.
- (d) The volume of mattresses undergoing some sort of dismantling is not insignificant. The majority of “recycling” involves a degree of shredding, which does not optimise the recovery of materials.⁸
- (e) Manufacturers, retailers and supply chain members wishing to progress the development of industry best practice have driven the concept and formation of the national product stewardship scheme, focused not just on recycling but whole of life management of mattresses and potentially other bedding products, conducting or commissioning research and development into improving resource recovery and recycling processes, and educating the Australian population on the problems associated with whole EOL mattresses being dumped into landfill and communicating the improved outcomes under the Scheme Design.
- (f) Consumers understand that there is a cost associated with recycling EOL mattresses and are keen to support the outcomes of reducing whole mattresses ending up in landfill. Consumers need to be better informed of the issue (as mattress purchases are an infrequent event), understand the options and have a service which assists with disposal of their EOL appropriately.
- (g) Recycling of EOL mattresses which maximises the recovery of resources cannot currently be solely carried out by machinery or in an automated fashion. This means that recycling services provide employment opportunities, including for people who experience social disadvantage. As part of its objectives, Council seeks to support such employment opportunities, and has a founding recycler, Soft Landing Mattress Recycling, operated by the Community Resources charitable organisation. Soft Landing Mattress Recycling recycled more than 500,000 mattresses in FY 2020-21. The financial burden of much of this volume was borne by local government and/or consumers.

3.4 Rationale for the Scheme – development of the Scheme

- (a) Members of the ABSC have commissioned and undertaken several investigations to support the establishment of a levy-based product stewardship scheme with broad industry participation. In particular, this has included analysis of potential levy models, albeit the assumptions underpinning these models and their potential outcomes for the industry have been based on uncertain data. For these and other reasons, members have not determined a consensus approach to take forward.

⁸ Attachment A: Scheme Design, section 1.3

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- (b) The following provides a high-level timeline of the development of the Scheme to date:
 - (i) 2009: Soft Landing started operating
 - (ii) 2016: Voluntary product stewardship scheme established by Community Resources and bedding industry
 - (iii) Funded by members, who are bedding industry participants
 - (iv) 2018: Westpac Foundation project investigated funding models
 - (v) 2019: Draft budget and levy scenarios modelled
 - (vi) 2020: Australian Bedding Stewardship Council established
 - (vii) 2020: Mattress Stocks and Flows study⁹
- (c) The Scheme, in its current form, was established by Community Resources Limited in partnership with Soft Landing Mattress Recycling in 2009.
- (d) In late 2020, operation of the scheme was transferred to ABSC. At that time, the Council was granted Federal Government funding under the National Product Stewardship Scheme Investment Fund administered by the Department of Agriculture, Water and the Environment. The maximum value of the grant is \$937,700 to be used for to design and implement an expanded national Scheme, which would increase the scale, geographical coverage and activities of the current scheme.
- (e) The Council is in the process of applying for mattresses to be placed on the Minister's Priority List for 2022-23 which identifies products and materials considered most in need of product stewardship action.

3.5 Term of authorisation sought

5 years. This is based on an expectation that it will take at least three years for the Scheme to be fully implemented and to see the impact that the Scheme has on the recycling of mattresses.

⁹ Attachment A: Scheme Design, section 1.3.

4. Documents

- 4.1 The relevant documentation has either been prepared by the ABSC or are records and documents collated by the ABSC during the consultation process. While the ABSC was incorporated on 26 June 2020, early stages of the Recycle My Mattress scheme design and consultation with industry and government started in early 2019 under the management of Community Resources.
- (a) **Attachment A:** Scheme Design document prepared by the ABSC and used in the consultation processes with industry and government. This document has been refined during the consultation process, and it is the version which is referred to in the letters of support at Attachment C.
 - (b) **Attachment B:** ABSC CEO Briefing Letter used by the Council to present and explain the Scheme to industry and government stakeholders.
 - (c) **Attachment C:** Letters of support from Scheme initiators and participants, provided in response to the most recent version of the Scheme Design.
 - (d) **Attachment D:** Summary of the consultation process undertaken by the ABSC which has led to refinement of the Scheme Design contained in Attachment A, including the engagement pack provided to participants.
 - (e) **Attachment E:** Constitution of the ABSC, a not-for-profit company limited by guarantee.
 - (f) **Attachment F:** ABSC Membership Application and Code of Conduct
 - (g) **Attachment G:** Pollinate research findings on consumer behaviour/preferences.
 - (h) **Attachment H:** Mattress Recycling Study: Stocks flows and feasibility.
- 4.2 The Council confirms that all Attachments are suitable to be published on the ACCC's public register. There is one further document containing personal information of participants in the consultation process which will be provided to the ACCC separately, which is not suitable for publication (please refer to section 12 below).

