

16 July 2024

ACCC Consulting Team  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra, ACT 2601

**Subject: Consultation on Draft Guide to Sustainability Collaborations and Australian Competition Law**

Dear Mr. Mick Keogh,

We, the undersigned, representing a coalition of individuals and organisations dedicated to preventing modern slavery, human trafficking, forced and child labour, write to provide feedback on the ACCC's draft guide on sustainability collaborations and Australian competition law, published on 8 July 2024.

While we commend the ACCC's efforts to facilitate business collaborations aimed at achieving positive environmental outcomes, we are concerned that the draft guidance applies a narrow definition of sustainability, overlooking the broader definition of sustainability used globally that include social dimensions. This narrow focus creates unique barriers to business collaboration on social sustainability issues, overlooks the interdependencies between environmental, economic and social sustainability outcomes, and risks undermining the progress of the Australian business community towards a truly sustainable future.

**Current focus and its limitations**

The draft guide helps businesses understand the competition law risks that may arise when contemplating working together to achieve positive environmental outcomes. However, by applying a narrow definition of "environmental sustainability", the guide risks excluding critical elements such as social equity, labour rights, and community impact and collaborative actions to prevent modern slavery

These aspects are integral to a holistic understanding of sustainability and are essential for achieving Australia's broader sustainability ambitions as well as meeting obligations under the Modern Slavery Act. There is a broad body of evidence on the inter-dependencies

between environmental and social dimensions of sustainability<sup>1,2,3,4</sup>; in excluding the social dimension from this guidance the ACCC risks hampering progress on both, and leaves Australia lagging in addressing sustainability in the global context (as evidenced by international actions including the European Green Deal, European Corporate Sustainability Due Diligence Directive and US Uyghur Forced Labour Prevention Act).

It is crucial that companies better address the social and human rights considerations of a 'just transition' in the face of the shifting economies, climate change and natural capital crisis. The ACCC has a critical opportunity with this guidance document to make it easier for businesses to integrate social sustainability into their collaborations, ensuring a more comprehensive approach that benefits both people and the planet.

### Expanding the definition of sustainability

To address this gap, we propose the ACCC applies the definition of sustainable development first defined by the 1987 Brundtland Commission's report<sup>5</sup> 'Our common Future' as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.

Alternatively, the US definition<sup>6</sup> of sustainability, "to create and maintain conditions under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations," could be used.

Both examples encompass both environmental and social dimensions, which may include considerations such as:

- Labour rights and working conditions, aligned with human rights principles.
- Community engagement and social equity.
- Impact on local and Indigenous communities.
- Fair trade practices and economic inclusiveness.

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<sup>1</sup> Breuer, A. J. (2019). Translating sustainable development goal (SDG) interdependencies into policy advice. *Sustainability*, 11(7), 2092

<sup>2</sup> Laumann, F. v. (2002). Complex interlinkages, key objectives, and nexuses among the Sustainable Development Goals and climate change: a network analysis. *The Lancet Planetary Health*, 6(5), e422-e430

<sup>3</sup> Laura Scherer, P. B. (2018). Trade-offs between social and environmental Sustainable Development Goals. *Environmental Science & Policy*, Pages 65-72.

<sup>4</sup> Rao ND, M. J. (2018). Less global inequality can improve climate outcomes. *WIREs Clim Change*, 9:e513

<sup>5</sup> Brundtland, G. (1987). Report of the World Commission on Environment and Development: Our Common Future. United Nations General Assembly document A/42/427

<sup>6</sup> US Congress (1970). National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970)

When businesses are involved in industries or collaborations that extend offshore via supply and value chains, they must adhere to the global definition of sustainability. Ensuring alignment to international standards has the added advantage of simplifying multi-national collaborations for Australian businesses, ensuring they remain competitive and compliant with global expectations.

By adopting these expanded and globally aligned definitions, the ACCC can extend its guidance to provide businesses with clarity on the competition law risks that may arise when contemplating working together to achieve positive outcomes across all sustainability domains.

### Supporting examples and case studies

We suggest incorporating specific examples or case studies where social dimensions of sustainability have been successfully integrated into business collaborations; specifically calling on examples where complimentary action in environmental and social dimensions is both practical and most effective.

