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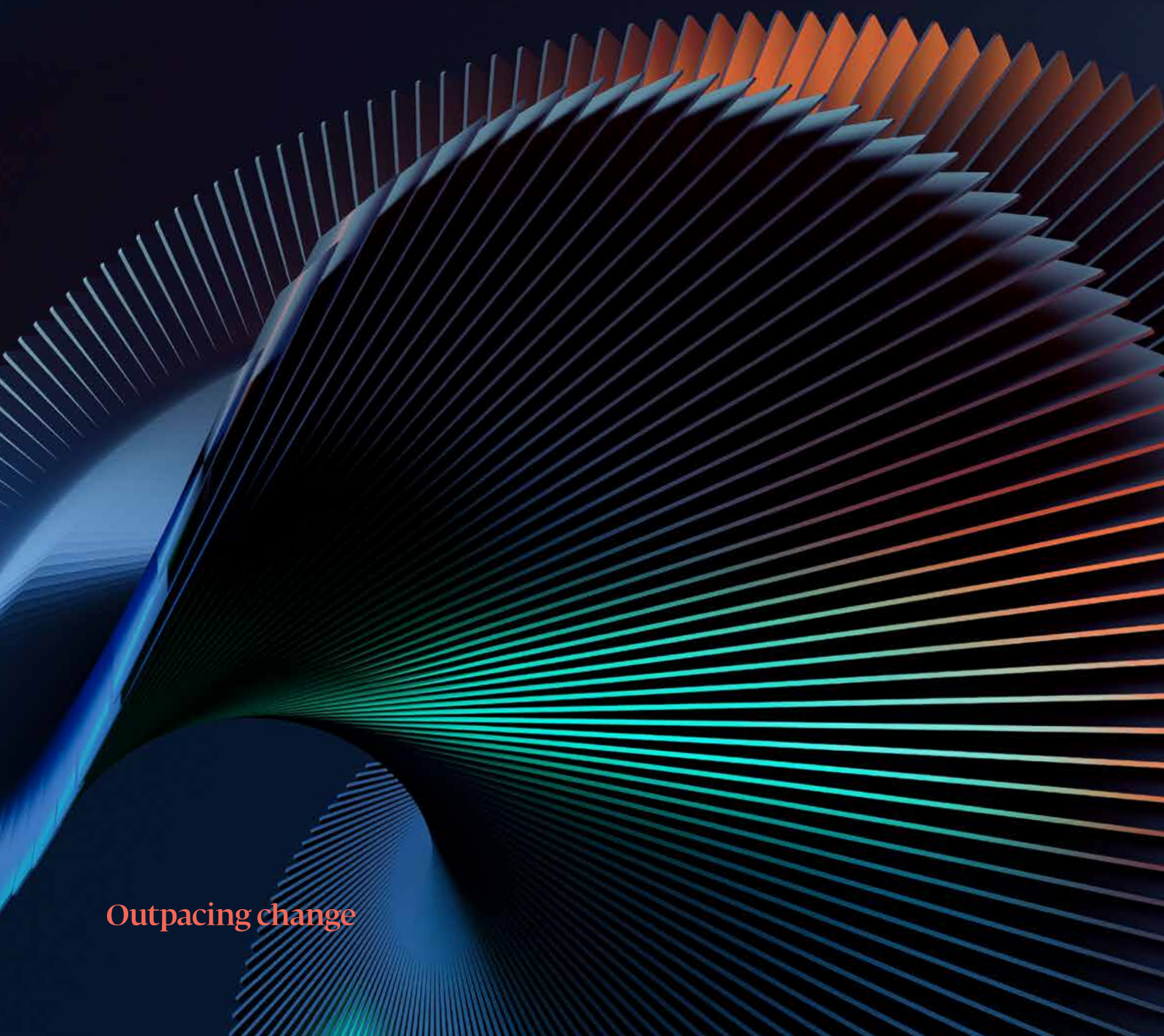