5. Who may be impacted by the Proposed Conduct

- 5.1 The Scheme will engage industry across the entire mattress supply chain, as set out in the Attachment D¹⁰ ("Participants"). The intention is to bring mattress supply chain organisations together to significantly reduce the volume of whole mattresses going as waste to landfill by increasing collection and recycling rates through retailers, developing a domestic mattress reprocessing capacity and increase the rate and value of recovered materials from processed EOL mattresses.

¹⁰ Attachment D: Engagement pack page 39: Responsibility of Parties.

- 5.2 The Scheme will also be complemented by actions from governments and supported by consumer behaviour.¹¹ At a high level, each of these stakeholders will share responsibility of mattress stewardship as follows:
- (a) Government – policy to support the objectives of the Scheme, and where relevant, local government participation in the Scheme by way of collection services
 - (b) Industry – apply a Product Stewardship Fee and prioritise engagement with accredited logistics and recycling service providers
 - (c) Consumers – in addition to paying a Product Stewardship Fee as part of their purchase of a new mattress, consumers will be encouraged to recycle their EOL mattress by utilising an accredited recycler or logistics provider.
- 5.3 Consumers play a key role in mattress stewardship and will continue to do so as the Scheme evolves. The Scheme will rely, at least in part, on consumers being willing to pay to recycle their old mattress at the time of receiving their new mattress, and making purchasing choices on that basis. A significant component of the Scheme will be the education of consumers and the marketplace as to the benefits of the Scheme. By increasing participation and the value of recovered resources in processed EOL mattresses, it is expected that the cost of recycling borne by consumers should decrease over time.
- 5.4 As set out in the Scheme Design¹², the categories of Participants will be the entities involved in the stages of the mattress supply chain:
- (a) raw material and component suppliers
 - (b) manufacturers
 - (c) importers
 - (d) retailers
 - (e) collectors/logistics providers
 - (f) recyclers
 - (g) local government
 - (h) charities
 - (i) social enterprise

¹¹ Attachment D: Engagement pack page 20-26.

¹² Attachment D: Engagement pack page 39 ; 50-51

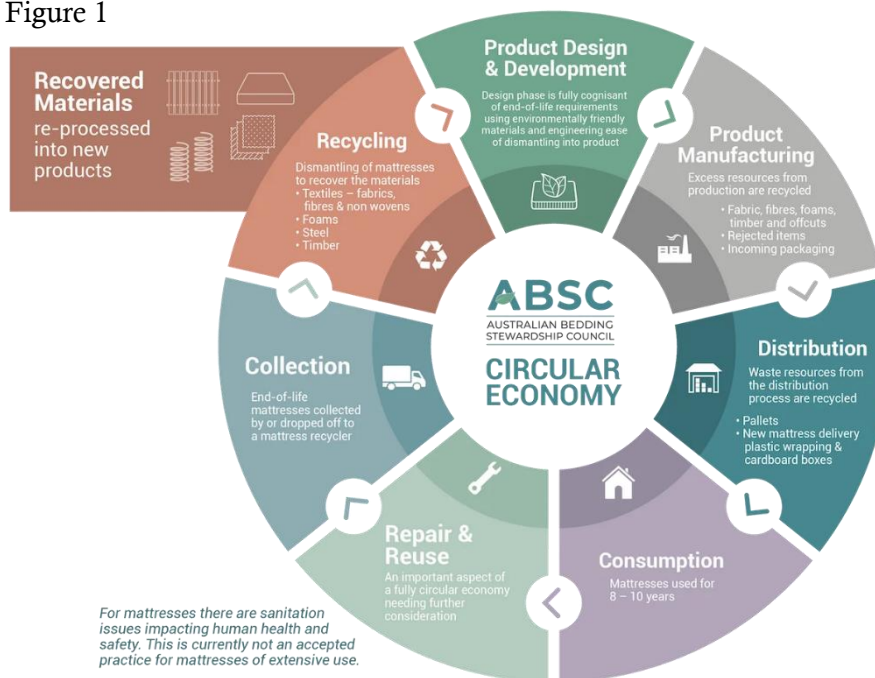
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C MARKET INFORMATION AND CONCENTRATION

