



Insurance Council  
of Australia

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Australian Competition and Consumer Commission

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To whom it may concern,

## **Feedback on the Australian Competition and Consumer Commission's Draft Guidance on Sustainability Collaborations and Australian Competition**

The Insurance Council of Australia (Insurance Council) thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to provide feedback on its draft Sustainability Collaborations and Australian Competition Law guide (the Draft Guide). We appreciate the collaborative approach the ACCC has taken to welcome submissions from interested stakeholders.

The Insurance Council is the representative body for the general insurance industry of Australia. Our members represent approximately 90 per cent of total premium income written by private sector general insurers, spanning both insurers and reinsurers. As a foundational component of the Australian economy the general insurance industry employs approximately 46,000 people, generates gross written premium of \$66 billion per annum, and on average pays out \$159 million in claims each working day (\$39.4 billion paid out per year).

Insurance Council members provide insurance products ranging from those purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

### **The Insurance Council's Action on Climate Change**

In 2022, the Insurance Council launched its inaugural Climate Change Roadmap (the Roadmap). The Roadmap reflects the commitment of the general insurance sector to achieving net-zero. It also provides guidance for the Insurance Council members on the role they can play in the decarbonisation of the Australian economy.

In issuing the Roadmap, the Insurance Council recognised that its membership is diverse, and that each member will face unique challenges when implementing actions to decarbonise. The Insurance Council provides support and guidance to all its members to help build knowledge, share best practice and enable insurers to make decisions that can accelerate Australia's net-zero transition and strengthen its contribution to the global net-zero transmission.

In preparing the Roadmap, the Insurance Council was very aware of the importance of considering competition law issues. Accordingly, the Roadmap is framed as a best practice framework to assist insurers in the development of their individual net-zero journeys. Each member is encouraged to use this framework or develop a different approach that it deems most suitable for the purpose of reaching net-zero.

Since then, Insurance Council members have made substantial progress in implementing its best practice recommendations to cut emissions this decade, set targets to achieve net-zero by 2030 for their operations, and work towards achieving net-zero across their investments, supply chain and underwriting by no later than 2050.

The Insurance Council has also established the Climate Change & Resilience Committee and the Net Zero Working Group to bring members together to drive the development of research, policy and sharing of best practice in respect of climate change and the transition to net zero.

The Insurance Council has also worked with some of Australia's leading experts and research institutes to develop reports that investigate growing climate risk, policy gaps and solutions, including on actions of the sea, cyclones and flooding.

## **Comments on the Draft Guide**

Overall, the Insurance Council considers the Draft Guide to be a useful aid to clarify the key competition risks associated with sustainability collaborations. In particular, the Insurance Council welcomes the examples of low-risk sustainability collaborations that are provided and the explanation as to how public benefit, in the form of sustainability benefits, will be assessed in an authorisation process.

### **1. Examples of low-risk sustainability collaborations**

In relation to the examples of low-risk sustainability collaborations in section 3.4 of the Draft Guide, it would be useful to understand the circumstances in which a sustainability collaboration, which falls within one of the examples, might still breach the prohibitions on cartel conduct or other anti-competitive practices. For example, will the ACCC look to apply a test of reasonableness to the level of information shared or consider what is objectively necessary to implement a sustainability agreement.

In the context of various sustainability initiatives that the insurance industry is considering, the Insurance Council requests that the ACCC provide guidance in the Draft Guide as to whether the types of activities described in Sections 2, 3, 4 and 5 below would constitute no risk, or low-risk, sustainability collaborations.

### **2. Pooling information about suppliers**

We note Case Study 2 suggests that pooling information about environmental credentials of suppliers would be unlikely to breach the prohibitions on cartel conduct or other anti-competitive practices.

In order to pool information about the environmental sustainability credentials of suppliers, the Insurance Council's members may want to develop and issue a standardised questionnaire to suppliers and access responses on a common platform. The Insurance Council would appreciate further guidance from the ACCC in the Draft Guide as to whether such conduct would also be unlikely to breach the prohibitions on cartel conduct or other anti-competitive practices.

### **3. Data sharing**

The Insurance Council would welcome further guidance from the ACCC in the Draft Guide as to the competition risks associated with data sharing amongst industry participants.

#### **Requests for data from government agencies**

It would be useful if the ACCC could clarify in its Draft Guide that where companies are requested to share data with a government agency or authority to assist with the review and development of climate change and environmental policy, this activity does not carry any risk of sustainability collaboration.

By way of example, the Australian Prudential Regulation Authority (APRA), on behalf of the Council of Financial Regulators, is currently conducting a general insurance Climate Vulnerability Assessment to examine the long-term implications of climate change on the affordability of household insurance cover. APRA requires members to provide it with certain sensitive information on risk writing and premiums and the outcome of modelling exercises.

To minimise potential competition and privacy risks arising from data sharing between insurers, members have sent information to the Insurance Council, which is responsible for collating and de-identifying data, before submitting it to APRA. This is a time-consuming, expensive undertaking for the Insurance Council. If members who provided such information could do so directly without risk of competition law issues arising then this would be a far better outcome and increase the willingness and ability of members to assist with government climate change and sustainability discussions.

### Involvement in government partnerships

A number of the Insurance Council's members are participating in the Hazards Insurance Partnership (HIP) managed by the National Emergency Management Agency (NEMA).

Part of the work being undertaken by HIP is the creation of a dataset to better understand insurance affordability and underinsurance, which will inform policy and decision making.

The development of a robust, national hazard database that streamlines existing national, state and territory datasets and that is accessible to all levels of government, industry and the Australian public can play a critical role in improving and standardising our understanding of climate risk and how we prepare for it.

Again, it would be useful if the ACCC could include guidance in the Draft Guide on the work of public-private partnerships and whether data sharing within these types of bodies constitutes any risk of sustainability collaboration.