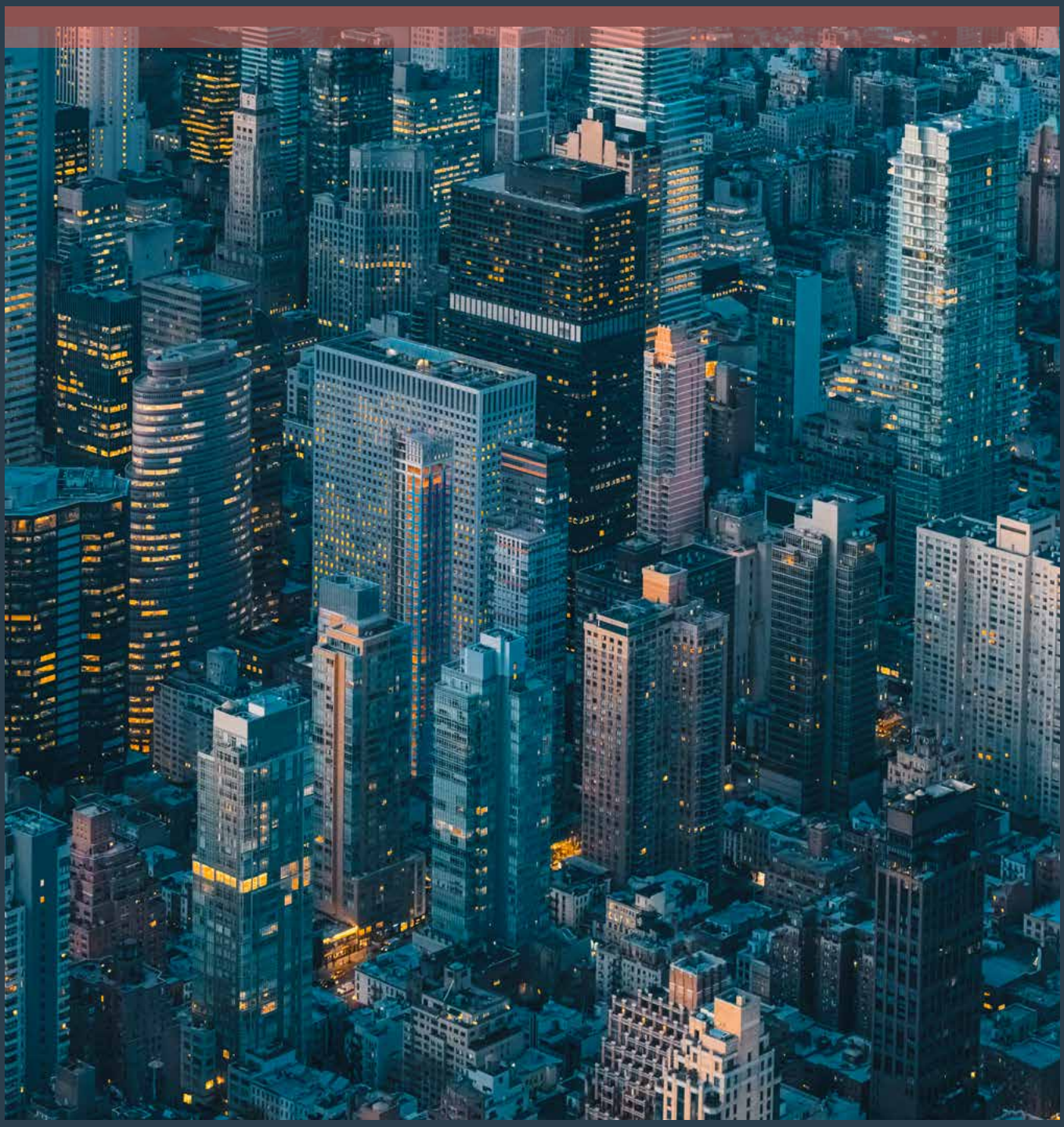
The M&A Deal Report 2026