6. Products and/or services supplied by the Applicant

- 6.1 The ABSC does not offer products or services to consumers but has been established to implement and maintain the Scheme. Because the Scheme is a stewardship scheme, there are participants and supporters of the Scheme that are working towards a circular economy.

Figure 1



- 6.2 Further, as the Scheme seeks participants from the industry there will also be participants whose products and services overlap, and to whom the Scheme guidelines will be applied (such as the mattress manufacturers and importers, who are competitors in the market).
- 6.3 There may also be participants that operate in more than one part of the supply chain, for example manufacturers that are also retailers. As the Product Stewardship Fee (which is ultimately paid by the consumer) is calculated on a common basis, irrespective of mattress size, composition, quality or source of manufacturing, the Scheme should not alter the level of competition between these parties.

7. Relevant industries

7.1 The Scheme will operate in the mattress recycling sector. However, because the Scheme will involve the whole supply chain, there will be participants from the following sectors who may have previously had varying degrees of involvement in the mattress recycling industry:

- (a) Importers– importers of mattresses into Australia who will pay the Product Stewardship Fee
- (b) Manufacturers – manufacturers of mattresses in Australia who pay the Product Stewardship Fee
- (c) Wholesale suppliers – the suppliers of components or raw materials used in the manufacture of mattresses
- (d) Retail suppliers – the sellers of mattresses to end consumers, either online or in store
- (e) End of life mattress collection services operated by local government, retailers, manufacturers, wholesalers/importers, ecommerce pure-plays and recyclers, waste contractors and landfill operators
- (f) End of life recycling services – accredited under the Scheme Design and Code of Conduct to ensure recycling is carried out as contemplated in the Scheme Design and to maximise resource recovery outcomes.

8. Overlapping products and services – market share

8.1 Please refer to 6.2 and 7 above regarding Scheme participants and potential overlap in market share and offerings to consumers.

8.2 The market share of each participant with overlapping products and services is not known to ABSC. However, as the Product Stewardship Fee (which is ultimately paid by the consumer) is calculated on a common basis, irrespective of mattress size, composition, quality or source of manufacturing, the Scheme should not alter the level of competition between these parties.

8.3 It should be noted that Members of the Council and Participants of the Scheme should be distinguished. Some organisations may be both Members and Participants, depending on their role in the supply chain, noting that:

- (a) The Recyclers will only be Participants of the Scheme but not Members of the Council, to avoid any conflict of interest arising; and
- (b) Some stakeholders will not be Participants due to their role in the supply chain, such as raw material suppliers, but may be Members of ABSC due to their interest in product stewardship.

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8.4 The ABSC does not intend to facilitate the ability for participants to pick and choose what products are part of the scheme. The intention is that all products falling under the scope of the Scheme imported, manufactured or sold by the Participant (as relevant) would be covered by the Scheme.

