

From: [Sophi MacMillan](#)
To: [Surina Sood](#)
Cc: [Tess Macrae](#); [Anna Pound](#); [Andrew Ng](#)
Subject: RE: Authorisation application for ResiLoop product stewardship scheme - Discussion [SEC=OFFICIAL]
Date: Tuesday, 9 July 2024 6:19:27 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[240708 responses to ACCC queries.pdf](#)

Hi Surina

We have considered the request for further information and have attached responses to address your dot points below. Please feel free to call me if you need clarification on any of these responses.

With respect to Section 5 of our application for authorisation regarding the reference to secondary boycotts, we request that this be struck out as it was mentioned in error. We do not foresee any conduct under our Scheme that might be construed as secondary boycotts.

We look forward to further discussion regarding our application,

Kind regards

Sophi MacMillan

M: 

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9 July 2024

Supplementary information submitted to ACCC as requested in email of 5 July 2024.

The impact of the Scheme on the competitiveness of the resilient floorcovering market

The Federal Government invited ARFA to apply for a National Product Stewardship Investment Fund grant in 2021 in order to design a national industry-supported scheme to divert floorcovering waste from landfill. The process involved widespread and open consultation with stakeholders throughout the industry.

Key stakeholder groups within the sector include:

- Product distributors (including importers and one local manufacturer)
- Commercial contractors - large number of firms. Exact number of firms unknown but ResiLoop has about 150 on its database
- Retailers - dominated by several large retail groups who have franchised networks totalling hundreds of stores. Also small independent stores.
- Floor technicians- the Floor Covering Institute of Australia estimates there are around 10,000 floor finishers (installers) and that 80% of them are subcontracted to retail or commercial contracting companies and are not directly employed (source: FCIA magazine June 2024)
- End consumers - residential and commercial.

As a Scheme, ResiLoop invites product distributors to become Full Members of the Scheme and agree to a product levy on in-scope products as an equitable membership fee. They sell product to Commercial Contractors and/or Retailers. We do not foresee the levy impacting competition in any significant manner in the market as it is voluntary, represents an additional product service offering, is very small in terms of the end price to the consumer, and the Scheme is open to any distributor to join. However, transparency of the levy is a key public benefit as it indicates participation in the Scheme and a justifiable price rise to support delivery of a public good.

Our application for Interim Authorisation seeks to provide the mechanism from the commencement of the Scheme whereby the levy is made transparent to the market and stakeholders. The benefits of a transparent product levy include:

- Allowing customers to understand the need to address waste
- Offering an opportunity to educate the value chain participants about the waste impact of products, and connect to their sustainability strategies
- Clear producer responsibility - transparent application of the product levy clearly differentiates ResiLoop products are part of a funded take-back program

Commercial Contractors and Retail stores who agree to participate as Collection Points in the Scheme will pay a modest annual membership fee (\$600 in Yr 1) which will be offset by a reduction in their current waste disposal costs. Again, there is no adverse impact foreseen on competition.

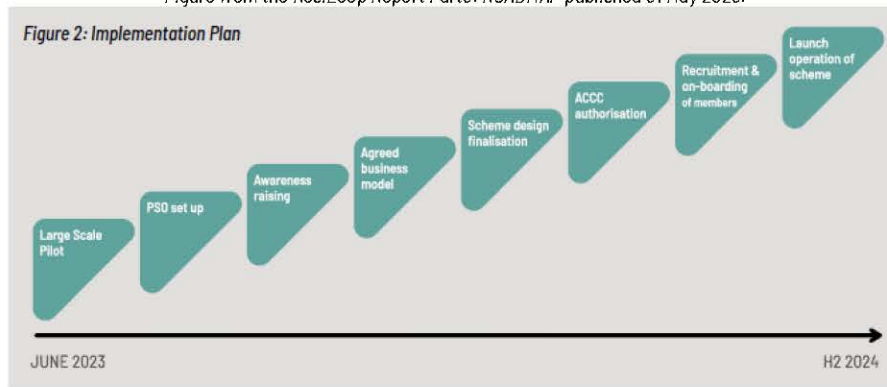
The following addresses the questions raised in the email from the Commission dated 5 July 2024.



