



Draft Determination & Interim Authorisation

Application for authorisation
lodged by Resiloop Ltd
in respect of
a national product stewardship scheme for resilient flooring
Authorisation number: AA1000675

Date: 16 August 2024

Commissioners: Keogh
Lowe
Carver
Williams

Summary

The ACCC proposes to grant authorisation to ResiLoop Ltd, its members and future participants to establish and operate a voluntary, industry-led product stewardship scheme to collect and recycle resilient flooring waste (**Scheme**).

Under the Scheme, a product levy of no more than 15 cents per square metre will be applied to certain categories of resilient flooring products. The product levy will be passed transparently through the value chain, for example, by direct reference on the invoice to the amount of the product levy and the relevant products included in the purchase.

The ACCC proposes to grant authorisation for 6 years.

The ACCC has also granted interim authorisation to implement all aspects of the Scheme, including the imposition of the product levy.

Approximately 60,000 tonnes of resilient flooring waste is generated each year in Australia, with virtually all of it going to landfill. The current recycling rate of resilient flooring waste generated in Australia is very low, as there is no adequate infrastructure to collect, sort and reprocess resilient flooring waste and few sources for remanufacturing or reuse of the material at scale.

The ACCC considers that the Scheme is likely to result in material environmental benefits through increasing the volumes of resilient flooring being diverted from landfill and being reused, including through research and development into effective uses of resilient flooring waste, and pricing that better reflects the cost of disposal of resilient flooring. It may also result in some employment opportunity benefits through the operation of the Scheme.

The ACCC considers that the proposed conduct is likely to result in minimal public detriment because:

- Any detriment arising from restrictions on supply imposed by the Scheme is partly mitigated by the voluntary nature of the Scheme.
- The levy charged under the Scheme represents a minimal proportion of the total retail cost of resilient flooring for consumers.
- A number of factors mitigate the risk that participation in the Scheme will lead to broader coordination or collusion between participants on matters beyond the scope of the authorisation.

The ACCC invites submissions in relation to this draft determination before making its final decision.

1. The application for authorisation

- 1.1. On 28 June 2024, ResiLoop Ltd (**ResiLoop**) lodged an application for authorisation AA1000675 on behalf of itself, its members and future participants to establish and operate a voluntary, industry-led product stewardship scheme to collect and recycle resilient flooring waste (**Scheme**). Authorisation is sought for 6 years.
- 1.2. ResiLoop has also sought interim authorisation to implement all aspects of the Scheme, including the imposition of the product levy to fund collection, transportation and supply of member waste to recyclers and manufacturers.
- 1.3. The application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides businesses with protection from legal action under the competition provisions in Part IV of the Act. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the conduct would result in benefit to

the public that would outweigh any likely public detriment (ss 90(7) and 90(8) of the Act (the **authorisation test**)).

The Applicant - ResiLoop

- 1.4. ResiLoop was formed by the Australian Resilient Flooring Association (**ARFA**), an industry peak body, which it submits aims to advance, encourage and protect the interests of the resilient flooring industry.
- 1.5. ResiLoop is a not-for-profit company limited by guarantee and has been formed to implement and administer the Scheme.
- 1.6. ResiLoop submits it currently has 15 founding members comprised of resilient flooring importers and suppliers¹ (**Founding Members**) and will actively encourage other distributors, re-distributors, commercial contractors, retailers, installers and accessory suppliers to join the Scheme. ResiLoop submits that at present, the Founding Members of ResiLoop account for approximately 40% of sales of resilient flooring in Australia.
- 1.7. ResiLoop will be managed by a Board of Directors that may include representation of brand owners/suppliers, contractors, retail groups, installers, and other relevant stakeholders (**Board**). The Board shall consist of up to 10 directors and at least one half of the directors must have been nominated by a Founding Member. The Board currently has 5 directors, including the ResiLoop CEO and representatives of 4 Founding Members. The proposed composition is to fill 3-4 additional Board seats with representatives of new members (additional distributors, contractors, retail stores etc) and potentially an independent director with relevant expertise of benefit to the organisation. ResiLoop submits that there is opportunity for one or more people from the recycling sector with relevant skills to play a role in ResiLoop's governance.
- 1.8. An Advisory Panel constituting up to 10 experts from diverse backgrounds and experiences relevant to the industry, logistics and product stewardship may also provide expert advice to support Board decision-making, and will focus on providing strategic input ensuring the organisation's alignment with best practices in product stewardship. As a separate committee, it has no binding decision-making authority, however it can provide specialist expertise.
- 1.9. The members of the Advisory Panel will be appointed and removed by ResiLoop's Board by resolution in its absolute discretion. Panel members will be selected based on their expertise in areas such as the resilient floorcovering value chain and/or with specific expertise in waste recovery, logistics, recycling, local manufacturing, the circular economy, environmental law, material science/chemistry, stakeholder engagement, or consumer behaviour change. Appointees do not need to be members of, or participants in, the Scheme.

Other parties to the Proposed Conduct

- 1.10. ResiLoop also seeks authorisation for its current and future members, and other industry participants, to participate in the Scheme.
- 1.11. While the Founding Members are the only current members involved in the Scheme, ResiLoop intends for any authorisation to also cover:

¹ Founding members are Altro APAC, Amtico International, Armstrong Flooring, Forbo Floorcoverings, Gerflor Australasia, Interface Australia, Karndean International, Kenbrock, Millikin, Pegulan Floor Coverings, Polyflor Australia, Shaw Contract Group, Signature Floorcoverings, Tarkett Australia, The Andrews Group. See page 7 of ResiLoop Limited's application for authorisation dated 28 June 2024, available on [ACCC's public register](#).

- a) Resilient flooring product manufacturers and distributors in the Australian market who become members of ResiLoop (**Full Members**)²
- b) Flooring installers who register to become collectors under the Scheme, who will collect old flooring and deliver it to Collection Points (**Collectors**)
- c) Commercial contractors, retailers and trade accessory suppliers who will operate as Collection Points (**Associate Members**)
- d) Commercial contractors who procure new resilient flooring as Project Partners (**Associate Members**)
- e) Recycling companies that take or purchase the recovered resilient flooring waste for reprocessing or remanufacture (**Affiliate Members**).

The Proposed Conduct

- 1.12. ResiLoop seeks authorisation on behalf of itself, its current and future members and other industry participants to establish and operate the Scheme. The Scheme will be funded by a product levy of no more than 15 cents per square metre applied to certain categories of resilient flooring products.
- 1.13. ResiLoop members will be subject to guiding principles approved by the ResiLoop Board.³ They will also be required to comply with the Acceptable Waste Criteria, which is intended to ensure that materials collected pursuant to the Scheme are of an acceptable condition to enable them to be managed and recycled.⁴

Table 1: Conduct for which authorisation is sought

Scheme Guidelines Reference	Conduct	Provision of Act
Guiding Principles of ResiLoop Membership	The Scheme will involve agreement among competitors who are participants in the Scheme in accordance with their roles and the governance framework established by the organisation's Constitution. Upon joining the Scheme, Members agree to the Guiding Principles which includes collaborating and cooperating when necessary with other parties employed or participating in the Scheme (eg Contractors, Retailers, recyclers).	Cartel conduct (Division 1 of Part IV) Contracts, arrangements or understandings that restrict dealings or affect competition (s. 45) Concerted practices (s. 45)
Funding of the Scheme by a product levy calculated at an agreed rate (cents per sqm) on the volume of product	Full Members of the Scheme are collectively agreeing to a levy on product sales and that it be passed through transparently to customers and ultimately to the end consumer.	Cartel conduct (Division 1 of Part IV) Contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)

² ResiLoop has identified a number of market participants who may join as Full Members of the Scheme. See Attachment 2 of ResiLoop Limited's application for authorisation dated 28 June 2024, available on [ACCC's public register](#).

³ See Attachment 3 of ResiLoop Limited's application for authorisation dated 28 June 2024, available on [ACCC's public register](#).

⁴ See Attachment 4 of ResiLoop Limited's application for authorisation dated 28 June 2024, available on [ACCC's public register](#).

sold by the Member.		Concerted practices (s. 45)
Research and Development funding under the Scheme	The Board, with input from the Advisory Panel, agrees to allocate Scheme funds in accordance with the organisation's budget to certain projects, trials or research initiatives. The purpose is to develop new end markets for the recovered waste material and increase the capacity and capability to reprocess these materials in Australia.	Contracts, arrangements or understandings that restrict dealings or affect competition (s. 45) Concerted practices (s. 45)
Resource recovery process	Contractors, accessory suppliers and retail stores will be invited or may express interest in joining the Scheme to operate a Collection Point for waste. Scheme registered Collection Points or their sub-contracted agents will collect only ResiLoop member product waste in Stages 1 and 2 of the Scheme. Scheme registered Collectors will make in-scope recovered waste available for collection by ResiLoop or its contracted third-party logistics partner(s) and the waste will be delivered to Scheme registered recyclers/end manufacturers. Collection Points will be entitled to use a ResiLoop logo and their ID number as evidence of their participation in the Scheme.	Cartel conduct (Division 1 of Part IV) Contracts, arrangements or understandings that restrict dealings or affect competition (s. 45) Concerted practices (s. 45) Exclusive dealing (s.47)

2. Background

What is resilient flooring?