9. **Competition faced by the parties to the Proposed Conduct**

9.1 When considering the factors that would limit or prevent any that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously, the ABSC identifies three key areas of potential concern:

- (a) The Product Stewardship Fee;
- (b) Impact on Retailers;
- (c) Impact of 'free-riders'

9.2 Product Stewardship Fee

- (a) The work done by RPS¹³ indicates a sustainable scheme can be achieved with a Product Stewardship Fee of \$17.50 per unit. Following receipt and consideration of industry feedback, and subject to ACCC approval, the Council has now resolved to set the Fee at \$10 per mattress. In relation to this decision, it is noted that:
 - (i) The Council has consulted extensively with industry about the appropriate level of the Fee, and in particular in relation to higher end versus lower end of the price range of mattresses.¹⁴
 - (ii) The Council's position is that setting the fee at \$10 per mattress does not impose an unreasonable imposition on those retailers selling mattresses at the lower end of the price range (below \$500), and therefore is likely to facilitate a higher level of participation in the Scheme.
 - (iii) The Fee will be subject to annual review, at which time factors such as level of industry participation, costs of the implementation and administration of the Scheme, investment in education and research & development and any proposed rebated to recyclers will be considered. The level of participation in the Scheme will also be an indicator of whether the Fee has been set at the right level.

¹³ Attachment H

¹⁴ Items 29 and 30 of **Attachment C** contain the feedback received from Greenlit Group and the ABSC response.

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- (b) The Product Stewardship Fee does not, and is not intended to, completely cover consumers' costs for collection and recycling of an EOL mattress. The Fee represents a consumer's contribution to the Scheme and the overall solution to the current problem with EOL mattresses (as articulated at 3.3 above). It may be that individual retailers also provide a separate service, and fee, for the cost of collecting and recycling a consumer's EOL mattress, on top of the Fee. While it is intended that after a period of implementation of the Scheme a rebate be available to offset some costs borne by consumers (see 9.3(d) below), it is noted that the lowering of the fee to \$10 per mattress may extend the period of time until the Scheme is able to facilitate such a rebate. However if, as anticipated, the lower fee will increase the participation in the Scheme, then the Council does not anticipate this time lag to be significant.
- (c) It will be a decision for each Retailer the precise way in which it applies to Fee to each mattress. The position of ABSC is that if a Retailer ensures that it complies with the parameters set by the ABSC, including:
- (i) transparency with the consumer about the passing on of the Fee, and
 - (ii) the total Product Stewardship Fee paid to the Manufacturer or Importer is equivalent to \$10 for every mattress sold by the Retailer;
- the ABSC will not dictate how the Fee is passed to consumers within these parameters.
- (d) The ABSC intends to publish guidance material for Retailers, including example text regarding the Scheme and the Product Stewardship Fee. It is intended that this material will make it clear that the Fee applied to each mattress will contribute to the Scheme, but will not cover the whole cost of recycling the mattress being purchased. The onus will be on each Retailer to make it clear how that Retailer passes the Fee to consumers – whether that be on the invoice for the mattress purchased, or published on a website or other media easily accessible to the consumer.
- (e) The ABSC also intends that the educational and promotional material to be published about the Scheme and its participants will highlight the benefit of the Scheme and therefore the Product Stewardship Fee, so that consumers view a Retailer's participation and therefore payment of the Fee as a valuable contribution to being part of the solution.

9.3 Impact on Retailers:

- (a) Whilst the Product Stewardship Fee is applied at the point of manufacture/importation, the Product Stewardship Fee is 'passed through' from the manufacturer/wholesaler to the retailer and then to the consumer. The rationale for a user pays approach is set out in the Scheme Design (attachment A) which has formed part of the industry feedback sessions. The result of this is that participation in the Scheme will have an impact on the price offered by the Retailer to the Consumer.

