



# Sustainability collaborations and Australian competition law

Quick guide

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Australian Competition and Consumer Commission  
Land of the Ngunnawal people  
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# Quick Guide

1. Australia is committed to transitioning to a net zero economy. The ACCC recognises it has a role, as the national competition regulator, in Australia realising the public benefit of an efficient and just net-zero transition. The ACCC also recognises the capacity of its processes to take into account broader sustainability issues of value to the community. Where regulatory obligations apply, such as in the case of modern slavery, this can demonstrate an issue is of value to the community.
2. As Australia transforms to a more sustainable economy, there may be instances where different types of entities, including businesses, government, not-for-profit organisations and charities, decide to work together to overcome market failure and achieve improved sustainability outcomes. Working together may enable entities to achieve sustainability objectives more quickly and efficiently.
3. Before collaborating, you need to be aware of your obligations to comply with Australia's competition law.
4. Australia's competition law is designed to ensure all businesses compete on their merits, while also ensuring consumers are treated fairly. Competition law applies to any entity engaged in trade or commerce, including not-for-profit organisations or charities.
5. There are many ways businesses and others can work together to achieve sustainability objectives without contravening competition law. This quick guide provides examples of collaborations that will not raise competition law risk as well as examples of collaborations that will.
6. Where you want to collaborate in a way which *does* raise competition law risks, certain exemptions may be available so that you can proceed with the activity:
  - [authorisation](#), often used by larger businesses and/or for more complex conduct
  - other forms of exemptions, which are usually simpler and faster. For example, small businesses who want to collectively bargain may be able to use the [class exemption](#) or lodge a [notification for collective bargaining](#). A number of exceptions may also apply in some circumstances, as discussed below.
7. This quick guide is designed to help those considering entering a sustainability collaboration to understand their key obligations and options under Australia's competition law.
8. For more information, please see the ACCC's [Guide on Sustainability collaborations and Australian competition law](#).

Many of the examples in this quick guide focus on environmental sustainability, as this is most often raised with the ACCC, but the principles will also apply to other types of sustainability collaborations, such as those to address modern slavery.

This quick guide generally refers to businesses participating in sustainability collaborations, but other types of entities including not-for-profit organisations, charities and government may also participate in sustainability collaborations and be subject to Australian competition law.

## Can I share information with other businesses to achieve a sustainability outcome?

9. Working with other businesses to achieve a common sustainability goal will usually involve information being shared between the businesses. The mere sharing of information, without any form of agreement or cooperation between businesses, is not prohibited by Australian competition law.
10. There are many different types of information that you can share with other businesses, including your competitors, that likely will not put you at risk under competition law. Here are some examples:
  - You can share **publicly available** information to achieve a sustainability outcome, provided each business continues to make independent business decisions rather than coordinating conduct.
  - You can share information to improve **regulatory compliance**, provided each business continues to make independent business decisions rather than coordinating conduct.
  - You can share information which is **not commercially sensitive**. This includes, for example, information which does **not** relate to your prices, your margins, your current or future volumes, your non-public trading terms, or your tenders. Information which is **aggregated** and cannot be attributed to specific traders will also be less sensitive than specific information which is identifiable as relating to a particular business.

**Tip:** It is good practice for collaboration partners to develop protocols for information sharing to ensure that the type of information exchanged, and the way it is used, does not raise competition law concerns.

*Some examples of information sharing that are unlikely to raise competition law risk*

- *Businesses can share publicly available reports, surveys, or news articles with one another to understand issues such as:*
  - *where sustainability risks and opportunities are more or less likely to arise in supply chains or investment portfolios*
  - *relevant government policies, programs or funding opportunities*
  - *potential solutions, such as initiatives being trialled or undertaken by others.*
- *Businesses can jointly audit and share information about the climate, nature or modern slavery risk of suppliers or regions to help obtain greater and more reliable data about their own supply chains to assist in their compliance with regulatory reporting obligations.*
- *Businesses which are required to report on sustainability matters, such as their greenhouse gas emissions, natural capital, exposure to financial impacts of climate change or biodiversity loss, can share information to facilitate consistent best practice data collection and efficient reporting for supply chain partners.*
- *Businesses can organise and/or attend industry forum discussions on sustainability issues – for example, an agriculture industry forum on land care initiatives, biodiversity and water conservation, or a seminar organised by an environmental organisation with a panel of business representatives discussing renewable energy initiatives.*
- *Businesses can collect and share survey data about Australian consumers to understand sustainability priorities.*

- Businesses can engage a consultant to collect and aggregate information about recycled material flows in Australian supply chains to build confidence in goods made with recycled inputs.
  - Businesses can share information about their recycling needs to support a request to their local council for specialised collection services.
  - Businesses can share good practices that have achieved sustainability objectives, such as data centre operators sharing information about effective ways to reduce emissions through adoption of new practices or technology.
11. Keep in mind, you do not need to ‘close your eyes and cover your ears’ to what is going on in your industry, including in relation to sustainability commitments and developments. Following industry trends and seeking to understand your competitors’ offers is a normal part of business.