- 2.1. Resilient flooring is floorcovering made from materials with some elasticity, and are made from natural mineral fillers. Resilient flooring products include Resilient Luxury Vinyl Tiles (LVT), sheet vinyl, linoleum/marmoleum, rubber, safety sheet flooring, and hybrid/rigid core tiles.
- 2.2. Resilient flooring has attributes which make it suitable for a wide range of applications, in both residential and commercial settings. In particular, resilient flooring is highly durable as a floorcovering and easy to maintain and keep clean, making it suitable for use in high traffic settings, such as educational and sporting facilities, hospitals, retail, and offices. Resilient flooring is tolerant of high-humidity locations, making it suitable for use in bathrooms and kitchens.
- 2.3. ResiLoop submits that the sales of resilient flooring in Australia have grown steadily over the last two decades, driven by innovative design, development and uptake of new products, particularly LVT and more recently, hybrid or rigid core products, and increased demand for durable, affordable, low-maintenance flooring options in both commercial and residential settings. In 2022, Australia consumed an estimated 24.2 million square metres of vinyl resilient flooring products.

Supply chain for resilient flooring

- 2.4. ResiLoop submits that most resilient flooring used in Australia is manufactured overseas, with only one local manufacturer whose factory is based in Victoria. The distribution segment of the industry is thus primarily importers.
- 2.5. There are a number of global resilient flooring brands which have sales and distribution networks in Australia and supply to the Australian commercial and residential building and construction sectors. There are also direct importers (no onshore base in Australia) and some retail chains, such as Bunnings, that supply imported resilient products in Australia.
- 2.6. Floorcovering retailers supply resilient flooring to residential end-users. Retailers in Australia include national chains, large franchise groups and smaller, independent retailers. These buying groups negotiate individually with product distributors and may receive buying group rebates and customer settlement discounts. Some retailers also import product directly and therefore may be considered 'product distributors' for the purposes of the Scheme.
- 2.7. Retailers and commercial contractors supply resilient flooring to the building and construction sector for use in commercial settings. There is a large number of commercial contractors in each state, ranging in size in terms of square metres sold per annum. Large contractors may sell 80,000 to over 100,000 square metres of resilient flooring a year.
- 2.8. Installation of resilient flooring is carried out by the flooring technician trade. These sub-contractors are responsible for installing resilient flooring products in a range of commercial and residential settings, including hospitals, schools, offices, and homes. The Floor Covering Institute of Australia (FCIA), a peak body focused on training and education in the sector, has informed ResiLoop that it estimates that there are between 7,500 and 9,500 installers operating across Australia.
- 2.9. Accessory suppliers specialise in the supply of products, materials and equipment to the flooring technician trade to assist them to install or uplift floorcoverings. These businesses have depots around the country and engage directly with installers and contractors, supplying trims, adhesives, floor preparation materials and tools for resilient flooring.

Resilient flooring waste

- 2.10. The generation of waste typically occurs at two main junctures in the lifespan of resilient flooring:
 - at the point of installation, when new product is being laid and off-cut/trim waste is generated in the laying process
 - at the point of uplifting flooring for replacement or demolition. These materials may contain legacy additives or may be contaminated with adhesives and sub-floor residues, which make the waste difficult to recycle.
- 2.11. ResiLoop submits that approximately 60,000 tonnes of resilient flooring waste is generated each year in Australia, including 50,000 tonnes of uplifted floorcoverings, and 9,000 tonnes of installation waste. Virtually all resilient flooring waste in Australia currently goes to landfill, due to a lack of recycling infrastructure and end markets for the recyclate, and the high costs for any one industry participant to collect and transport the waste.
- 2.12. ResiLoop estimates that approximately 60,000 tonnes of resilient flooring waste is generated each year in Australia. As noted above, approximately 24.2 million square

metres of resilient flooring is consumed annually in Australia. Based on a 15-year average life span for resilient flooring, a Material Flow Analysis undertaken by the Vinyl Council of Australia found that there are around 256 million square metres or over 1 million tonnes of vinyl flooring currently in use in Australia. The modelling estimated that 48,000 tonnes of end-of-life waste of vinyl resilient flooring is generated per annum. ResiLoop estimates that a further 3,000 tonnes of waste is generated from non-vinyl resilient flooring per annum and that off-cuts generated by the installation of new resilient floorcoverings result in a further estimated 9,000 tonnes of 'clean' waste material annually.

- 2.13. This volume of resilient flooring waste constitutes approximately 1 per cent of Australia's national building and demolition waste that goes to landfill per annum.

Current efforts for recycling resilient flooring

- 2.14. ResiLoop submits that presently, there is no industry wide solution for collecting and recycling resilient flooring waste in Australia. This is in large part a reflection of the fact that Australia has a shallow manufacturing base, particularly with respect to resilient flooring, meaning there is a limited domestic market for the offtake from the recycling process. ResiLoop expects that this would continue to be the case in the future without the Scheme.
- 2.15. Further, efforts by individual participants in the industry to date have been minimal and ResiLoop expects that this would continue to be the case in the future without the Scheme.
- 2.16. For some years, a small volume of resilient flooring waste was being sent to floorcovering manufacturers overseas pursuant to individual producer responsibility arrangements (**Individual Arrangements**) with a few Australian distributors. However, only a small number of Australian distributors had these Individual Arrangements and they were taking back no more than tens of tonnes per annum for export to manufacturing plants in Europe and the UK. ResiLoop understands some Individual Arrangements that rely on floor layers to return waste to the distributor have yet to see any material returned.
- 2.17. ResiLoop submits that this practice has become more difficult and costly since the introduction of the Federal Government's 2021 Recycling and Waste Reduction (Export–Waste Plastics) Rules as well as the Basel Convention Amendments 2021. The Rules now stipulate that only materials separated into single polymers and that have been re-processed and turned into other 'value-added' materials (those ready for further use) can be exported. Aside from the cost implication, this capability is minimal in Australia at present.
- 2.18. A further small volume was being taken by a local manufacturer for recycling in Australia but the local manufacturer had limited use for the recyclate. Overall, ResiLoop estimates that less than 200 tonnes of resilient flooring waste per annum were being diverted from landfill in Australia even before the change in Rules noted above (being less than 1% of annual resilient flooring waste), and that less is likely being diverted now and that this would continue to be the case in the likely future without the Scheme.
- 2.19. ResiLoop submits that where a distributor elects to establish a company product take-back offer, this does not preclude these organisations from joining ResiLoop on the same terms as existing members. Distributors can opt into the ResiLoop scheme yet maintain their own Individual Arrangements if they wish. ResiLoop's funding model includes offering a rebate of a proportion of the levy contribution to these members for waste they demonstrate is collected under their own Individual Arrangements and sent for recycling. A company's Individual Arrangements might only collect one product

type, in which case ResiLoop membership may complement their Individual Arrangements.

Research and development into end products and reprocessing technologies

- 2.20. ResiLoop submits that initial trials were conducted by ARFA in 2023, funded by the grant from the National Product Stewardship Investment Fund. The purpose of the trials was to test, within ResiLoop's project timelines, the reprocessing of targeted resilient flooring wastes with the highest likelihood of success in producing marketable recyclate feedstocks and diverting waste from landfill. This includes the assessment of whether recycled resilient flooring can be incorporated into flooring accessories and other high-value applications. These trials were designed to determine the make-up of products and how they might be processed, moving towards a solution of having them able to be re-processed into finished goods.
- 2.21. ResiLoop submits that no decision has yet been taken on future field trials, although, based on the work completed to date, it is possible ResiLoop may explore the following:
- additional product concepts such as fence posts and decking boards with PVC manufacturers
 - a larger scale trial of the PVC Separation process to assess the feasibility of recycling Hybrid tiles, and potentially safety flooring
 - a more extensive trial with the polymer aggregate plant in Victoria⁵
 - a university research trial to explore the use of the material in civil engineering and mining applications
 - a university research trial to explore the use of the material in concrete applications.
- 2.22. ResiLoop submits that overseas, there is some recycling of resilient floorcovering waste back into resilient floorcoverings. Uplifted, end-of-life material is contaminated by adhesives and sub-floor materials (e.g. concrete) as well as, potentially, legacy additives. Some Homogeneous end-of-life flooring can be decontaminated and recycled back into the same type of product, or backing layers for Heterogeneous or LVT flooring. The amount of end-of-life material being recycled is rather low due to unresolved challenges, however higher volumes of the cleaner offcut waste are being recycled. In Asia, LVT products are being recycled into the backing for new LVT products.
- 2.23. ResiLoop submits that the challenge for the Scheme will be aligning the volume of material recovered with demand from the end market to reprocess it. The R&D component of the Scheme, funded from the levy, is therefore paramount for ResiLoop to be in a position to expand the Scheme's coverage in terms of both products and geography. Export opportunities for the recyclate to be used in manufacturing new floorcoverings may also be explored. In part, this accounts for the initial 6-year focus of the Scheme to give sufficient time to explore and develop potential end markets, with the intention of conducting a full review of the Scheme's progress after 5 years. The

⁵ Approx 0.75 tonne of granulated resilient flooring material was sent to a new Victorian mixed plastics recycling facility that produces polymer aggregate for use in concrete building products. The material was of interest due to the high calcium carbonate content. The plant reported the trials went "quite well" when mixed with other plastic. ResiLoop will explore larger scale trials with the company.

review will provide clear direction on the longer-term viability of the Scheme, as outlined above.