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- (b) Retailers, particularly those involved in the sale of low value mattresses, may choose to vary the amount of Product Stewardship Fee per product sold, however, the total Product Stewardship Fee will still be payable by the retailer to the manufacturer/importer on a per-unit basis. In such circumstances, the retailer may wish to identify the mattresses they sell as part of the Scheme, but not disclose the actual value of the Product Stewardship Fee (as this may vary by product).
- (c) As raised at 9.2(b) and (c) above, as long as a Retailer meets its obligations under the Scheme, as set by the ABSC, it will be up to that Retailer how it applies the Fee to each mattress. The position of the ABSC is that as long as the total Fee paid to the relevant Manufacturers and Importers is equal to \$10 for each mattress sold, the Retailer can pass that fee to the consumer in the way it determines best for its business. This flexibility is designed to allow Retailers to manage its participation in the Scheme to minimise the impact on its market position.
- (d) The design of the Scheme is such that the Retailers should also receive an additional benefit of receiving a rebate. Currently, Member stores are offering recycling at their own or the customer's expense. The rebate available under the Scheme will contribute towards this expense.
- (e) The Council notes that any Retailer will maintain a right to charge a consumer for the collection and recycling of an EOL mattress on top of the Fee. This will be a matter for each Retailer.
- (f) Some industry feedback¹⁵ has raised the issue that there are remote and regional areas operated by the Retailers that are not serviced by mattress recyclers. This issue has been addressed in the ABSC response provided during the consultation process.¹⁶ As with other product stewardship schemes, it is difficult to discriminate between where and on what products the Fee is applied to. All mattresses covered by the Scheme contribute to the same problems with EOL mattresses. The issue with regional recycling is part of the problem which the Scheme is seeking to address. As set out in 9.2 above – the Fee is a contribution to the Scheme to address problems including regional recycling, not a Fee to cover the cost of recycling a specific consumer's mattress.

¹⁵ Attachment C item 29.

¹⁶ Attachment C item 30.

9.4 Free-Riders

- (a) Current ABSC members have expressed concerns of 'free-riders' and fear they will be covering the costs of non-members, and in particular importers. Imports are a growing segment for mattresses, particularly in the lower end of the market. In addition, manufacturers and importers advise they will be unable to pay the Product Stewardship Fee on sales to retailers who refuse to pass on that fee to the consumer, leaving the manufacturer/importer to bear the cost of the Product Stewardship Fee. ABSC Members are concerned that retailers may increase their purchases from non-participating manufacturers and importers, thereby becoming 'free-riders'.
- (b) While it is not anticipated that the Scheme will involve formal enterprise-to-enterprise agreement among competitors who are Participants in the Scheme, the governments' desire and encouragement for all the whole supply chain to participate in the Scheme should result in the balance of market power being uninfluenced by the Scheme. This is because the Scheme Design involves a relatively nominal Product Stewardship Fee which is borne by consumers, not the participants in the Scheme. Each participant's place in the market is preserved and (apart from some administration) no participant is in a position which is more disadvantageous than prior to entering the Scheme. Further detail about the Fee is at 9.2 above.
- (c) To address the 'free-rider' issues, while there is no formal requirement of the Scheme for participants not to deal with parties who are not participants of the scheme, it is the ABSC's preference that other participants be given priority in dealings. While it is expected that Manufacturers and/or Importers may preference having their Retailer customers to be part of the Scheme, it is not expected that those manufacturers and retailers will stop selling to the retailers who choose not to participate.
- (d) It should be noted that the Council does not have an enforcement capability and participants will not be policed in relation to their dealings. However, the Council does intend to educate consumers about the Scheme and its participants, which is expected to include holding up and positively promoting those organisations which are participants of the Scheme. It is also a consideration for the Council to identify those brands or businesses which are not participants of the Scheme.
- (e) The aim of the Council is that, by effectively promoting the Scheme and educating consumers about the participants of the Scheme, consumers will prefer to deal with Scheme participants and/or question those retailers not part of the Scheme, which will encourage more retailers to become participants.