An analysis of Australian public mergers & acquisitions



Outpacing change

10 | Corporate Regulators and FIRB



In this Chapter we explore the latest developments in relation to the regulation of M&A by the Australian Securities and Investments Commission (ASIC), the Takeovers Panel, the Australian Securities Exchange (ASX) and the Foreign Investment Review Board (FIRB).

ASIC

The second half of 2025 saw several developments in relation to ASIC's regulation and oversight of M&A transactions and entities subject to the Australian takeover rules. In particular, new legislation to significantly amend the beneficial ownership disclosure regime in the *Corporations Act* passed both houses of parliament and ASIC has announced procedural changes to facilitate earlier engagement by parties in relation to schemes of arrangement following entry into a scheme implementation agreement.

Enhanced beneficial ownership disclosure regime: overhaul of Australia's substantial holding, derivative disclosure and tracing regimes

Australia has progressed reforms (flagged in late 2024) to enhance the existing beneficial ownership disclosure obligations that apply to listed entities, by bringing a wider set of equity derivative exposures into the substantial holding disclosure framework and materially strengthening tracing and enforcement tools. The *Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Act 2025* (Cth) (**Act**) was passed on 27 November 2025 and received Royal Assent on 4 December 2025. The reforms are intended to improve corporate transparency by showing who ultimately owns, controls and receives profits from listed entities, and allowing better informed decision-making by investors and other stakeholders. The enhanced substantial holding disclosure rules and other reforms will commence 12 months after the Act received Royal Assent, i.e. on 4 December 2026.

The relevant amendments to the *Corporations Act* expand the substantial holding and tracing notice regimes, extending the disclosure obligations to interests arising under equity derivatives regardless of how the derivative is to be settled and whether the counterparty has a relevant interest in any underlying securities. Interests arising from both physically settled and cash-settled equity derivatives will be brought within the scope of substantial holding disclosure, supplementing conventional "relevant interests" and making derivative-based stake building visible to the market. The tracing notice regime will also be broadened so that regulators can direct notices to a wider range of persons reasonably suspected of holding interests in or influence over securities, including associates in specified cases, improving transparency of ownership.

The Act also introduces amendments which extend the reach of the beneficial ownership disclosure regime in Chapter 6C, so that foreign entities whose securities are listed in Australia will also be subject to the substantial holding and tracing regimes, creating a single substantial holding and tracing framework for domestic and foreign listed bodies in Australia.

Enforcement provisions have also been strengthened. ASIC has been given enhanced enforcement tools, notably a new freezing order power to restrain dealing, voting and other rights in "disclosable securities" where disclosure contraventions have occurred, complementing the expanded tracing powers and supporting timely corrective disclosure.

The changes are targeted at "closing a disclosure loophole and bringing Australia into greater alignment with many comparable international jurisdictions". Overall, the legislation signals a decisive shift toward significantly greater transparency of economic exposure and influence in listed entities, particularly where derivatives have enabled low-visibility stake building. ASIC intends to undertake a consultation process in relation to the proposed new forms for substantial holding notifications in the first quarter of 2026.

For further analysis of these changes as they relate to equity derivatives, see pages 58 to 59 of this Report.

ASIC's new approach to schemes of arrangement: facilitating earlier ASIC engagement

In November 2025, ASIC announced that shortly after the entry into a scheme implementation agreement is announced, ASIC will send the scheme target company a set of standard questions to assist ASIC to consider, and give scheme targets an opportunity to address, potentially material issues before the draft scheme booklet is lodged with ASIC for review.

ASIC considers this procedural change will make its review of scheme booklets more efficient and "ensure ASIC is comfortably able to volunteer an indication of its intent in advance of the first court hearing".

Specifically, ASIC will ask the scheme target company about the following matters:

- any complex or novel issues relating to the scheme;
- the proposed approach to voting class composition and any differences in member rights or treatment;
- interests of or benefits to members or their associates beyond their capacity as a member (ie any collateral benefits);
- any actual or potential conflicts of interest and how they will be managed; and
- any novel deal protection arrangements.

ASIC will monitor ASX announcements to ascertain when to approach a listed entity – unlisted targets should notify ASIC directly upon entering into a scheme implementation agreement.

This is an evolution and formalisation of the approach we've seen ASIC taking in recent schemes, whereby ASIC has specifically requested or has otherwise been open to early engagement with the scheme proponent. This approach will hopefully minimise the timetable risk that can arise from ASIC's engagement with (and questions about) a proposed scheme being compressed into the 14 day scheme booklet review period.

Takeovers Panel

2025 overview

The Takeovers Panel's 2025 year was marked by an increased number of applications, with 46 applications received (the highest since 2003). That said, the Panel declined to conduct proceedings in half of those applications. Of the 46 applications, seven were review applications and three applications were withdrawn. The Panel made declarations of unacceptable circumstances in four cases.

A key feature of 2025 was the high number, and low success rate, of applications concerning issues of association and/or breaches of section 606 of the *Corporations Act*. The Takeovers Panel also saw an uptick in the number of applications that were considered at the boundaries of its jurisdiction. These are discussed further below.

Dropsuite and the truth in takeovers

The Takeovers Panel grappled with ASIC's truth in takeovers policy in its recent decision *Dropsuite Limited* [2025] ATP 22, which illustrates how the policy continues to evolve, particularly in the context of shareholder intention statements.