How the Scheme works

2.24. The Scheme will engage: contractors and major retailers to operate collection points for resilient flooring waste; installers (the floor laying trade) and major construction project partners to act as collectors; and recycling and remanufacturing partners to reuse the collected waste.

Table 2: Supply chain process

Step	Supply Chain actors	Process
1.	Floor layers/installers – largely sub-contractors employed by Commercial Contractors or Retail Stores Contractors, Retail Stores operating a Collection Point.	Floor layers working for Contractors or Retail Stores operating Collection Points, and willing to collect offcut materials are registered with the Scheme (for free). They may be associated with one or more Collection Points. They will be issued with ResiLoop collection bags by the Contractor or Retail Store related to the installation job being performed. Three types of bags provided, one for each product type (LVT, HE, HO). ⁶
2.	Floor layers/installers	Collect offcut waste by product type as they install new floorcoverings of ResiLoop Member in-scope product. Responsible for ensuring collected material complies with Acceptable Waste Criteria.
3.	Floor layers/installers Contractors	Bags are returned to the Collection Point.
4.	Floor layers/installers Contractors / Retail stores / Accessory Supplier depots	Bags of recovered waste are ‘checked in’ to the Collection Point’s ResiLoop waste receptacle. Number of bags dropped off by product type and collector logged on ResiLoop digital platform.
5.	Contractors / Retail stores / Accessory Supplier depots	Collection Point requests collection of the full waste receptacle when required via the digital platform. ResiLoop arranges supplier to collect and transport recovered material to ResiLoop-registered end manufacturer or recycler.
6.	Recycler/End Manufacturer	Receives delivery of material, confirms weight of material received and processed, and reports any contamination or material requiring disposal.

2.25. ResiLoop intends to roll out the Scheme incrementally, to ensure its viability, particularly in light of the currently limited end-markets for resilient flooring waste. ResiLoop submits that stage 1 will commence in 2024, stage 2 will commence late-2025 and stage 3 will commence in mid 2028. The table below shows the 3 stages to establish the Scheme leading up to the scheduled full implementation of the Scheme in 2030.

⁶ Luxury Vinyl Tiles (LVT), Non-textile backed Heterogeneous sheet (HE) and Homogeneous sheet (HO) offer the best likelihood of recyclability and account for a large proportion of sales of resilient flooring in Australia. See page 22 of ResiLoop Limited’s application for authorisation dated 28 June 2024, available on [ACCC’s public register](#).

	Stage I TODAY	Stage II TOMORROW	Stage III FUTURE
Collection	Member-only products	Member-only products	Member and non-member products ¹¹
Waste stream	Installation	Installation	Installation + End of first use
Products for recycling	LVT, HO, certain HE (non-textile backed).	Add: Safety Floor and Hybrid or rigid core tiles products if feasible.	Add all vinyl-containing products and non-vinyl products, if feasible
Consumption Sector	Residential + Commercial	Residential + Commercial	Residential + Commercial
Geographic coverage	Metro NSW, VIC, QLD	Metro and regional NSW, VIC, QLD	National if economically viable

Collection cannot be limited to member-only products at this Stage (Stage 3), as it is too difficult to track whether a member is responsible for end of first use waste.

2.26. During the initial implementation phases (Stages 1 and 2), the types of resilient flooring waste and geographic regions covered by the Scheme will be limited. In particular:

- In the initial stages of the Scheme, ResiLoop will only accept Full Members' products in order to limit the risk of 'free riders' benefitting from the Scheme without contributing and to ensure that ResiLoop can match supply of waste to demand from recyclers and remanufacturers. ResiLoop welcomes and encourages any distributor or manufacturer to become a Full Member.
- The geographic areas in which collections of resilient flooring waste will occur will initially be confined to select locations in NSW, Victoria and Queensland. These states account for approximately 80% of resilient flooring waste.
- All product must meet the Acceptable Waste Criteria.⁷ The Acceptable Waste Criteria will apply guidelines that are intended to ensure that the collected materials are of an acceptable condition to enable them to be managed and recycled. Further, the Acceptable Waste Criteria will list what products are currently able to be recycled under the Scheme. This will initially only be LVT, HO and certain HE resilient flooring products sold by Full Members. While hybrid/rigid tiles waste will not be collected and recycled initially, research and development will be undertaken into processing capacity for this product, so that it can be recycled in future stages of the Scheme.

2.27. The Scheme will later be expanded to collect and recycle all post-consumer waste of resilient flooring, including the harder-to-recycle waste streams and the less cost-effective geographic locations (Stage 3). This stage is dependent on identifying viable technology to remove legacy additives⁸ from the waste stream and on identifying end market options for non-vinyl materials and further markets for vinyl materials.

⁷ See Attachment 4 of ResiLoop Limited's application for authorisation dated 28 June 2024, available on the [ACCC's public register](#).

⁸ Legacy additives are substances that are no longer permitted or considered acceptable to be used in newly manufactured products. It may be harder to recycle materials with legacy additives because end customers are reluctant or unable to use waste materials containing legacy additives due to concerns they may end up in new products.

Funding of the Scheme

- 2.28. ResiLoop will initially be funded through seed funding. Founding Members have each paid a cash advance, which is calculated based on one-quarter's worth of the application of a levy of 9 cents per square metre on the sale of in-scope products in the preceding sales year. These cash advances will be used as working capital to establish the Scheme infrastructure and operationalise the Scheme.
- 2.29. Full Members agree that this contribution will not be passed on through the supply chain but absorbed as the Members' contribution to the Scheme.
- 2.30. After the initial period of funding the implementation of the Scheme through seed funding, the Scheme will then be predominantly funded by a product levy. The product levy will be agreed and paid by Full Members (participating product manufacturers and distributors). The precise levy will be determined annually by the Board of ResiLoop based on the volume of recovered material required to meet end market demand, up to a maximum levy of 15 cents per square metre to be applied on the sale of in-scope products.

Engagement and incentives to be part of the Scheme

- 2.31. ResiLoop submits that it will develop and manage an effective, targeted marketing campaign to raise awareness of the Scheme, and a system for on-boarding further stakeholders. The key audiences of this campaign will be industry participants rather than household (retail) consumers.
- 2.32. ResiLoop submits that Scheme awareness and necessary training in the collections process will be rolled out through existing industry training channels such as Technical and Further Education (TAFE) institutions, Registered Training Organisations, industry associations, events and forums.
- 2.33. ResiLoop submits that in July 2024, the Australian Government released its Environmentally Sustainable Procurement Policy to support Australia's transition to a circular economy by encouraging procurement of products that are either recycled, remanufactured, or re-used after they have served their initial purpose. Implementation of the Policy will commence with Construction Services which includes new building works, major refurbishments and fit-outs of owned or leased buildings. This activity is relevant for floorcovering installation. One of the metrics for the Policy is the proportion of products and/or material recycled or recovered from total waste generated during the life of the project.
- 2.34. ResiLoop submits that building rating tools and product ecolabels and sustainability certifications are encouraging the building and construction sector to minimise waste generation and divert wastes from landfill, in order to position their products for specification preference, particularly in the commercial sector.

Measurement and reporting under the Scheme

- 2.35. ResiLoop submits that it will, in consultation with participating members, develop specific targets to measure progress towards the Scheme's goals.
- 2.36. Key performance targets will be established particularly in relation to:
 - expanding the estimated market share of distributors and manufacturers that are participants in the Scheme (currently approximately 30%) to a medium-term target of 50%
 - financial sustainability

- expanding the volume of end market demand for recyclate (currently 350-400 tonnes), driven by the development of new end markets as a result of R&D investment
- expanding the number and geographic coverage of collection points in line with end market demand for materials
- growth in the volume of recovered, recyclable material. The target for the first 6 years of ResiLoop is to divert at least 3,000 tonnes of resilient floorcoverings from landfill
- average cost per tonne of material recovery.

2.37. Annual reporting of progress against agreed performance metrics will be published in a statement by ResiLoop on its website, and promoted through trade and social media channels.