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- (f) It should also be noted that clear guidelines will be provided in relation to franchise networks to ensure that if not all stores are part of the scheme, there is no misrepresentation to consumers to the contrary. If only specific stores are participants, then the ABSC will only identify those specific stores as participants and will expect the franchisor to the same. Guidance will be provided to participants to assist with communication with consumers about what participation means and that participation must not be misrepresented to consumers.
- (g) The Product Stewardship Fee (see 9.2 above), which will be ultimately borne by the consumer, has been designed based on a standard rate per mattress, irrespective of size, type, quality or materials (the combination of factors rather than any one factor influences the cost of the Scheme). Recyclers do not differentiate their fees for different types or sizes of mattresses. The aim is to impose the Product Stewardship Fee in a way that enables the objective of funding the Scheme to be met, while remaining fair and equitable to the companies that contribute. This is also intended to streamline the calculation of the Product Stewardship Fee liability and thus lower administrative cost for liable parties.
- (h) The proposed scheme design creates a user-pays system to offset some of the cost of recycling and logistics, as well as investing in research & development to improve the recovery rate and value of materials and improve manufacturing of mattresses for product lifecycle enhancement, as well as fund marketing and communications to educate Australians about the urgent need for product stewardship in this space.
- (i) The Scheme Design includes brand marketing, consumer education and transparency to reduce free riding. Provided that the major market players participate in the Scheme and with early action to identify liable parties, free riding is not anticipated to be a significant issue.

D PUBLIC BENEFIT

The Applicant submits that any potential public detriment arising from the imposition of a Product Stewardship Fee will be far outweighed by the public benefits.

10. Likely benefits to the public as a result from the Proposed Conduct

10.1 The current situation

- (a) EOL for bedding in Australia has typically meant mattresses have been disposed of in landfill or have been shredded, with minimum material recovery. In some cases, the material is sent offshore to be incinerated or used in cement kilns. This is not an environmentally sustainable position.
- (b) Effective recycling and resource recovery of EOL mattresses requires human intervention. Employment opportunities (particularly for individuals facing social disadvantage) are available through a more effective recycling industry supported by the Scheme.
- (c) Waste mattresses are currently managed in a largely ad-hoc manner that is not regulated and is without specific co-ordination regarding industry participation, overall material recovery rates, and workplace health & safety performance.
- (d) There are currently no set environmental standards or regulations in place to govern the performance of industry participants involved with the collection and management of waste mattresses, other than general environmental licensing provisions which vary from State to State.
- (e) A material flow analysis commissioned by the ABSC and completed in January 2021 estimated that over 2 million mattresses were sold in 2019, of which 1.8m of the EOL mattresses that were being replaced as a result of these purchases were expected to be disposed of. While some estimates have been made about the proportion landfilled, the data may not be very accurate, as there was much uncertainty by local government respondents. Soft Landing Mattress Recycling recycled more than 500,000 mattresses in FY 2020-21. It is estimated about 800,000 whole mattresses are going to landfill each year. The financial burden of much of this volume was borne by Councils and/or consumers.
- (f) The volume of mattresses undergoing some sort of dismantling is not insignificant. The majority of “recycling” involves a degree of shredding, which does not optimise the recovery of materials.
- (g) Diverting mattresses from going into landfill is paramount to the environment which means that finding ways to increase recycling and recovery rates is critical.

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- 10.2 Consumers currently have a number of options available for disposal of their EOL mattress:
- (a) Council hard waste / verge collection services
 - (b) Private collection services
 - (c) Landfill
 - (d) Transfer stations
 - (e) Illegal dumping
 - (f) Sell or donate through social media
- 10.3 Research commissioned by the Council and conducted by Pollinate¹⁷ has shown that most consumers do not think about disposal of their old mattress until the point of purchase of a new replacement but feel a sense of guilt when they are told their old mattress could have been recycled. This research also shows consumers have a willingness to pay for their old mattress to be recycled, but want the process co-ordinated, preferably by the retailer from which they purchase their new mattress.
- 10.4 The aim of the implementation of the Scheme is to:
- (a) be a voluntary, industry-based solution, operating under the guidelines imposed by government and in accordance with the *Waste Avoidance and Resource Recovery Act 2020*.
 - (b) create a standard practice of retailers offering consumers, at the point of retail, to facilitate the recycling of EOL mattresses by arranging for the collection of the EOL / used mattress , where possible, coordinated with the delivery of the new mattress.
 - (c) establish a larger network of accredited mattress recyclers covering the bulk of the population. Recyclers need to be accredited and ensure that they handle and recycle bedding products in keeping with the product stewardship scheme Guidelines.
 - (d) optimise logistics for transporting EOL mattresses to accredited recyclers, ensuring the mattresses collected by its members are properly dismantled and recycled and will increase the total resource recovery through enforceable recycling standards.
 - (e) develop technology solutions to help maximise material recovery for further use, and identify commercially viable uses for those recovered resources, including transitioning from landfill/shredding/burning to ethical recycling.
 - (f) demonstrate the benefit of the bedding industry working together to solve an environmental problem, and preference solutions which improve social and employment outcomes.