**Tip:** It is important to ensure that any information you share to support a collaborative sustainability activity is used only for that activity. Using shared information for other purposes, including in the future when the sustainability activity has ceased, may raise competition concerns.

## Can I undertake research and development (R&D) with other businesses to achieve a sustainability outcome?

12. Businesses may choose to work together to better understand a sustainability problem or to identify options for sustainability improvements. There are many different types of R&D collaborations that likely will not put you at risk under competition law. Here are some examples.
- You can engage in joint R&D activities which are **voluntary** – with each business being free to choose whether to participate or not, and provided participants make their own independent business decisions – remaining free to innovate, free to buy from or sell to whom they choose, free to set their own output, and free to set the price at which they buy or sell.
    - E.g. businesses can collectively fund research into a sustainability issue which aims to identify solutions the businesses may unilaterally decide to invest in.
    - E.g. businesses can pool objective, evidence-based information about the sustainability credentials of suppliers which they then use to each make independent business decisions about who they deal with.
    - E.g. businesses can jointly arrange and contribute funds to retain an expert consultant or directly undertake supplier audits, customer surveys or focus groups to gather sustainability related market intelligence or other sustainability data.

## Can I undertake joint supply chain activities with other businesses to achieve a sustainability outcome?

13. Businesses may wish to work together on sustainability collaborations that involve shared supply chain activities, joint purchasing of products or services, and/or joint supply and marketing of products or services. Some collaborations between competitors about supply chain activities will contravene Australian competition law. However, there are types of shared supply chain collaborations that likely will not put you at risk under competition law.

14. Here are some examples:

- You can undertake shared logistics activities with other businesses, **provided** you continue to make independent decisions about your business, including ensuring that you do not use the increased visibility you have over their business to coordinate your conduct. For example, you could agree with a competitor to share warehousing space, or to split loads using the same transport company, to reduce your environmental footprint.
- You can undertake joint verification processes with other businesses, **provided** you continue to make independent decisions about your business, including who you deal with in your supply chains. For example, you could agree to share the costs of a verification process that assesses the sustainability credentials of existing and potential suppliers.
- You could agree with others in your industry on joint voluntary targets for reducing sustainability-related harms in your supply chains and identify a range of possible measures for achieving the targets **provided** you continue to make independent decisions about which measures you adopt to achieve the targets.

**Tip:** It is good practice for collaboration partners to develop protocols which clearly set out the scope and limits of the activities that can be undertaken jointly, and the purpose for which the joint activities can be undertaken.

## Can I engage in joint outreach and advocacy activities to achieve a sustainability outcome?

15. Where businesses are wanting to work together to achieve a sustainability outcome, there are a range of other kinds of joint activities that likely will not put you at risk under competition law. Here are some examples.

- A charity could establish a voluntary pledge inviting businesses to sign up and commit to reducing their emissions or to eliminating the use of slave labour in their supply chains.
- Businesses subject to emissions reporting could issue joint voluntary guidance for suppliers about how to undertake scenario analysis or account for greenhouse gas emissions, in accordance with best practice and publicly available methodologies, to facilitate accurate and consistent data and reduce the burden on suppliers of having to employ multiple accounting systems across different suppliers.
- Businesses can participate in coalitions to jointly study and advocate for regulatory or policy positions.

- Businesses can arrange an industry seminar from an expert to talk about ways to address a sustainability issue.
- Businesses can jointly organise community outreach activities to understand community concerns about sustainability issues, for example, in relation to mining leases.
- Businesses subject to new nature-related regulations can meet to discuss an exposure draft and agree a jointly formulated submission to a consultation process.
- Businesses adjacent to a zone due for redevelopment can develop a joint submission advocating that the land be developed without negatively impacting biodiversity gains made through joint efforts in the local area.