2.38. The statement will be published no later than 3 months after the end of each annual reporting period. The statement will report on, at least, the following matters:

- annual targets for the Scheme
- the number of distributors, manufacturers, wholesalers and retailers that are participants in the Scheme as at the end of the annual reporting period
- the estimated market share of distributors and manufacturers that are participants in the Scheme as at the end of the annual reporting period (based on sales by volume of categories of resilient floorcovering included at that time in the product levy compared to total market sales by volume)
- the number of collectors and recyclers as at the end of the annual reporting period
- the number of collection points as at the end of the annual reporting period
- the geographic coverage of the collection points as at the end of the annual reporting period
- the volume of resilient flooring products that was recycled in the annual period due to the Scheme
- estimated CO2 emissions saved from the substitution of virgin materials during the annual reporting period
- the total volume of resilient flooring that has been collected under the Scheme to date and estimated CO2 emissions saved from the substitution of virgin materials under the Scheme to date
- the end use applications taking up the recyclate
- the total levy funds collected under the Scheme in the annual reporting period
- a breakdown of how levy funds were spent in the annual reporting period
- an explanation of how the funds being spent are contributing to achieving the Scheme's objectives.

2.39. ResiLoop submits that a system will be developed to collect and collate other relevant data at a sufficiently granular level to implement relevant performance metrics

including a digital platform that will record collections and movements of materials from Collection Points to Recyclers. Participants in the Scheme, such as floor layers collecting materials and contractors or retail stores operating a Collection Point, will need to be registered with the Scheme so that movements of materials can be tracked.

- 2.40. ResiLoop will maintain a register of Members participating in the Scheme, and this will be listed on ResiLoop's website.
- 2.41. The Board will appoint an independent, external consultant to conduct a full review of the operation of the Scheme, to commence no later than the fifth anniversary of the commencement of the Scheme.⁹ The reviewer will have full access to relevant operations and performance data. The review must be completed within six months and a report published on ResiLoop's website.
- 2.42. ResiLoop submits that given the likely 1-3 year duration of research, commercial feasibility and capacity investment projects, less than 5 years as a review period would not provide sufficient time to evaluate the effectiveness of the Scheme, particularly in development of end markets for recycle. It considers the five-year timeframe is an appropriate length of time for a start-up operation to consolidate early learnings into its longer-term strategy.
- 2.43. ResiLoop submits that it also intends to seek formal government accreditation of the Scheme as a voluntary stewardship program. ResiLoop submits that a key success factor of the Scheme will be supported by government voluntary product stewardship scheme accreditation. This would further formalise that the Scheme is designed to meet its objectives.

The rationale for the Scheme

- 2.44. In 2022-23, the Australian Resilient Flooring Association (**ARFA**) received a \$1 million National Product Stewardship Investment Fund grant from the Commonwealth Government to design an industry-supported Australian product stewardship scheme for the responsible management, recovery and recycling of resilient flooring waste.
- 2.45. ResiLoop submits that ARFA has engaged with participants across the resilient flooring supply chain and undertaken research, business modelling and field trials to test and refine various approaches to recycling resilient flooring waste, which has informed the design and development of the Scheme.
- 2.46. ResiLoop submits that the current recycling rate of resilient flooring waste generated in Australia is very low, and at present, there is no adequate infrastructure to collect, sort and reprocess resilient flooring waste; and few sources for remanufacturing or reuse of the material at scale.
- 2.47. ResiLoop further submits that it is not aware of any alternate scheme offering similar scale that would emerge in the likely future without the Proposed Conduct. ResiLoop expects that in the likely future without the Proposed Conduct, insignificant volumes of Australian resilient flooring would be recycled, in Australia or overseas.

3. Consultation

- 3.1. The ACCC invited submissions from a range of potentially interested parties including existing and potential Scheme participants (manufacturers, importers, distributors,

⁹ The review will cover, at 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 and recommendations for any material improvements to the Scheme's operation.

contractors and retailers), and parties external to the Scheme such as relevant industry associations and peak bodies, consumer groups, state and federal government and relevant regulatory bodies.¹⁰

- 3.2. The ACCC received 14 submissions from interested parties in relation to the application.
- 3.3. Karndean Designflooring, a Founding Member of ResiLoop and President of ARFA, approves of the Scheme and submits that it addresses a significant landfill problem that has no current operational solution and is likely to lead to further industry developments. Karndean Designflooring also submits that interim authorisation, among other things, would provide certainty and consistency in the market, reduce the risk of greenwashing, and increase the likelihood that the end market is supplied with the required quantities of collected material.¹¹
- 3.4. Andersens Floor Coverings, BVT Flooring Solutions and Newfurn Floor Coverings support the Scheme and submit that it is likely to deliver improved environmental outcomes, support the transition to a circular economy, and send strong signals to floorcovering distributors in the sector to commence addressing end-of-life of their products. The interested parties also submit that interim authorisation would provide confidence and transparency in the market and will enable the funding of the recovery of waste materials as feedstock for the production of the new end market product.¹²
- 3.5. Pegulan Floor Coverings supports the Scheme and submits that it is a major step forward in improving sustainability within the industry through diverting large amounts of waste material away from landfill to be repurposed as new products. Pegulan Floor Coverings notes that in order for the Scheme to be successful and gain wide industry support, the small levy will need to be transparent across all stakeholders.
- 3.6. Carpet Court Australia endorses the Scheme and submits that the initiative will deliver significant public benefits, including enhanced environmental outcomes, improved resource efficiency, and positive competitive effects across the resilient flooring market.
- 3.7. Altro APAC and Polyflor Australia, both Founding Members of ResiLoop, support the Scheme and its objectives.
- 3.8. Interface Australia, a provider of resilient flooring, supports the Scheme and submits that its implementation will improve the design, recovery, reuse, and recycling within the resilient flooring industry.¹³
- 3.9. Gerflor Australia Pty Ltd and Kenbrock Pty Ltd support the Scheme and submit that it will deliver improved environmental outcomes, to build a circular economy. Further, the probability of the Scheme's success will be maximised by enabling ResiLoop to adopt a consistent approach so that the market can gain confidence in the Scheme's future.¹⁴
- 3.10. Global GreenTag International (an industry product certification participant) approves of the Scheme and submits that it is likely to result in economic, environmental and

¹⁰ Public submissions received are available from the [ACCC's public register](#).

¹¹ Submission from Karndean Designflooring dated 19 July 2024, available on [ACCC's public register](#).

¹² Submissions from Andersens Floorcoverings Pty Ltd dated 17 July 2024, BVT Flooring Solutions Pty Ltd dated 16 July 2024, and Newfurn Floor Coverings dated 30 July 2024, available on [ACCC's public register](#).

¹³ Submission from Interface Aust Pty Ltd dated 1 August, available on [ACCC's public register](#).

¹⁴ Submission from Gerflor Australia and Kenbrock dated 5 August, available on [ACCC's public register](#).

resource benefits, as well as being essential to the circular economy measures that are attempting to be implemented on an industry, Federal, State and Local Government level.¹⁵

- 3.11. Vinyl Council of Australia supports the Scheme and ResiLoop's aim to establish and operate a voluntary, industry-led product stewardship scheme for the collection and recycling of resilient flooring waste, funded by a transparent levy on all resilient flooring sales to support Research & Development and operational costs of the Scheme.
- 3.12. Waste Management and Resource Recovery Association of Australia (**WMRR**) generally supports an interim authorisation of the Scheme.¹⁶ WMRR notes there are often long-term challenges with voluntary schemes and proposals of a short-term lower product levy, submitting that this approach may not be conducive to a long-term financially viable scheme that covers the true costs of a stewardship. WMRR is concerned that short-sighted costings run the risk of not only harming this Scheme's efforts, but hindering further schemes if the integrity of these policy levers is doubted. WMRR submits the ACCC should include a review of the proposed levy to ensure it is still an accurate reflection of the growing maturity of recovery markets, and an additional review of the voluntary nature of the Scheme to ensure non-participants are not gaining a competitive advantage nor free riding.¹⁷
- 3.13. DCCEEW supports the Scheme and submits that there is a national public benefit in collective action to address resilient flooring product waste, and that the Proposed Conduct supports and aligns with the government's policies to move to a more circular economy. DCCEEW further considers that the iterative rollout of the Scheme is likely to increase recycling and reuse of resilient flooring waste by public reporting and clear performance targets.¹⁸
- 3.14. ACOR submits that with the right measures in place, product stewardship schemes and extended producer responsibility can be an effective way to improve environmental stewardship - particularly where recycling rates are low, or materials have low or negative value - but only if these schemes are properly designed in partnership with recyclers. Further, product stewardship schemes must address the actual costs of recovery and recycling to support genuine high-order recycling outcomes, and investment in Australian recycling.¹⁹
- 3.15. In relation to industry representation and engagement under the Scheme, DCCEEW submits that whole-of-supply chain engagement and buy-in, especially with the product design, installation, and recycling and resource recovery sectors, is important to understand upstream and downstream impacts and realistic costs of delivering stewardship actions. This can be achieved by ensuring broad supply chain representation on scheme governance and technical advisory arrangements. DCCEEW understands the initial focus of the Scheme is on a tailored, small-scale approach with the intention for greater inclusion of recyclers as demand increases.

¹⁵ Submission from Global GreenTag International Pty Ltd dated 12 July 2024, available on [ACCC's public register](#).

¹⁶ The Waste Management and Resource Recovery Association of Australia is the national peak body representing Australia's waste and recovery industry, and includes representation from business organisations, the three tiers of government, universities, Non-Government Organisations and research bodies.