¹⁷ Attachment G.

- 10.5 The Scheme will or seeks to achieve a range of public benefits including:
- (a) Priority environment protection measures;
 - (b) Marketing, incentives and education for consumers, leading to increased public awareness of:
 - (i) the current lack of recycling of mattresses on the environment
 - (ii) participation in the Scheme through increased knowledge about the Scheme Participants, and in particular local participants to consumers
 - (iii) the importance of and pathways to mattress recycling.
 - (c) Research and development in relation to a wide range of relevant issues:
 - (i) improve the recovery value of materials;
 - (ii) improve the pathways for recycling of EOL mattresses;
 - (iii) improve manufacturing of mattresses for product lifecycle enhancement
 - (d) Industry development and jobs by supporting new entrants to the market due to innovations in recycling and the increased value of EOL mattress components.
 - (e) Employment outcomes for people experiencing social disadvantage, where possible
- 10.6 In addition to the likely public benefits that will flow from the authorisation of the Scheme, if the Scheme is not authorised there is potential public detriment arising from:
- (a) As pressures on landfill space means disposal becomes more expensive, the cost to the community of dealing with EOL mattresses will increase. While this may provide a financial incentive for some consumers to pay for recycling, it will potentially increase the incidence of illegal dumping.
 - (b) Other methods of deconstruction recover lower quantities of material that may be more difficult to reuse and have a higher risk of pollution.
 - (c) Potential for landfill bans being imposed on EOL mattresses in various jurisdictions due to the limited space available in landfill and the volumetric inefficiency of whole mattresses entering landfill, as described above.
- 10.7 The Council considers that education and promotion of the Scheme to consumers will be crucial to maximise consumer understanding of the Scheme and the problem it seeks to provide a solution for. It expects that this effective communication will provide the required incentive for consumers to support the Scheme and be part of that solution.

E PUBLIC DETRIMENT

11. Likely possible detriments to the public as a result from the Proposed Conduct

11.1 Participation

- (a) Participation in the Scheme is voluntary. It is possible, therefore, that various operators will choose to participate outside of the Scheme and this will create a double economy.
- (b) The industry will benefit from improved credibility if it embraces the Scheme, increases transparency and works together to find solutions for current environmental problems.
- (c) It is anticipated that strong branding and marketing, good communication and education as to the benefits of the Scheme will encourage participation, for the benefit of all.
- (d) Further, the ABSC has undergone an extensive process to develop the Scheme Design in consultation with the end participants to maximise participation (See **Attachment D**). Government have also publicly indicated that it wishes all industry participants to participate in the Scheme.

11.2 Imposition of a Product Stewardship Fee and membership fees

- (a) The Scheme is to be funded by:
 - (i) The Product Stewardship Fee paid by mattress manufacturers and importers, passed through the wholesale/retail chain to the consumer as an expense associated with the operation of the Scheme. It is proposed the fee will be paid as an additional fee on top of the cost of the product, but as part of the transaction with the retailer.¹⁸
 - (ii) Membership fees paid by members of the Scheme, to be reduced for those involved in the Product Stewardship Fee collection (manufacturers, importers and retailers), once the Scheme is implemented and cash flow positive.¹⁹

¹⁸ Attachment A: Scheme Design at 5.1.

¹⁹ Attachment F.