The urgency justifying our request for Interim Authorisation

Our original roadmap to implement the scheme anticipated the scheme commencing in late 2024. However, as explained in the Application, the timing of the start of the scheme has been heavily influenced by the end market opportunity where we have a manufacturer commencing production and supply of a new product based on the use of recycled resilient flooring materials. Their need to get the product to market via a leading national retailer has led to the requirement to commence waste material recovery and its supply through to the recycler. While ResiLoop was able to source and transport 35 tonnes of waste materials to start the production process, using the preceding grant funds available, without the commencement of the product levy, there will be no funding to continue the set-up of Collection Points and the reverse logistic arrangements required to recover a forecast 210-250 tonnes of material required over the next 6 months.

Figure from the ResiLoop Report Part3: ROADMAP published 31 May 2023.



Could ResiLoop have lodged the application for authorisation earlier?

We do not believe so as discussions with Foundation Members regarding agreement to proceed with an industry scheme and the proposed funding model were not finalised until the end of March 2024. (Each Member was canvassed individually as to whether they agreed with setting up the scheme to commence supplying the end manufacturer and to continue R&D work; whether they agreed to the proposed scale of levy in Yr1 (9 cents / sqm of Relevant in-scope Products); and whether they agreed the first instalment of the membership levy would be contributed as seed funding).

Without an understanding of the number of members willing to commit seed funding and future funding via a levy, and the proportion of the market covered by these companies in turn influencing the scale of a future product levy, we were not in a position to finalise the scheme design.

The application for authorisation has been in development by ResiLoop and its lawyers since January 2024 and has taken considerable time and resources to prepare. We did not wish to submit the application before the scheme design was complete as it may have led to the ACCC having to consider a conditional authorisation.

If interim authorisation is granted, what will be the likely or possible changes to the market and competition?

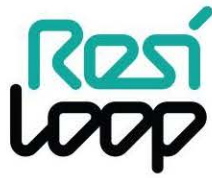
We are seeking authorisation to enable the scheme to coordinate its members and implement a product levy in a transparent and consistent manner from Scheme commencement.

We believe the changes to the market and existing competitiveness due to the introduction of the Scheme will be negligible and the competitive dynamics of the market will be as robust as without the Scheme. However, the public benefits from the scheme will commence immediately and at an opportune time to build momentum.

The current Founding Members' estimated market share of in-scope products is 30 per cent. They do not therefore constitute the majority of the market in the supply of these products.

The imposition of the product levy per square metre is considered to be very modest in terms of the end price of the products. Members will still be free to set the wholesale prices of their products and to negotiate with their transactional customers (commercial contractors and retail groups).

At the initial levy proposed, 9 cents per square metre, we do not foresee and have not been made aware of any likely adverse impact on the competitive dynamics of the market. The levy represents an additional aspect of the product offering - producer responsibility in the form of participation in waste recovery and recycling - which is intended to be visible to



customers. The transparency of the levy is, we believe, a key public benefit as it is directly related to participation of the distributor in the Scheme and the benefits the Scheme will deliver.

The Scheme is a voluntary program and membership of the Scheme is not restricted; any importer/distributor of the relevant resilient floorcovering products may opt into the Scheme. The Scheme neither inhibits competitor distributors or other parties from establishing their own product take-back program or Extended Producer Initiative, nor forming an alternative group program.

Furthermore, the Scheme already has provisions for any of its Members continuing their own efforts at collecting their product waste and returning it to offshore manufacturing plants. The Scheme offers a rebate of a portion of the Member's levy contribution for waste they collect themselves.

If authorisation is not granted, will the market be inhibited from returning to its pre-interim state?

If authorisation is denied, the impact on the competitive dynamics of the market will not have been altered during the period of interim authorisation and therefore there would be no significant change. The market would continue in a similar state to prior to the commencement of the Scheme.

What is the possible harm to the applicant if interim authorisation is denied?

The most significant harm would be lack of clarity in the market as there will be no uniform approach to the product levy and no transparency, increasing uncertainty for members and their customers. This may reduce the Scheme's funding, curtailing its activities and lead to the loss of a viable end market for the waste materials. Market confidence in the Scheme would be eroded and market participants may be reluctant to fund the Scheme as they would be unable to claim any material is being diverted from landfill, which in turn will curtail our planned research and development into additional end markets.

The Scheme is only viable when we have an end use for the material and a critical mass of member participants willing to contribute an equitable product levy. It will reduce the options for circularity of resilient floorcoverings in Australia at a time when there is increasing government policy pressure to transform to a circular economy.

What is the possible harm to other parties if interim authorisation is granted or denied?