On 28 January 2025, Dropsuite announced that it had entered into a scheme implementation deed, under which NinjaOne had agreed to acquire all of Dropsuite's shares via a scheme of arrangement. Dropsuite's announcement stated that its largest shareholder (Topline Management, which held a 31% stake) had confirmed its intention to vote in favour of the scheme (**First Intention Statement**). The statement was expressed in customary terms and, consistent with market practice, did not expressly reserve Topline's right to dispose of its shares.

Between 28 January and 6 February 2025, Topline sold 11.3% of its stake on-market, reducing its holding to 19.7%. It disclosed the change in voting power in a single notice on 18 February 2025 – well outside the timeframe required under the substantial holding provisions of the *Corporations Act*. In its disclosure, Topline stated its intention to "*hold its remaining shares through the close of the transaction and vote in [favour] of the transaction*" (**Second Intention Statement**). However, Topline subsequently sold another ~9%, bringing its holding down to 10.5%, and again failed to disclose this change within the timeframe required under the substantial holding provisions.

Harvest Lane (another Dropsuite shareholder) applied to the Takeovers Panel for a declaration of unacceptable circumstances. Harvest Lane argued that the First Intention Statement did not reserve a right for Topline to sell Dropsuite shares and so Topline was required to maintain its 31% interest and vote that shareholding in favour of the scheme. In particular, Harvest Lane asserted that by proceeding to sell down a significant portion of its stake, Topline had breached the truth in takeovers policy.

The Panel made a declaration of unacceptable circumstances, including the following findings:

- While noting that the First Intention Statement was ambiguous as to whether Topline intended to retain its full 31% holding, the Panel stopped short of finding the disposals themselves unacceptable, instead noting that any ambiguity could have been resolved if Topline had lodged a substantial holder notice within the required timeframe.
- Topline's further disposals following the Second Intention Statement were clearly inconsistent with that statement, which conveyed an intention to retain its remaining shares and vote in favour of the scheme. The Panel found these disposals to be contrary to the expressed intention, and again noted Topline's failure to disclose the changes in a timely manner.

The Panel made orders requiring Topline to maintain and vote its remaining Dropsuite shares in favour of the scheme, subject to certain qualifications.

Some key observations from the *Dropsuite* decision

- **Stated intentions should be firm and enduring:** Any public statement attracting the truth in takeovers policy should reflect – and be understood as reflecting – a genuine and firm intention that will be followed through, rather than a transient or uncertain position. Attempting to limit risk by framing a statement as a mere present intention is unlikely to be effective because:
  - this language may be found by the Panel to be "misleading, or at least confusing" (in the words of the Panel's guidance on shareholder intention statements); and
  - ASIC considers that the overall impression conveyed to an ordinary investor may still be that the intention is firm and final, regardless of any disclaimers.

  In *Dropsuite*, the Panel gave little weight to Topline's argument that it genuinely had no intention to sell shares when its intention statements were made. The focus was on the market impact of the statement – not the subjective mindset of the maker.

- **Truth in takeovers extends beyond takeover bids:** Although ASIC's truth in takeovers policy is framed around takeover bids, *Dropsuite* reconfirms that the Panel will apply the underlying principles to schemes of arrangement. The Panel has also indicated (in its Guidance Note 23) that the principles of the policy extend to control transactions requiring shareholder approval under item 7 of section 611 of the *Corporations Act*.

For further discussion on the *Dropsuite* decision, see our previous article Say what you mean and mean what you say – sticking to the 'truth in takeovers'.

Claims of association: a high bar

In 2025, claims of association comprised more than one-third of all applications, yet the Panel declined to conduct proceedings in all but two applications (*Mayfield Childcare Limited* [2025] ATP 16 and *Bryah Resources Limited* [2025] ATP 32) and ultimately did not make any declaration of unacceptable circumstances in those two applications. Typically, these applications are based on evidence which does not, of itself, establish the existence of an association and so requires the Panel to make a finding by inference. The Panel has, only in extremely rare circumstances, made such findings.

The Panel continues to set a high bar for undisclosed association claims, requiring a "sufficient body of evidence" (being the threshold set by the Panel in *Mount Gibson Iron Limited* [2008] ATP 4).