¹⁷ Submission from WMRR dated 30 July 2024, available on [ACCC's public register](#).

¹⁸ Submission from Department of Climate Change, Energy, the Environment and Water dated 24 July 2024, available on [ACCC's public register](#).

¹⁹ Submission from ACOR dated 7 August 2024, available on [ACCC's public register](#).

This approach will align industry commitment with processing capacity and end-market readiness.²⁰

- 3.16. ACOR also submits that it is essential that the entire supply chain participates in establishing the Scheme's goals and ongoing operation, through adequate representation on Scheme boards, including recycler representation. To effectively deliver a circular economy, product stewardship schemes must have a governance structure that equitably represents every stage of the supply chain. ACOR submits there is no indication that ResiLoop's Board will include representation from the recycling sector, which is an oversight given that the Scheme is centred on recycling.²¹
- 3.17. ResiLoop submits in response that, a Stakeholder Reference Group was established with about 40 self-nominating members drawn from across the resilient floorcovering value chain and relevant stakeholders. This group acted as a consultative forum, providing a sounding-board for the project team in the Scheme's design development as well as expert, solution-based advice and feedback in implementation of the 18 month project. Four members were from recycling businesses. All members had the opportunity to provide valuable feedback to the project team and it played a pivotal role in shaping the Scheme's design.
- 3.18. The ACCC strongly encourages ResiLoop to find ways to enable greater involvement from all sectors of the industry in the strategic direction of the Scheme, whether by appointing additional Board representatives, and/or by other means, such as targeted consultation. The ACCC is open to further discussion with ResiLoop in this regard.
- 3.19. Public submissions by the Applicant and interested parties are on the ACCC's Public Register and are discussed further in the ACCC's assessment below.

4. ACCC assessment

- 4.1. ResiLoop has sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, may substantially lessen competition within the meaning of section 45 of the Act, and would or might constitute exclusive dealing within the meaning of section 47 of the Act.
- 4.2. Consistent with 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 conduct would result or be 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.

Relevant areas of Competition

- 4.3. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. The ACCC considers it is not necessary to precisely identify the relevant areas of competition in assessing this application. The ACCC considers that the relevant areas of competition likely to be affected by the Proposed Conduct include:
 - the manufacture, importation, wholesale and retail supply of resilient flooring
 - the installation and uplift of resilient flooring services

²⁰ Submission from Department of Climate Change, Energy, the Environment and Water dated 24 July 2024, available on [ACCC's public register](#).

²¹ Submission from ACOR dated 7 August 2024, available on [ACCC's public register](#).

- the disposal of end-of-life resilient flooring products
- the supply of end products that use end-of-life resilient flooring as an input.

Future with and without the Scheme

- 4.5. In applying the authorisation test, the ACCC compares the likely future with the conduct that is the subject of the authorisation to the likely future in which the conduct does not occur.
- 4.6. ResiLoop submits that in the likely future without the Scheme there will be no alternative industry stewardship schemes for resilient flooring in Australia that is likely to emerge, and ResiLoop expects that insignificant volumes of resilient flooring would be recycled and diverted from landfill in Australia.
- 4.7. ResiLoop submits that in the likely future without the Scheme, any efforts by individual participants in the industry would be minimal (as they have been to date), and that it would be unlikely that material volumes would be exported for recycling under current or new Individual Arrangements given the costs borne by distributors due to current regulations (outlined above). As a result, ResiLoop submits that the benefits from the Scheme will not be realised.
- 4.8. ResiLoop submits that some distributors may elect to establish or continue Individual Arrangements, for the reasons discussed above at paragraph 2.19. This does not preclude these organisations from joining ResiLoop on the same terms as existing members, and distributors can opt into the ResiLoop scheme yet maintain their own Individual Arrangements if they wish.
- 4.9. The ACCC considers that, in the future without the Scheme, at least in the short to medium term, there would be no industry-led product stewardship scheme to promote recycling of resilient flooring. Further, the ACCC considers that it is unlikely that significant volumes of resilient flooring will be recycled under Individual Arrangements, especially considering recent legislation introduced around exporting waste material.
- 4.10. The ACCC considers that in the future with the Scheme, companies may choose to continue their own Individual Arrangements, while also having the option to participate in the Scheme. The ACCC considers the Scheme may also appeal to companies on the basis that ResiLoop will be offering a rebate of a proportion of the levy contribution to these members for waste they demonstrate is collected under their own Individual Arrangements and sent for recycling.

Public benefits

- 4.11. 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.²²

- 4.12. ResiLoop submits that the Scheme results in substantial public benefits including environmental benefits (primarily by reducing the volume of resilient flooring going to

²² 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.

landfill and reducing CO2 emissions by substituting virgin materials with recycled materials) and economic benefits (by creating new jobs and delivering allocative efficiencies).

4.13. ResiLoop submits that the Scheme will be transparent, accountable and aligned with industry expectations and government policy.

4.14. The ACCC has considered:

- environmental benefits from reducing resilient flooring going to landfill
- benefits arising from research and development into resilient flooring end-of-life products
- pricing to better reflect the externalities of resilient flooring disposal
- increase in job opportunities pursuant to the Scheme.

Environmental benefits from reducing resilient flooring going to landfill

4.15. ResiLoop submits that the environmental benefits of the scheme include reduced amounts of resilient flooring waste going to landfill in Australia. ResiLoop estimates (conservatively) that over 3,000 tonnes of resilient flooring waste will be diverted from landfill over the first 6 years of the Scheme.

4.16. Further, ResiLoop submits that environmental benefits of the scheme include a consequent reduction in the use of fossil-fuel virgin resources and CO2 emissions from the increased recycling and reuse of resilient flooring waste. ResiLoop estimates that 900kgs CO2 equivalent emissions per tonne will be saved through the recycling of resilient flooring waste under the Scheme in place of virgin materials.

4.17. ResiLoop submits that diverting this material from landfill reduces the risk of microplastic pollution generated from landfills. While well-maintained landfill sites have containment measures in place to prevent leakage, over time these measures may degrade and may release microplastic particles to the environment.

4.18. ResiLoop submits that older floorcovering materials may contain legacy additives such as phthalate plasticisers and heavy metal stabilisers that are restricted from use today but were once widely used. These substances may leach from landfilled material although the environment is protected where adequate containment measures are in place. Illegal dumping of waste is likely a more significant cause of environmental damage. Construction and demolition waste is one of the common sources of illegally dumped material in Australia by both households and businesses, usually to avoid disposal fees at tip sites.

4.19. While the early stage of ResiLoop is focused on waste generated by installation of today's products (that do not contain restricted substances), ultimately the scheme intends to recover aged, end-of-life material that is still currently in use.

Interested parties

4.20. DCCEEW submits that collective industry action is more likely to achieve improved environmental outcomes for waste resilient flooring products than individual business led approaches. Stewardship schemes deliver the financial and operational arrangements to divert end-of-life products with limited or no recycling options away from landfill.

4.21. Further, DCCEEW submits that that implementation and delivery of voluntary product stewardship schemes is supported by establishing clear performance targets that are

developed using recognised standards or best practice methodologies; and public reporting on outcomes against these targets.

- 4.22. Global GreenTag International submits that ResiLoop and emergent schemes like it will be critical in reducing Australia's (and indeed the global) carbon, biodiversity and resource footprint.
- 4.23. Pegulan Floor Coverings submits that ResiLoop has developed a Scheme that will divert large amounts of flooring waste material away from landfill to be repurposed as new products. It sees this as a major step forward in improving the industry's sustainability.
- 4.24. Andersens Floor Coverings, BVT Flooring Solutions and Newfurn Floor Coverings confirm that resilient floorcoverings, such as vinyl sheet and Luxury Vinyl Tiles, account of an estimated 60,000 tonnes of waste in landfill a year, where 9000 tonnes of this have never been walked on (offcuts and left-overs from laying new floors). They submit that a wide range of industry stakeholders have expressed interest in seeing a solution for the waste generated in floor laying so that the material doesn't end up in landfill.

ACCC view

- 4.25. The ACCC considers that the Scheme is likely to result in public benefit in the form of reduced volumes of resilient flooring waste in landfill, and the consequential reduction of other pollutants and contaminants leaking from landfill. The ACCC considers there is a clear public benefit likely to result by reducing the environmental and health and safety hazards associated with such disposal methods.
- 4.26. However, the level of reduction of resilient flooring in landfill pursuant to the Scheme is heavily dependent on the levels of (voluntary) participation, and the effective administration of the Scheme by ResiLoop including robust monitoring and reporting procedures.
- 4.27. The ACCC notes that ResiLoop has committed to setting annual targets for the Scheme including: membership, collection and recycling rate, levy funds usage, and usage of the recycle. ResiLoop 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. The ACCC strongly believes that public reporting is critical to ensuring the effectiveness of the Scheme and is open to further discussions with ResiLoop in this regard.

Benefits arising from levy-funded research and development into resilient flooring end-of-life products.