If granted:

- Customers: there is minimal impact on our Members' customers other than adjustments to billing systems to identify the levy on invoices if they choose to pass it through. They will still be able to choose which distributors to source from, to negotiate wholesale prices and set their own retail prices, and to supply a wide range of products from distributors. They will still source from a range of distributors, both in and out of the Scheme.
- Competitors (distributors): may continue to choose whether or not to participate in the Scheme, or to make alternative extended producer responsibility (EPR) arrangements. Regardless of whether and which option they choose, market awareness of ResiLoop will deliver a benefit to the community as increasing volumes of waste are diverted from landfill through ResiLoop or alternative company-led or group schemes.

If denied:

- Customers: if interim authorisation is denied, there will not be a transparent and consistent approach to the application of the product levy as each Member will decide whether and how to pass on the cost. This will not only be potentially problematic for customers' billing systems, but also the lack of a transparent, consistent approach will reduce the public benefit of the Scheme in terms of accountability. If the Scheme is unable to operate due to reduced funding, it will remove an option for commercial contractors and retailers to access a service that diverts waste generated by their business from landfill.
- Competitors: if authorisation is denied and there is a lack of a transparent, consistent approach to the product levy, the product levy will be less visible among competitors and it will reduce the public benefit of the Scheme in terms of accountability.

How will the Scheme contribute to the promotion of competition or reduce competition in the Australia market?

As a voluntary product stewardship scheme, ResiLoop offers one pathway for producers and distributors of resilient floorcoverings in Australia to contribute to a circular economy and to promote their engagement in that process. It is anticipated that Scheme Members will choose to promote their participation which will contribute to driving competition between participants in the industry as sustainability credentials are often considered a competitive edge. It may foster the initiation of other circular economy initiatives that will develop competition, such as product design and installation improvements, as well as other EPR approaches.

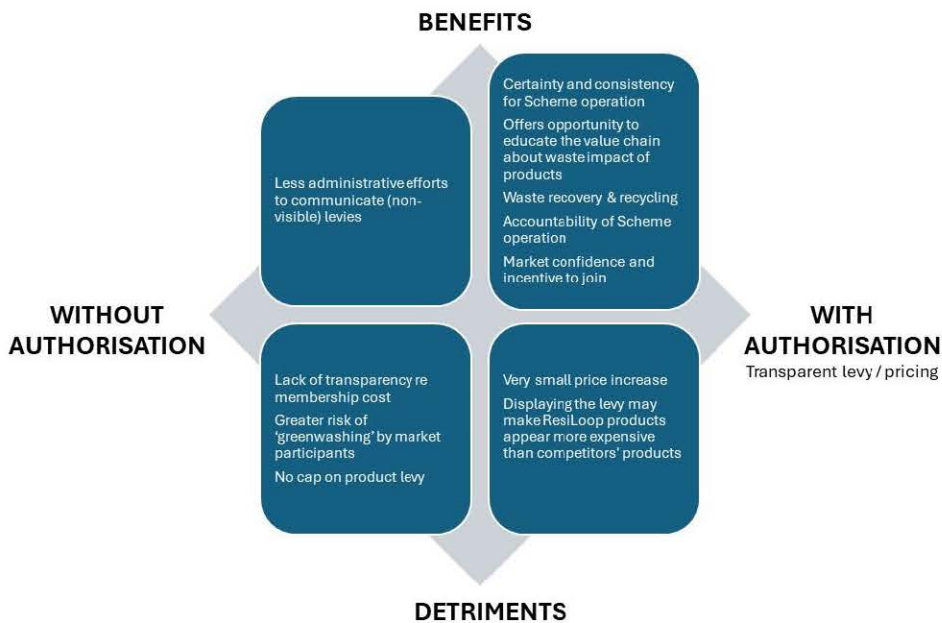


As an independently operated scheme with a focus on transparency and accountability, ResiLoop will provide a verifiable pathway for companies in the industry to make claims regarding waste recovery and recycling, reducing the potential for greenwashing.

ResiLoop participation may facilitate competition in the tendering and specification of floor laying work as building projects increasingly seek to minimise their waste disposal to landfill, by providing a recognised pathway for contractors and floor installers to demonstrate waste recovery.

We do not foresee any potential for ResiLoop to substantially lessen competition in the market.

The matrix below summarises what we see as the potential benefits and detriments authorisation will bring:



Assessable public benefits or detriments in relation to interim authorisation

We suggest the following might be achieved in a relatively short time frame to assess the benefits or detriments:

[Redacted content]