In *Mayfield Childcare*, the Panel declined to infer the existence of association, notwithstanding the volume of material presented to the Panel. The applicants pointed to behaviour by the alleged associated parties, including structural links, examples of prior collaborative conduct, similar entry and treatment of shares issued in a placement and voting alignment on shareholder resolutions. The alleged associates submitted that, while there were historical structural links, these had no bearing or influence on relevant conduct by the shareholders in question. Further, there were differences in voting decisions (and if there were an association as asserted, it could be reasonably expected that voting preferences would have converged). The Panel found that the alleged concerted actions could potentially be explained as permissible collective action, or other conduct unlikely to constitute acting as associates.

The Panel also declined to make a declaration of unacceptable circumstances in respect of an application by Bryah Resources in relation to its own affairs. Bryah Resources alleged undisclosed associations emerging following its two-tranche placement in February and April 2025. The application asserted that a cohort of shareholders, including clients and personnel connected with GBA Capital (the lead manager of the placement), acted in concert to acquire 31.19% of the voting power of Bryah Resources and influence board composition in breach of section 606 of the *Corporations Act* and substantial holding requirements. A client of GBA Capital (which acquired shares under the placement), lodged notices under sections 203D and 249D of the *Corporations Act* to remove two of Bryah Resources directors. Bryah Resources alleged, among other things, that the "associates" had a shared goal in taking control of the board, there was evidence of prior collaborative conduct, many of the alleged associates held common investments in other ASX listed entities and that there had been uncommercial trading. Despite noting that there were "*several indications of association*", the Panel was not persuaded that there was sufficient evidence to infer an association to support a declaration of unacceptable circumstances. Interestingly, the Panel acknowledged that, in part, *"this is a consequence of our limited powers of investigation"*. That said, the Panel considered parts of the matter (including concerning substantial holder notice compliance) merited further scrutiny and indicated it would refer several issues, such as compliance with substantial holder reporting, to ASIC.

The threshold for evidence is necessarily high, limiting the instances where the Panel can make inferences as to the existence of an undisclosed association. This high threshold not only fosters certainty in the decisions of the Panel, but it also illustrates that not every connection is, or is evidence of, an improper association. The Panel is contemplating issuing further guidance on association, given the high number of applications and the evidentiary difficulties often encountered.

For further discussion on how the Panel addresses claims of association, see our see our previous article Behind closed doors – the Takeovers Panel's approach to claims of association.

Panel's jurisdictional boundaries

Panel President, Alex Cartel, stated in the Takeover Panel's Annual Report that several applications received during 2025 touched on issues at the boundaries of the Panel's jurisdiction. The President noted the following examples:

- Issues relating to share placements: *Emu NL 03* [2025] ATP 18, *Mayfield Childcare Limited* [2025] ATP 16 and *FBR Limited 02* [2025] ATP 14.
- Proposed de-listings: *Vmoto Limited* [2025] ATP 7, *Vmoto Limited 02R* [2025] ATP 9 and *Pact Group Holdings Ltd 02 & 03* [2025] ATP 13. Recent decisions confirm that the Panel's jurisdiction is confined to circumstances involving a control transaction or breach of takeover laws. In the absence of these circumstances, a de-listing proposal is principally a matter for the ASX and the target board's commercial judgment.
- Allegations concerning whether a proprietary limited company had fewer than 50 members: *Invest Blue Pty Ltd* [2025] ATP 5.

The President observed that there may have been a misunderstanding as to the Panel's remit in a number of these cases and some were either concurrently before the court or may have been more appropriately considered by the court. The Panel is giving consideration as to whether it should issue further guidance on the scope of its jurisdiction.

For further discussion on the Takeovers Panel's jurisdictional boundaries, see our previous article Control issues: insights from the Takeovers Panel's 2024-25 Annual Report.

Panel consultation on draft revised Remedies Guidance Note

In the Takeover Panel's Annual Report the Panel restated its preference for succinct applications. It also acknowledged process issues arising from disruptive behaviour and uncooperative conduct by some parties and advisers (for example, failing to answer questions directly or to produce materials when first requested), which prolong proceedings, increase costs, and can adversely affect commercial interests, including those of shareholders. As part of a broader process-improvement project, the Panel issued a consultation paper on 15 December 2025 in relation to a draft revised Guidance Note 4: Remedies General, with a view to taking a stronger stance on remedies (including costs orders).