- 4.28. ResiLoop submits that benefits from the Scheme include funding new research to identify more efficient and effective methods to recycle and reuse resilient flooring in Australia.
- 4.29. ResiLoop submits that the goal is to build end market demand and recycling capacity and capability, and thereby increase the volume of resilient flooring waste that can be collected and recycled under the Scheme. For example, this may involve identifying ways to foster durability, good maintenance and repair to encourage retention of resilient flooring in use for longer, improve the design of products to make recycling easier and collaborate with the recycling and manufacturing industries to develop new end markets that can recycle or reuse the materials sustainably.
- 4.30. ResiLoop submits that the Board, with input from the Advisory Panel, agrees to allocate Scheme funds in accordance with the organisation's budget to certain

projects, trials or research initiatives. A policy on the allocation approach of R&D funds has been drafted and will be reviewed and ratified by the Advisory Panel once established.

- 4.31. ResiLoop submits that a local plastics manufacturer has commissioned a new production line to manufacture a new gardening product made using recycled resilient flooring waste and commercial arrangements have been entered into with a retailer in relation to that product. This commercial arrangement would not have come about, and will not come to fruition, without the Scheme, thereby strengthening the Australian recycling industry and markets for resilient flooring waste.
- 4.32. ResiLoop submits that fostering collaboration along the entire supply chain and innovative manufacturing will support government policy and Australia's transition to a circular economy by 2030.

Interested parties

- 4.33. DCCEEW submits that industry led, voluntary product stewardship schemes can support a more circular economy in Australia by taking responsibility for products across the whole product lifecycle, including at end-of-life.
- 4.34. Global GreenTag International submits that the ResiLoop project is an important industry supported initiative essential to the circular economy measures trying to be implemented not only by industry but by Federal, State and Local Governments and Corporations.
- 4.35. Andersens Floor Coverings, BVT Flooring Solutions and Newfurn Floor Coverings submit that ResiLoop will commit significant funding to research and develop reuse and recycling solutions locally, as well as make recovery of waste from construction sites economically viable. Landfilling this waste represents a missed opportunity to keep useable resources in productive use.
- 4.36. Interface Aust Pty Ltd submits that ResiLoop is a key building block for the development of a circular economy within the resilient flooring industry.

ACCC view

- 4.37. The ACCC notes that without the Scheme, industry funding to undertake research and development into resilient flooring recycling practices and new end products is likely to be minimal.
- 4.38. The ACCC accepts that additional research and development activities as a result of levy funds collected under the Scheme, aimed at increasing the value of recovered resilient flooring materials, is likely to incentivise more collection of end-of-life resilient flooring and higher standards of recycling practices.
- 4.39. The ACCC notes that under the Scheme, ResiLoop, in collaboration with industry partners, intends to research how legacy additives may be safely extracted from waste and how to manage the adhesives and residues in the recycling process. Such initiatives would likely increase recycling practices and support a circular economy policy.
- 4.40. The ACCC notes that the proportion of funding used for research and development may be low in the early stages of the Scheme but expects that the proportion of funding for research and development will increase as the Scheme progresses.

Pricing to better reflect the externalities of resilient flooring disposal

4.41. ResiLoop submits that the Scheme will address externalities and improve allocative efficiency. It submits that current pricing for resilient flooring does not fully reflect the costs associated with managing the lifecycle of those products, as it does not reflect the significant environmental costs associated with the current methods of disposal of resilient flooring waste. The Scheme is likely to result in pricing that better signals to end customers the environmental costs of consuming predominately imported resilient flooring in Australia.

ACCC view

4.42. The competitive process generally leads to efficient market outcomes. However, in circumstances where there is market failure (for example, from information asymmetries or externalities), the competitive outcome of the market is not the most efficient.

4.43. The ACCC considers that externalities exist in the disposal of resilient flooring in Australia. In particular, the costs of improper disposal and insufficient recycling accrue predominantly to the public at large.

4.44. The ACCC is not in a position to quantify the size of the negative externality associated with resilient flooring disposal, or the extent to which it is corrected by ResiLoop's levy. However, the ACCC considers that the Scheme is likely to result in some public benefit due to the levy resulting in prices of resilient flooring being more reflective of their full social cost.

Increase in job opportunities pursuant to the Scheme

4.45. ResiLoop submits that the implementation of the Scheme will create new jobs across a variety of sectors and this would not occur in the likely future without the Scheme.

4.46. ResiLoop submits that modelling undertaken by ARFA/ResiLoop to date supports the proposition that jobs will emerge in the following areas of the economy as a result of the Scheme:

- Transport and logistics – associated with the haulage of resilient flooring waste product from Collection Points to recyclers (and subsequent transport of the recovered resources from recyclers to product manufacturers).
- Waste processing and materials recycling – the predominance of jobs created will be in this sector and will involve the receipt of resilient flooring waste and the recycling of this resource / waste stream into a saleable commodity. As this material is not currently recycled in Australia, the Scheme will generate additional tonnes of material for reprocessors to handle, creating additional labour demand.
- Product manufacturers – potential for new jobs where investment in new manufacturing lines or expansion of existing production occurs as products develop that can absorb these recycle materials.
- Research & Development – ResiLoop intends to invest in research and development in processing technologies and improvements and recycled product and end market development and collaboration (outlined further above).
- Scheme management and administration – ResiLoop will manage the Scheme on behalf of industry and for the benefit of the community. ResiLoop will employ

managers and professionals to fulfil needs covering marketing and communications, logistics coordination, operations, and finance and administration amongst other expected needs.

4.47. ResiLoop expects 11.9 full time equivalent (FTE) jobs to be created in at least the first 4 years of the Scheme, in line with the anticipated volumes to be collected, although ResiLoop considers this to be a conservative estimate.

ACCC view

4.48. The ACCC considers that, to the extent that the Scheme facilitates additional employment opportunities in the collection and/or recycling of resilient flooring, and through the administration of the Scheme, this is a public benefit.

ACCC conclusion on public benefit

4.49. The ACCC considers that the Scheme is likely to result in significant environmental benefits through increasing the volumes of resilient flooring being diverted from landfill and being reused, including through research and development into effective uses of resilient flooring waste, and pricing that better reflects the cost of disposal of resilient flooring. It may also result in some employment opportunity benefits through the operation of the Scheme.

Public detriments

4.50. 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.²³

4.51. ResiLoop submits that the Scheme is unlikely to generate any material public detriment, including because there will be limited impact on the wholesale or retail prices of resilient flooring (given the levy will represent a minimal proportion of the installed cost of new resilient flooring) and it will not involve, or increase the likelihood of, co-ordination between Scheme participants in other aspects of their competitive behaviour or decision-making.

4.52. The ACCC has considered potential public detriments including:

- imposition of the levy
- restriction on supply
- risk of impacts on competition from information sharing or coordination beyond that authorised.

Imposition of the levy

4.53. Generally, an agreement among competitors on price, including the imposition of a levy, has the potential to produce a public detriment to the extent that the levy is passed on to consumers, resulting in higher prices, and is likely to lessen competition

²³ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

relative to a situation where each business individually makes its own pricing decisions.

- 4.54. Under the Scheme, members are collectively agreeing to a levy on product sales that will be passed through transparently to customers and ultimately to the end consumer. The Scheme will be funded by a product levy of no more than 15 cents per square metre applied to certain categories of resilient flooring products.
- 4.55. ResiLoop submits that, for resilient flooring installed in an average house,²⁴ the wholesale cost of the resilient flooring will be \$1,323, based on an average wholesale price for resilient flooring of \$20/square metre. The total levy will be approximately 0.4% of this wholesale cost. The retail installed cost will be \$3,307.50, based on a cost of \$50 per square metre. The total levy will be less than 0.2% of this installed cost.
- 4.56. In an additional submission, ResiLoop submits that it has engaged a third party with expertise in economic modelling and business case development of product stewardship schemes to consider the financial viability of the Scheme in respect to the levy imposition. ResiLoop submits the scale of the levy has been determined based on modelling of volume forecasts and includes assumptions about inflation, and market growth of sales from the existing 15 foundation members. ResiLoop further submits additional income streams, such as annual membership fees and capital grants provided under the Research & Development program, have also been considered to ensure the financial viability of the product levy and success of the Scheme.
- 4.57. The product levy will be passed transparently through the value chain, for example, by direct reference on the invoice to the scale of the product levy and the relevant products included in the purchase. By making the levy explicit on invoicing, it will make it easier for customers and end consumers to identify that appropriate waste recovery and recycling behaviour is being undertaken by product suppliers, reducing the risk of 'greenwash' and enabling consumers to choose freely the product offering best meeting their needs.
- 4.58. ResiLoop submits that the levy is not likely to distort competition as it constitutes a very small proportion of the installed price of the product. It does not impede supply, will have no impact on product choice, or quality, nor likely have any influence on market allocation among members.
- 4.59. Further, ResiLoop submits that the imposition of the levy will not create any barriers to entry for new competitors as the ResiLoop scheme is voluntary and open to any supplier/distributor of relevant products into the Australian market. It will not disadvantage smaller players in the industry as the intended levy collected is proportional to a member's sales of the relevant products.
- 4.60. ResiLoop submits that the levy (if passed through to end customers) may be offset by reduced waste disposal charges (to the extent these are currently being passed through to end customers). To the extent there is any (small) increase in price, this more closely reflects the costs associated with managing the lifecycle of those products, including the current methods of disposal of resilient flooring waste. This is an improvement in efficiency and so should not be viewed as a detriment.