## What kind of sustainability collaboration activities may raise competition concerns?

16. Businesses should take care to avoid activities within collaborations that may be an illegal form of anti-competitive agreement or cooperation.

17. Australia's cartel laws prohibit competitors from:

- Agreeing on the prices for selling or buying goods or services, minimum prices, a formula for pricing or discounting goods or services, or rebates, allowances or credit terms. This will amount to illegal **price fixing** where there is a purpose, effect or likely effect of fixing prices, either directly or indirectly.
- Allocating customers, suppliers or markets between them. Illegal **market sharing** arises where an agreement between competitors has a purpose of allocating customers, suppliers or territories between them, either directly or indirectly.
- Agreeing to restrict the amount or type of goods or services they make available. Illegal **output restrictions** arise where there is a purpose of restricting output of goods or services or limiting the amount or type of inputs acquired, either directly or indirectly.
- Agreeing who should bid for or win tenders or agreeing a material component of a bid. Illegal **bid rigging** arises where there is a purpose of controlling what bids are made, either directly or indirectly.

**Tip:** It is good practice for businesses to take care to protect themselves from cartel activity among suppliers. The ACCC website provides guidance on how you can [protect your business from cartel activity](#).

18. Here are some examples of sustainability collaborations that may contravene Australia's cartel laws:

- ✗ You share information with your competitors about a new sustainable input you are going to use, including the price at which you will buy it. Some of the competitors agree to switch to the new more sustainable input, in line with their desire to improve their sustainability credentials. It is agreed to pass on the cost of the new input through a uniform increase in the retail price to 'support' the industry transition to more sustainable products and not lead to a 'price war' where some pass on the full increase and others do not.
- ✗ At a meeting about sustainability initiatives, retailers discuss the cost of a new sustainable product which could replace a product that the retailers currently stock but at a higher price.

There is concern that the price increase associated with switching to the new product may deter customers. To soften the blow of the price increase, the businesses agree to reduce the availability of the current product and slowly drive prices up so that there is a smaller price difference when the retailers switch to the new, more expensive product.

- X As part of their commitment to sustainability, a group of competitors agree to transition to offering products made from sustainable inputs within 6 months. This will require the competitors to all purchase one common input from a single supplier. There is a concern about whether a sufficient quantity of the input will be available, so the competitors share information about their production volumes and agree on a limit to the amount of the input that they can each purchase in the 6-month period to ensure that there is enough for everyone.
- X As part of a sustainability collaboration, a group of competitors agree that they will only bid for tenders which include sustainability criteria and they commit to offering the same standard set of sustainability commitments in tender bids.
- X A group of small competing retailers agrees to jointly negotiate with a common supplier about the terms and prices on which they will acquire sustainable inputs from that supplier.

These small businesses may be eligible to obtain an exemption from competition law under the **collective bargaining class exemption**, free of charge, simply by providing a one-page notice to the ACCC. To be eligible, each business would need to have turnover under \$10 million in the previous financial year.

If the above businesses had a higher turnover or wanted to agree not to purchase from that supplier or only acquire on certain conditions, for example they would not purchase from that supplier unless its inputs were sourced from deforestation-free locations (a 'collective boycott'), they may still be eligible for an exemption from competition law if certain conditions are met, but this would need to be through the **notification process**.

19. An exception or exemption to the cartel laws may be available in some circumstances. These are explained in the next section.
20. In addition to prohibiting cartels, Australian competition law also prohibits collaborating with other businesses for **the purpose** of substantially lessening competition in a market in Australia. You should be careful to ensure your objective of achieving a sustainability outcome is well defined and you do not agree or coordinate your conduct beyond what is necessary for that objective.
21. For large businesses or businesses which have a substantial share of a market in Australia, you should also consider whether your sustainability collaboration has the potential to have **the effect** of substantially lessening competition in a market in Australia, as this can trigger other competition law prohibitions (see the ACCC's [Guide on Sustainability collaborations and Australian competition law](#)).
22. For collaborations involving small businesses or businesses with low market share, the risk of your collective conduct having the effect of substantially lessening competition will generally be low.
23. Business behaviour 'substantially lessens competition' when it interferes with or damages the competitive process in a market in a meaningful way. This is usually by doing something that materially impacts how businesses supply or acquire goods or services.
24. As long as a business is competing on its merits rather than trying to stop other businesses from competing, its behaviour is unlikely to break the law. This is the case even if a competitor's business is harmed.