11.3 Cost of the Scheme

- (a) The Scheme will be run by industry with low administrative costs.
- (b) Current estimates are that the funds of the Scheme, following payment of the rebates, will be allocated as follows during the first 5 years of implementation of the Scheme:²⁰
 - (i) 45% on research and development and market development activities
 - (ii) 33% on marketing and consumer education
 - (iii) 22% on fund administration.
- (c) There has been some concerns raised by a current lack of clarity about the end to end administration of the Scheme rebate system.²¹ The ABSC position is that until the Scheme is implemented, there will be some uncertainty. The ABSC is very concerned to continue to consult with recyclers throughout the implementation phase to ensure the most streamlined approach is adopted to minimise administration costs and unnecessary complexities in operating the Scheme (which is one of the bases for setting a flat Product Stewardship Fee per mattress).
- (d) The Scheme will be non-profit with any excess revenue generated from the Product Stewardship Fee held over from year to year, or applied to reductions in the rate of Product Stewardship Fee and/or membership fees. An annual assessment to determine the appropriate action will be undertaken by the Board of ABSC.
- (e) The current Scheme design contemplates a collector rebate to incentivise the collection of mattresses outside of metropolitan areas, and also to address pressures on local councils to collect EOL mattresses. Some industry groups have raised concerns with this being a cost funded by the Scheme, which has been addressed by the Council in the consultation process.²² The Council's position that this rebate is still a possibility, but will be considered much later in the Scheme's development once the sustainable level of participation is known and the impact on collectors is better understood.

²⁰ Attachment A: Scheme Design p23 and figures 5.2, 5.3 and Appendix C.

²¹ For example, Soft Landing letter at Attachment C.

²² Attachment C items 29 and 30.

11.4 Potential exclusionary practices

- (a) The Member Code of Conduct²³ requires participants to make a number of commitments to promote the Scheme. This may have a consequence of some exclusionary practices as a result, arising from the following requirements of the Code::
- (i) Actively support and promote the Scheme's purposes as set out in the Scheme Guidelines;
 - (ii) Participate in a range of product stewardship activities;
 - (iii) Provide accurate information and data as set out in the Scheme Guidelines or as agreed by the ABSC Board
 - (iv) Act to enhance the profile of the Scheme and the resource recovery industry; and
 - (v) Promote/encourage recycling of mattresses and bedding products according to the Scheme Guidelines.
- (b) Scheme participants will promote the Scheme and encourage participation in it. While there is no formal requirement of the Scheme for participants not to deal with parties who are not participants of the scheme, it is the ABSC's preference that other participants be given priority in dealings. While it is expected that Manufacturers and/or Importers may preference having their Retailer customers to be part of the Scheme, it is not expect that those manufacturers and retailers will stop selling to the retailers who choose not to participate.
- (c) It should be noted that the Council does not have an enforcement capability and participants will not be policed in relation to their dealings. The aim of the Council is that, by effectively promoting the Scheme and educating consumers about the Scheme, consumers will ask retailers if they are part of Recycle My Mattress. This is expected to encourage more retailers to become participants.
- (d) This may have the result of excluding non-Participants from dealing with Scheme Participants, and therefore may be considered exclusionary under the Act.
- (e) The Scheme needs such an approach, however, if it is to be effective in encouraging environmentally sound recycling practices for EOL mattresses.

- 11.5 It is submitted that, given the voluntary nature of the Scheme, and the considerable public benefits that will flow from it, the Applicant submits that the potential public detriments are acceptable and should not prevent the authorisation of the Scheme.

²³ Attachment F.

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F CONTACT DETAILS FOR RELEVANT MARKET PARTICIPANTS

12. Details of likely interested parties

12.1 Please refer to Attachments C and D.

12.2 The Council has also provided to the ACCC a further spreadsheet providing contact details of the participants in the consultation process which is not permitted to be published for privacy reasons.

For the reasons outlined above, the Council submits that the extensive public benefits of the proposed conduct will significantly outweigh any public detriment.

Sincerely

EMILY SHOEMARK

A handwritten signature in blue ink that reads "Snadden Hall & Gallop". The signature is written in a cursive, flowing style.

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Annexure A: Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

This 23 May 2022

Signature of authorised person:



Office held:

Solicitor for the Applicant

(Print) Name of authorised person

Emily Shoemark