Interested parties

- 4.61. Polyflor Australia submits that it supports the collection levy of up to \$0.15 per square metre as a complete visible passthrough at each point of sale.

²⁴ ResiLoop submits that the average floor area size of a new house in Australia is 232.3 square metres, resilient flooring will be used for half of the floor area (66.15 square metres).

- 4.62. Karndean Designflooring submits that the product levy is very small in relation to product prices, and therefore the impact on competitiveness would be negligible.
- 4.63. Carpet Court Australia submits that the clear disclosure of the levy ensures greater accountability, enhances the reliability and uniformity of the Scheme's operations, and mitigates the risk of misleading environmental claims.
- 4.64. Andersens Floor Coverings, BVT Flooring Solutions, Newfurn Floor Coverings, Gerflor Australia and Kenbrock all submit that as a voluntary scheme, it will not restrict competition in the market as the levy is a very small component of price yet may signal to other product distributors the need to address the end-of-life of their products through ResiLoop, or through other industry or company initiatives.
- 4.65. Further, they submit that levy transparency provides greater accountability, certainty and consistency of Scheme operation, reduces risk of 'greenwashing' and offers opportunity to educate the value chain about the waste impacts of these products.
- 4.66. Pegulan Floor Coverings submits that to be successful, it is essential that the Scheme gains wide industry support, and believes that for this to happen the comparatively small levy will need to be transparent across all stakeholders involved.
- 4.67. WMRR submits that while a voluntary scheme is proposed, this does not detract from the need to ensure it is properly costed to reflect the actual cost of recovery to participants, and the real escalation of these costs over the lifecycle of the authorisation to ensure its longevity and genuine sustainability. The fact that the scheme is voluntary, resulting in the proposal of a short-term lower product levy to encourage participation, highlights both the challenge of voluntary schemes and the concern that this approach is not conducive to a long-term financially viable scheme that covers the true costs of a stewardship. WMRR is concerned that short-sighted costings run the risk of not only harming this scheme's efforts but hindering further product stewardship schemes if the integrity of these policy levers is doubted.
- 4.68. Further, WMRR submits that when reviewing subsequent applications, the ACCC should include a clear review of the proposed levy to ensure it is still accurate and reflects the growing maturity of recovery markets.
- 4.69. ACOR submits that ResiLoop's application is unclear on how the capped levy has been calculated, or how it will fund the real cost of recycling resilient flooring in Australia. ACOR submits that the factors enumerated as part of the levy calculation in ResiLoop's application include the number of members, sales volumes, end market demand, collection, transport, research and development, and administrative costs, but do not include the actual processing itself, arguably the most important aspect. Further, the application does not detail any quantification of the cost of recycling resilient flooring in Australia.
- 4.70. In response to ACOR, ResiLoop submits that ResiLoop's model is based on providing a feedstock (recovered material) for an end manufacturer for free. This approach reduces the cost of recycled feedstock for end manufacturers to make it more attractive to use recycle over virgin materials. The costs of collection, separation, delivery and contamination disposal are met by the Scheme. The model is based on the end-product manufacturer paying the cost of reprocessing in commercial arrangements typical between a reprocessor and manufacturer.

ACCC view

- 4.71. The ACCC considers that the levy is unlikely to materially impact competition, where the likely price increases will represent a minimal proportion of the total retail cost of resilient flooring for consumers.

- 4.72. The ACCC notes that industry participants will continue to each set their prices for the relevant products and services they supply and will then apply the (maximum) 15 cents per square metre levy.
- 4.73. The ACCC notes the voluntary nature of the Scheme, and that industry participants can opt to join ResiLoop, operate their own Individual Arrangements, or a combination of both. The ACCC notes that ResiLoop will offer a rebate of a proportion of the levy contribution to members who have collected and recycled waste under their own Individual Arrangements.
- 4.74. The ACCC also notes that the levy may be offset by reduced waste disposal charges for ResiLoop members (or customers), however the extent that these are currently being passed through to end customers is unclear.
- 4.75. This limited increase in price, directed at promoting proper disposal and recycling of resilient flooring, is unlikely to constitute a material public detriment.
- 4.76. The ACCC acknowledges concerns about ensuring the Scheme is properly costed, with consideration of the possible escalation of costs as the Scheme develops and the long-term viability of the Scheme. The ACCC notes the additional information ResiLoop provided about its economic modelling efforts (discussed at paragraph 4.56) and considers this is likely to address these concerns. The ACCC considers that ResiLoop should continue monitoring this closely, and if this authorisation is granted, it will be a relevant consideration for the ACCC in any application for a substitute authorisation.

Restrictions of supply

- 4.77. ResiLoop submits that pursuant to the Scheme, contractors, accessory suppliers and retail stores will be invited or may express interest in joining the Scheme to operate a Collection Point for waste. Scheme registered Collection Points or their sub-contracted agents will collect only ResiLoop member product waste in Stages 1 and 2 of the Scheme.
- 4.78. ResiLoop submits that Scheme registered collectors will make recovered waste available for collection by ResiLoop or its contracted third-party logistics partner(s) and the waste will only be delivered to Scheme registered recyclers contracted to receive the recovered materials, or end manufacturers.
- 4.79. ResiLoop submits that recyclers will need to comply with a Code of Conduct to ensure appropriate insurances, risk assessments and management plans are in place in relation to the collection, storage, handling and processing of flooring waste materials and to maintain and provide records of waste materials collected and processed under the Scheme.

ACCC view

- 4.80. The ACCC considers that the Scheme is likely to generate some public detriment by limiting the resilient flooring end-of-life supply chain to ResiLoop Scheme members, particularly in relation to Collection Points and recyclers. This could have a greater impact in regional and remote areas where access to such services is more limited or not available. The ACCC considers that the more participants that join the Scheme, the greater the competitive disadvantage for non-members.
- 4.81. However, the ACCC recognises that the requirement to deal only with ResiLoop members is a key feature of the Scheme, designed to promote participation in the Scheme, and therefore is also a key part of delivering the public benefits.

4.82. The ACCC does not consider the Proposed Conduct is likely to result in a significant detriment by restricting supply and that the magnitude of any public detriment will be partly mitigated because participation in the Scheme is voluntary.

Risk of impacts on competition from information sharing or coordination

4.83. The ACCC considers that where commercially sensitive information is shared amongst competitors, there is a risk that this could result in public detriment – particularly by impacting competition. Such information sharing creates a risk of collusion or coordinated conduct beyond what has been authorised.

4.84. ResiLoop submits that the Scheme does not involve, nor does it increase the likelihood of, co-ordination between Scheme participants in other aspects of their competitive behaviour or decision-making. In particular, there will be no broader agreement between Scheme participants as to their wholesale or retail prices for resilient flooring. Those prices will continue to be set independently by Scheme participants.

4.85. ResiLoop submits that it will establish a ‘black box’ approach to calculating and receiving levies from Full Members. The receipt of sales data will be managed by an independent, third party contractor and the calculation of the levy and receipt of funds raised will be managed by a third party accountant. ResiLoop may oversee the input of sales and calculation of the levy for each Full Member, so as to satisfy itself that the data and calculations are accurate and complete. ResiLoop and the third party contractors who receive the data and calculate and invoice the levy will not share the data of any individual member with other industry participants in order to protect commercial confidentiality and mitigate the risk of coordination. Regular audits of data submitted by Full Members to facilitate the calculation of the levy will be performed by independent, third party contractors.

4.86. ResiLoop further submits that it has a procedure for compliance with the Act including pre-meeting preparation, conduct during meetings and post meeting requirements. Both ARFA’s and ResiLoop’s Board meetings and member meetings commence with a short form reminder to members and staff present at the meeting to pay consistent attention to complying with the Act. Meeting chairs emphasise the commitment to adhering to the Act and remind participants of the prohibition on discussing sensitive or competitive information such as, but not limited to, prices, contracts, geographic coverage, market shares, production limits etc.

Interested Parties

4.87. WMRR submits that when the ACCC is reviewing subsequent applications, the Scheme’s voluntary nature will also need to be reviewed to ensure that non-participants are not gaining a competitive advantage nor free riding. It submits that as the market for resilient flooring is relatively small these issues should be apparent.

ACCC view

4.88. The ACCC does not consider that the agreement to impose the Scheme significantly increases the likelihood of broader price or non-price co-ordination between otherwise competing industry participants.

4.89. The ACCC considers that information collected by ResiLoop appears to be limited to information necessary for ResiLoop to administer the Scheme. Under the Scheme, the receipt of sales data will be managed via an independent third-party contractor and the calculation of the levy and receipt of funds raised will be managed by a third party accountant. Further, ResiLoop will protect this information and how it is used from other industry participants, substantially mitigating the risk of competitors having

access to each other's commercially sensitive information and therefore of collusion or coordinated conduct beyond that authorised, including price or non-price factors.