**Tip:** If you are concerned about a collaboration you are proposing to engage in or about the conduct of others in the marketplace, you should seek advice from a lawyer and consider [making a report to the ACCC](#).

## What exceptions or exemptions are available?

25. In some situations, an exception may apply so that your joint activities are not at risk of contravening the cartel laws:
  - a. If you are undertaking collaboration activities as part of a **joint venture**, an exception may apply so that your conduct does not contravene the cartel laws.
  - b. Where goods or services are being **collectively acquired** by businesses, the prohibition on price-fixing cartels may not apply.
  - c. Where businesses are **jointly advertising** for re-supply of goods or services they collectively acquired, the price-fixing prohibition may not apply.
26. For more exceptions which may be available for cartel and other anti-competitive conduct, see the ACCC's [Guide on Sustainability collaborations and Australian competition law](#). You should seek legal advice before relying on these exceptions.
27. In some situations, an exemption may be available to gain protection for your joint activities from legal proceedings for contravening the competition prohibitions:
  - a. Collective bargaining class exemption – available for small businesses wanting to engage in collective bargaining conduct. Each business' turnover must be under \$10 million in the previous financial year to qualify. For further information, see the ACCC's [Guide on Sustainability collaborations and Australian competition law](#) and the [Collective bargaining class exemption guidelines](#).
  - b. Notification – may be available for proposed collaborative conduct such as collective bargaining, collective boycotts, and exclusive dealing. For further information, see the ACCC's [Guide on Sustainability collaborations and Australian competition law](#) and the [Small business collective bargaining notification guidelines](#), [Exclusive dealing notification guidelines](#) and [other notification guidelines](#).
  - c. Authorisation – may be available for cartel conduct, various anti-competitive agreements and concerted practices. Broadly speaking, the ACCC may grant authorisation if it is satisfied that the likely public benefit resulting from the proposed collaboration (which can include sustainability benefits) outweighs the likely public detriment or that the collaboration will not substantially lessen competition. For further information, see the ACCC's [Guide on Sustainability collaborations and Australian competition law](#) and the [Guidelines for authorisation of conduct \(non-merger\)](#).
28. The ACCC may use a shorter (streamlined) authorisation process for non-contentious arrangements that are largely consistent with those that have been previously considered by the ACCC.

**Tip:** Discuss exemptions with the ACCC

The ACCC is available and willing to discuss proposals for sustainability collaborations with businesses, government, not-for-profit organisations and charities to help you understand whether an exemption may be available. The ACCC encourages businesses to come forward for preliminary discussions by contacting [exemptions@accc.gov.au](mailto:exemptions@accc.gov.au).

# 5 step checklist for businesses considering collaboration

There are many ways businesses can work together to achieve sustainability objectives without contravening Australian competition law.

This checklist will help businesses to assess whether a proposed collaboration may raise competition concerns.

There are 5 important steps that a business considering collaboration to achieve sustainability objectives can take.

1. Read the ACCC's [Guide on Sustainability collaborations and Australian competition law](#) carefully to better understand the potential effects of the collaboration on competition.
2. Consider the objectives of the proposed collaboration, and whether collaboration is necessary to achieve those objectives.
3. Consider whether the collaboration will impact competition.
  - Will the collaboration involve actual or potential competitors?
  - Will the collaboration affect the way that businesses make decisions in relation to:
    - How prices are set?
    - The quantity and quality of goods and services supplied or purchased?
    - The range of goods and services supplied or purchased?
    - Incentives to improve and innovate?
  - Will the collaboration involve competitors who collectively hold a significant share of the market?
  - Will the collaboration restrict the ability of businesses to enter, exit, or expand in the market?
  - Will any competitively sensitive information be shared between competitors, suppliers or customers?
  - Will the collaboration take place over an extended or unlimited time?
4. If the answer is yes to any part of question 3, or you are unsure, consider seeking legal advice on how Australian competition law may apply.
5. If you think your collaboration might raise competition law concerns, consider the benefits of the proposed collaboration and whether an exemption from Australian competition law may be available.
  - There are three types of exemptions:
    - [authorisation](#), often used by larger businesses or for more complex conduct
    - [notification](#)
    - [class exemption for collective bargaining](#), available for small businesses and is the simplest, fastest process.

Contact the ACCC at [exemptions@acc.gov.au](mailto:exemptions@acc.gov.au) if you wish to discuss the availability of these exemptions further. While the ACCC is unable to provide legal advice, we can discuss with you the various options for exemption.