The main proposed changes include:

- removing the reference to costs orders being the "exception not the rule";
- expanding the circumstances in which costs may be awarded to include where parties unnecessarily delay proceedings by failing to answer questions directly or to produce materials when requested, act in a hostile manner or defend circumstances that are clearly unacceptable;
- updating the Panel's approach to the quantum of costs orders;
- clarifying the circumstances in which the Panel may be less amenable to costs undertakings, for example where the undertaking would be overly complex or where the party proposing the undertaking has been uncooperative; and
- clarifying when costs orders may be made for nonconstructive engagement.

We welcome the Takeovers Panel proposed initiatives here. It is critical that the Panel continue to provide a forum for efficient resolution of disputes in control matters. Disruptive conduct which unnecessarily prolongs matters needs to be dealt with.

Submissions in response to the consultation paper must be provided to the Panel by 2 March 2026.

ASX

Consultation on potential changes to shareholder approval requirements for dilutive acquisitions

ASX issued a consultation paper on 20 October 2025 regarding potential changes to the ASX Listing Rules which would expand shareholder approval requirements in connection with dilutive acquisitions by listed companies. This follows the extensively canvassed controversy surrounding the acquisition by ASX listed James Hardie Industries (**James Hardie**) of The AZEK Company (**AZEK**) which was announced in March 2025. The terms of that acquisition saw James Hardie agreeing to issue shares equal to approximately 35% of its share capital to AZEK shareholders (equalling 26%, post-acquisition), which did not require approval of James Hardie shareholders. James Hardie's institutional shareholders complained, arguing that approval of the bidder's shareholders should be required under the ASX Listing Rules for dilutive share issues in connection with takeovers or schemes of arrangement.

Under ASX Listing Rule 7.1, listed companies can generally issue up to 15% of their share capital in any 12 month period without shareholder approval. There are various exceptions which permit share issues exceeding that 15% limit without shareholder approval. Those exceptions include an issue of shares under a takeover bid or a merger by way of scheme of arrangement or an issue of shares to fund the cash consideration payable under such a transaction, provided that this exception for takeovers and schemes of arrangement is not available if the transaction constitutes a "reverse takeover" i.e. when the ASX listed company issues 100% or more of its existing share capital under the transaction.

While ASX's proposals in the consultation paper range from doing nothing to entirely removing the ASX Listing Rule 7.1 exception that applies to takeovers and schemes of arrangement, ASX notes that its initial position is that it supports lowering the "reverse takeover" threshold to 25% for larger entities (such as those in the S&P/ASX300), while potentially retaining the current threshold for smaller entities.