Additionally, a section explaining how social sustainability benefits can be considered as public benefits under the ACCC's authorisation process would be beneficial.

### Relevant frameworks and standards

In support of this broader definition, we reference the following frameworks and standards:

1. **The UN Sustainable Development Goals (SDGs)**<sup>7</sup> Australia played a key role in creating the 2030 Agenda, advocating for the participation of diverse groups including civil society, businesses, philanthropists, and academics. The SDGs emphasise that progress in one area can drive positive outcomes in others, highlighting the interdependence of environmental, social, and economic dimensions of sustainability. For example, SDG 8 (Decent Work and Economic Growth) promotes sustained, inclusive, and sustainable economic growth, which can reduce inequalities (SDG 10) and contribute to sustainable cities and communities (SDG 11).
2. **The OECD Guidelines for Multinational Enterprises**<sup>8</sup> The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide

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<sup>7</sup> "The 17 Goals". *Sustainable Development Goals*. UN. Retrieved 13 July 2024

<sup>8</sup> OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, <https://doi.org/10.1787/81f92357-en>

non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards. The Guidelines cover a wide range of issues, including human rights, employment and industrial relations, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. They encourage enterprises to conduct due diligence to identify, prevent, mitigate, and account for how they address actual and potential adverse impacts in their operations, supply chains, and other business relationships.

3. **The UN Guiding Principles on Business and Human Rights (UNGPs)**<sup>9</sup> The United Nations Guiding Principles on Business and Human Rights (UNGPs) establish the responsibility of businesses to respect human rights, including the rights of workers in supply chains. The UNGPs are built on the “Protect, Respect and Remedy” framework, often referred to as the Ruggie principles, which outlines three key pillars:
- a. **Protect:** The state duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication.
  - b. **Respect:** The corporate responsibility to respect human rights, meaning that businesses should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
  - c. **Remedy:** The need for greater access to effective remedy, both judicial and non-judicial, for victims of business-related human rights abuses.

The UNGPs set out clear expectations for businesses to collaborate with other actors, including governments, civil society, and affected stakeholders, to mitigate human rights impacts and provide remedies when violations occur. Remedy is central to protecting human rights, and sharing information with suppliers, competitors, civil society actors, and consumers is often required to identify and address modern slavery.

Further, the UNGPs call on governments to enact and enforce legislation that supports these principles, ensuring a regulatory environment that promotes respect for human rights and facilitates collaboration to prevent and address abuses.

#### 4. **Australia’s national commitments**

Australia's commitments to addressing worker exploitation and promoting sustainability are reflected in several national frameworks and international

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<sup>9</sup> United Nations (2011) *Guiding Principles on Business and Human Rights*. Available at: [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf)

agreements. The Modern Slavery Act 2018 and the National Action Plan to Combat Modern Slavery 2020-25 are key initiatives specifically targeting modern slavery and worker exploitation. The Fair Work Act 2009, Sustainable Procurement Guide, National Sustainable Development Strategy, and adherence to ILO conventions further demonstrate Australia's commitment to comprehensive and integrated approaches to sustainability.

These commitments provide a robust foundation for the ACCC's guidance, emphasising the need to address both environmental and social dimensions in business collaborations to ensure holistic and effective sustainability outcomes.

### **Public benefits of a broader approach**

Including social dimensions in sustainability collaborations can yield significant public benefits, such as improved worker welfare, stronger community relations, and enhanced corporate reputation. This approach aligns with global best practices, can assist the Commonwealth in achieving its national commitments and can position Australian businesses as leaders in sustainability efforts.

### **Conclusion**

We believe that broadening the definition of sustainability to include social dimensions will not only enhance compliance with competition laws but also drive more comprehensive sustainable development. We encourage the ACCC to revise the draft guide to reflect these broader sustainability goals and look forward to collaborating on this important initiative.

We welcome the opportunity to discuss this further and provide any additional information needed.

Thank you for considering our feedback.

Yours sincerely,

Dr Darian McBain  
Chair  
Be Slavery Free Australia

### **Endorsed by:**

[List of endorsing organisations and individuals]

Be Slavery Free is part of the global movement that aims to prevent, disrupt and abolish slavery. We work collaboratively with other organisations to effect change.

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