4.90. Further, the ACCC is encouraged by the protocols to be implemented around competition law at the commencement of ARFA and ResiLoop meetings.

ACCC conclusion on public detriment

4.91. The ACCC considers that the Proposed Conduct is likely to result in minimal public detriment because:

- Any detriment arising from restrictions on supply imposed by the Scheme is partly mitigated by the voluntary nature of the Scheme.
- The levy charged under the Scheme represents a minimal proportion of the total retail cost of resilient flooring for consumers.
- A number of factors mitigate the risk that participation in the Scheme will lead to broader coordination or collusion between participants on matters beyond the scope of the authorisation.

Balance of public benefit and detriment

4.92. The ACCC considers that the Proposed Conduct is likely to result in material environmental benefits through increasing the volumes of resilient flooring being diverted from landfill and being reused, including through research and development into effective uses of resilient flooring waste, and pricing that better reflects the cost of disposal of resilient flooring. It may also result in some employment opportunity benefits through the operation of the Scheme.

4.93. It considers that the Proposed Conduct is likely to result in minimal public detriment.

4.94. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

5. Length of Authorisation

5.1. The Act allows the ACCC to grant authorisation for a limited period of time.²⁵ 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.

5.2. ResiLoop is seeking authorisation for the Scheme for 6 years. ResiLoop submits that this period will provide sufficient time to establish and implement the Scheme, particularly given that ResiLoop will adopt a staged and sustainable approach to bring the Scheme to maturity. It will also provide time for ResiLoop to measure the impact of the Scheme and assess and fine tune the Scheme for future continuation.

5.3. The ACCC considers that the Proposed Conduct is likely to result in a net public benefit, and as such, the ACCC is proposing to grant authorisation for 6 years. The ACCC also accepts that it will take some years for the Scheme to become established and for the purported public benefits to be realised.

²⁵ Subsection 91(1) of the Act.

6. Draft determination

The application

- 6.1. On 28 June 2024, ResiLoop Ltd (**ResiLoop**) lodged an application for authorisation AA1000675 on behalf of itself, its members and future participants to establish and operate a voluntary, industry-led product stewardship scheme to collect and recycle resilient flooring waste, as described below (**Proposed Conduct**). Authorisation is sought for 6 years.
- 6.2. ResiLoop members will be subject to guiding principles approved by the ResiLoop Board.²⁶ They will also be required to comply with the Acceptable Waste Criteria, which is intended to ensure that materials collected pursuant to the Scheme are of an acceptable condition to enable them to be managed and recycled.²⁷
- 6.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 6.4. 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 would or 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.
- 6.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the conduct, including any lessening of competition.
- 6.6. Accordingly, the ACCC proposes to grant authorisation AA1000675.

Conduct which the ACCC proposes to authorise

- 6.7. The ACCC proposes to grant authorisation for ResiLoop, its current and future members, and industry participants, to discuss, enter into or give effect to any contract, arrangement or understanding, or engage in any conduct for the purposes of participating in a voluntary and industry-funded stewardship scheme to collect and recycle resilient flooring waste (**Scheme**), that constitutes:
 - a) Agreeing to participate in the Scheme pursuant to guiding principles or other requirements on Scheme participants, including to promote the Scheme, work collaboratively to ensure the development of specific targets and proper reporting of progress towards the Scheme's goals and abide by criteria in relation to acceptable flooring waste.
 - b) Planning and agreeing on collective communications about the Scheme to customers or the public, including in relation to the ResiLoop logo and imposition of the levy.

²⁶ See Attachment 3 of ResiLoop Limited's application for authorisation dated 28 June 2024, available on [ACCC's public register](#).

²⁷ See Attachment 4 of ResiLoop Limited's application for authorisation dated 28 June 2024, available on [ACCC's public register](#).

- c) Collective coordination in relation to the supply, collection and delivery of resilient flooring waste to collection points, including prioritising waste collected from ResiLoop members.
- d) Collective coordination in relation to the collection and delivery of recovered resilient flooring waste materials to recyclers or manufacturers.
- e) Collective agreement on the imposition of a levy on product sales of no more than 15 cents per square metre applied to certain categories of resilient flooring products, that will be passed through transparently to customers.
- f) The allocation of scheme funds to certain projects, trials or research initiatives, overseen by the ResiLoop Board and with input from the Advisory Panel, for the purpose of developing new end markets for the recovered waste material and increase the capacity and capability to reprocess these materials in Australia.

(Collectively, the **Proposed Authorised Conduct**.)

- 6.8. The ACCC proposes to grant authorisation for the specified Proposed Conduct in relation to Division 1 of Part IV of the Act, and sections 45 and 47 of the Act.
- 6.9. The ACCC proposes to grant authorisation AA1000675 for 6 years.
- 6.10. This draft determination is made on 16 August 2024.

7. Interim authorisation

- 7.1. At the time of lodging the application, ResiLoop requested interim authorisation to implement all aspects of the Scheme, including the imposition of the product levy to fund collection, transportation, and supply of member waste to recyclers and manufacturers.
- 7.2. ResiLoop submits that interim authorisation is essential to ResiLoop securing a foundation contract to supply resilient flooring waste to a manufacturer. This manufacturer wants to acquire resilient flooring waste in order to manufacture a new gardening product but requires supply of the waste immediately to fulfill an order from a major retailer.
- 7.3. ResiLoop submits in order to fund the collection, transportation and supply of member resilient flooring waste to the manufacturer, it will commence charging its Full Members a fee based on their annual sales of certain resilient flooring products. ResiLoop seeks interim authorisation to enable its Full Members to commence the transparent pass through of the fee as a product levy on the sale of certain resilient flooring products.
- 7.4. ResiLoop submits that if Scheme funding is not implemented imminently and collections and logistics arranged, so as to enable delivery of the resilient flooring waste and manufacture of the new gardening product, then the manufacturer may seek a substitute raw or recycle material or the retailer customer may abandon the commercial arrangement and instead seek a substitute product. If this occurs, then ResiLoop will be left without a source to supply the resilient flooring waste to if the Scheme receives final authorisation.
- 7.5. ResiLoop submits that securing the foundation contract will underpin the viability of the initial stage of the Scheme. It will also give confidence to key stakeholders in the value chain that the Scheme will be implemented consistently and transparently which, in turn, will encourage the planning and discussions required to ensure implementation of the Scheme sooner and may encourage further members to join the Scheme.

7.6. ResiLoop considers that interim authorisation will also lead to the realisation of the public benefits sooner, and will not have any detrimental effect on competition or cause harm to any parties. Further, interim authorisation would not permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim authorisation state if final authorisation is later denied.

Interested parties

7.7. DCCEEW supports the grant of interim authorisation and considers that demonstrating viable and environmentally sound arrangements for end-of-life products is important to attract industry financial participation in the Scheme and to promote confidence in an arrangement's ability to meet its environmental outcomes effectively.

7.8. Karndean Designflooring and Gerflor Pty Ltd and Kenbrock Pty Ltd all strongly support the application for interim authorisation. These parties submit as the Scheme is a first for the industry, the immediate commencement of the Scheme will provide the certainty and consistency it requires in the market, and would reduce the risk of greenwashing.

7.9. Andersens Floor Coverings, BVT Flooring Solutions and Newfurn Floor Coverings submit that granting interim authorisation will strengthen ResiLoop's ability to build momentum for the Scheme to support the start-up of manufacturing of the new garden edging product, being sold through a national retailer. Gerflor Pty Ltd and Kenbrock Pty Ltd also agree that it will also give the sector confidence to commence funding Research & Development into further end market development and onshore solutions.

7.10. WMRR submits that it recognises the time constraint for ResiLoop and supports an interim authorisation.

ACCC view

7.11. The ACCC is of the view that it is appropriate to grant interim authorisation for the Proposed Authorised Conduct set out at paragraph 6.7, considering the industry support shown by interested parties and, based on current information, that the Proposed Conduct is likely to result in a net public benefit.

7.12. The ACCC accepts that delays in commencing the Proposed Conduct could result in the retailer abandoning the commercial agreement if, without the Proposed Conduct, ResiLoop is unable to deliver the resilient flooring waste to the relevant manufacturer. The ACCC considers that the loss of ResiLoop's foundation contract could cause disruption to the foundation of the Scheme.

7.13. The ACCC understands that a foundation contract can assist the viability of and confidence in a new product stewardship scheme and encourage increased industry participation. The ACCC considers that if final authorisation is not granted, there will be some disruption from ResiLoop unwinding the Proposed Conduct and it will make it difficult for ResiLoop to meet the delivery requirements of the foundation contract. For example, Members will need to change their invoicing systems accordingly. However, the ACCC considers this would be a relatively temporary transition period.

7.14. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect or when the application for authorisation is withdrawn.

7.15. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

8. Next steps

- 8.1. The ACCC now invites submissions in response to this draft determination. 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.