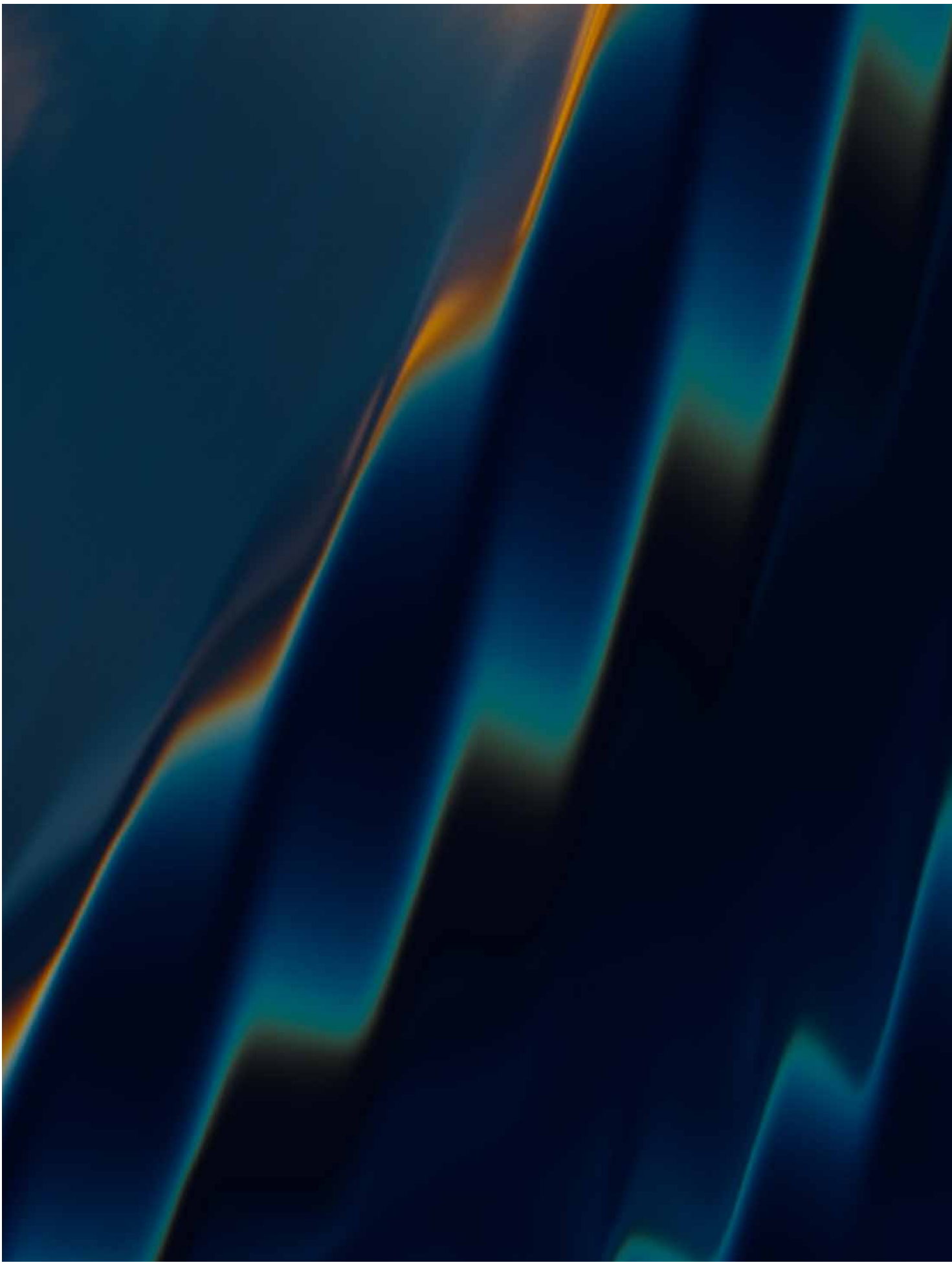
However, the distinction between this group of companies and smaller ones does not seem to address any particular underlying concern – the potential for dilution exists regardless of company size. Large companies may very well be the ones that require the ability to exceed the 25% threshold in order to secure transformative or strategic transactions. Imposing a blanket cap on them fails to account for legitimate commercial needs and the diverse circumstances in which scrip-based deals are used.

If ASX's proposal to lower the "reverse takeover" threshold is adopted, it would introduce a further hurdle to public market deals by ASX listed companies. We consider that restricting a board's flexibility in this way will deprive companies of opportunities. It will place listed companies at a significant disadvantage to their unlisted counterparts. It will also deprive boards of their ability to do their job and make decisions in the best interests of all shareholders. It may force listed companies to utilise alternate and possibly less optimal funding structures, including greater debt funding resulting in more leverage.

There is a real question as to whether, in a small market like Australia, a reduction to the reverse takeover threshold to 25% is the right way forward. If there is going to be a reduction, a 50% cap would be more appropriate (assuming a reduction is favoured). Alternatively, having an even narrower sub-set of companies to which such threshold applies may also be an improvement. A 50% cap would have done away with the most controversial of scenarios, where there is a broadly equal merger without a bidder shareholder vote, while retaining the ability for listed companies to effectively compete in many situations.

For further discussion on ASX's consultation paper, see our previous article Wait AZEK – is this too much change?

Submissions on the consultation paper closed on 15 December 2025. We await the ASX's next move following their review and consideration of the responses received by the ASX to the consultation paper.



FIRB

Recent updates to FIRB's regulatory approach reflect heightened national security concerns and a stronger focus on maintaining domestic control over sensitive industries.

Future Reforms – Treasury Discussion Paper

In October 2025, Treasury released a Discussion Paper proposing significant reforms to the foreign investment regime, aimed at streamlining low-risk transactions while strengthening oversight of higher-risk or national security-sensitive cases. Some of the key proposals in the Discussion Paper are:

The carrots: a more streamlined foreign investment framework

- **Automatic approvals and notification requirements:** Certain low-risk investments could proceed on a notification-only basis, without prior approval, unless called in for review. This would include lower-value acquisitions in non-sensitive sectors and minor shareholding changes that do not affect control or influence.
- **Exemption Certificate reform:** The Discussion Paper notes that the current Exemption Certificate regime is a partial solution to "the repeat scrutiny of low-risk investments from low-risk, frequent investors". The Paper proposes adjusting and expanding exemption certificate powers. One example provided is to exempt a fund with passive foreign government investors from Foreign Government Investor requirements.
- **Reducing reporting and tracing requirements:** The Discussion Paper notes that the Register of Foreign Ownership of Australian Assets, launched in July 2023, has over 80,000 registrations. The Paper looks at ways to reduce duplicative or onerous reporting, such as allowing one party to report on behalf of others in a deal, or removing requirements to report certain types of interests.