### Development of new databases

The Insurance Council's Net Zero Working Group is progressing various pieces of work related to climate change and the transition to net zero. This work, together with mandatory climate-related financial reporting requirements likely to be introduced once the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024* passes, means that members will need access to improved data to measure and reduce emissions.

There are currently considerable methodology and data gaps which prevent the accurate measurement and reporting of some Scope 3 emissions across underwriting portfolios, supply chains and some investment asset classes (i.e., sovereign bonds, exchange traded funds, derivatives etc.). While some of these gaps are set to be addressed over the next few years through the Science-Based Target Initiative (SBTI), the Partnership for Carbon Accounting Financials (PCAF) and Net Zero Asset Owner Alliance (NZAOA), there is currently no global process to establish a measurement methodology for emissions in supply chains, including insurers' claims supply chains.

The Insurance Council and its members are developing methods to measure emissions where no global standards exist. They have created a method to measure insurance-associated emissions from the homes they underwrite and are interested in developing similar methodologies in the future (e.g., for insurance-associated emissions from marine and agriculture insurance).

The Insurance Council and its members are also considering options to uplift data capability and availability across the economy given the extent of interdependencies for Scope 3 reporting.

The Insurance Council has identified member appetite to create a database which includes data about emissions, climate change transition measures and physical risks in respect of policyholders and suppliers. The information in this database would be used by insurers to make independent decisions regarding appetite for underwriting risks and preferred suppliers.

The Insurance Council is particularly interested in further guidance from the ACCC as to whether such a database would be less likely to breach competition laws if it was coordinated by an independent

third-party provider, with data obtained by each insurer being sent directly to the third party and anonymised rather than being shared directly between insurers or with the Insurance Council.

#### **4. Collaborating on an emissions reporting framework**

Again, with reference to the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024*, the Insurance Council considers that some degree of industry collaboration would be beneficial to ensure its members can effectively comply with the Scope 3 emissions reporting requirements.

The Insurance Council's members are currently approaching Scope 3 emission data collection, interpretation and reporting on an individual basis, with no industry-wide "best practice" approach. However, a unified emissions reporting framework for members would be very valuable, not least because it would ensure that Scope 3 emissions could be meaningfully compared across the general insurance industry.

The Insurance Council would be grateful if the ACCC could provide guidance on the level of competition law risk associated with collaborating on a Scope 3 emissions reporting framework. Further, it would be useful to understand if collaboration on a "best practice" reporting framework would fall within the scope of the streamlined authorisation process that is proposed for sustainability collaborations.

#### **5. Comparison with international regulatory guidance**

The Insurance Council is familiar with the equivalent sustainability collaboration guidance published by the United Kingdom's Competition and Market Authority and New Zealand's Commerce Commission New Zealand.

To align the Draft Guide with international guidance, the Insurance Council requests the ACCC to provide further guidance in the Draft Guide as to the level of competition risk associated with:

- (a) an agreement to engage in training activities to improve sustainability outcomes;
- (b) an industry-wide common framework for reporting climate-related information;
- (c) an agreement that concerns internal conduct of members' businesses (for example, eliminating the use of single-use plastics in business premises, moderating the use of air conditioners in offices, or limiting the number of printed materials); and
- (d) an agreement to jointly lobby for policy or legislative changes in respect of environmental or sustainability laws.

#### **Role of industry organisations**

The Insurance Council would appreciate if the ACCC could include comments in the Draft Guide on the role of industry organisations in assisting, facilitating and supporting sustainability initiatives and potential competition law risks associated with such conduct.

In addition, in line with the UK Green Agreements Guidance, it would be useful to better understand the ACCC's stance on industry-wide standards and environmental targets. As noted above, the Roadmap developed by the Insurance Council is a best practice framework that can be followed by any insurer in the market, not only members of the Insurance Council. No insurer is obliged to implement the suggestions in the Roadmap.

## Global cooperation

The Insurance Council would also like the ACCC to consider including guidance on the competition risks associated with global companies collaborating on international sustainability initiatives.

Many of the Insurance Council's members were previously members of the United Nations-convened Net-Zero Insurance Alliance and have joined or are considering joining the United Nations-led and convened Forum for Insurance Transition to Net Zero (FIT). The FIT intends to work with insurance market participants and engage with insurance regulators and supervisors, net-zero standard setters and initiatives, the scientific and academic community, civil society and other key stakeholders to advance net-zero insurance thinking and practices.

Regulatory guidance as to how the ACCC is working with regulators in other countries to facilitate sustainability collaboration would be a useful addition to the Draft Guide.

## Guidance on other issues

In addition to sustainability collaborations, another issue in the environmental space where guidance would be welcome from the ACCC is collaboration in respect of nature-related risks to achieve a nature-positive economy. The Insurance Council and its members have engaged with the Taskforce on Nature-related Financial Disclosures on the design of the framework and are preparing for the role of the insurance industry in enabling a nature-positive future.

The Insurance Council would also welcome further guidance from the ACCC on other collaborations that address broader social issues. For example, its members may want to work together to address human rights issues in line with the UN Guiding Principles on Business and Human Rights. Particular areas of focus include dealing with issues of vulnerability, discrimination and modern slavery.

It would be very helpful to understand if the ACCC's approach to collaborative arrangements to deal with these types of broader social issues would be treated in a similar way to sustainability collaborations.

We trust that our initial observations are of assistance and we look forward to assisting the ACCC as this draft guide progresses. If you have any questions or comments in relation to our submission please contact Ange Nichols, Senior Adviser, Climate Action & Resilience, [ange.nichols@insurancecouncil.com.au](mailto:ange.nichols@insurancecouncil.com.au).

Yours sincerely,



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