The sticks: a stronger foreign investment framework

- **Enhanced conditions and undertakings:** Treasury is proposing to allow the Treasurer to impose conditions before a transaction completes, including on upstream or minority investors. This represents a shift toward pre-emptive risk management, addressing concerns that conditions imposed under the current regime only apply post-completion and can lag commercial momentum.
- **Enhanced enforcement powers:** The Government proposes to strengthen the Treasurer's enforcement toolkit by accelerating disposal orders (currently subject to a 30-day buffer) and restricting resale to other high-risk entities. It also proposes to scale penalties for multiple breaches, expand the range of contraventions, and introduce more proportionate enforcement by allowing related breaches to be grouped. The Discussion Paper also considers penalties for deliberate avoidance of the FIRB regime. If adopted, these measures would significantly increase the "sticks" available to the Treasurer.
- **Expanded approval requirements in sensitive sectors:** As technologies evolve and strategic dependencies shift, the Discussion Paper identifies that the old boundaries of "sensitive" sectors no longer capture where real vulnerabilities lie. Artificial intelligence, quantum computing, data infrastructure, and critical minerals now sit alongside defence and energy as the front lines of national interest. Treasury

is looking at ways to designate emerging sensitive sectors for mandatory notification and approval, and to introduce post-acquisition screening powers for rare, high-risk cases.

While Treasury's proposals are not yet law, they provide a clear indication of the Government's reform priorities and are likely to influence how foreign investment risks are assessed and managed going forwards.

For further discussion of Treasury' Discussion Paper on potential reforms to Australia's foreign investment regime, see our previous article Carrots and sticks: the next wave of Australia's foreign investment reform.

FIRB blocks Cosette Pharmaceuticals / Mayne Pharma deal

On 21 November 2025 the Treasurer announced that he had decided to block the acquisition by Cosette of Mayne Pharma. The Treasurer stated that this was necessary to protect Australia's national interest, to safeguard critical medicine supply chains, preserve local jobs and the local community, and was on the basis of advice from Treasury and FIRB that no conditions could adequately mitigate those risks, particularly unique risks to the supply of critical medicines. For further discussion on this decision by FIRB, see pages 92 to 93 of this Report.

Updated Guidance Notes

In March 2025, Treasury updated a number of its Guidance Notes to introduce some noteworthy changes, including:

Tax conditions

Previously, standardised tax conditions were applied to most transactions regardless of context. Under Guidance Note 12: Tax Conditions, FIRB and the ATO will develop tailored tax conditions for each investment (if deemed appropriate), reflecting the specific risk profile of the transaction. This approach is designed to address higher-risk arrangements, including global restructures, acquisitions involving related-party debt, and investments by private equity funds. The updated guidance increases the level of scrutiny on tax structuring, with conditions now calibrated to mitigate particular risks rather than relying on a one-size-fits-all approach. As a result, investors should anticipate more transaction-specific engagement with FIRB and the ATO on tax matters during the approval process.

Application fee refunds for unsuccessful bids

Guidance Note 10: Fees now provides clearer guidance on when an unsuccessful bidder in a "competitive bid process" may be eligible for a partial refund of its application fee. In broad terms, a bidder that is "genuinely unsuccessful in a competitive bid process" may request one (but not both) of the following:

- a partial refund of the application fee (generally 75%), provided the request is made within six months of being notified that the bid was unsuccessful; or
- a credit for the full application fee, to be applied to another application lodged within the following 24 months.

While the guidance includes a number of nuances and exceptions, the key requirement is that the bidder must demonstrate to FIRB that it was genuinely unsuccessful. This requires showing that the bidder submitted a bid, acted at arm's length, and was formally advised by the seller that it was unsuccessful (rather than withdrawing its bid voluntarily).

New Foreign Investment Portal

In May 2025, Treasury launched the new Foreign Investment Portal, consolidating FIRB's assessment process for foreign investment applications. The Portal allows investors to lodge applications, pay fees, respond to FIRB requests, and submit compliance reports in a single platform.

The Portal requires investors to provide all relevant details upfront and uses dynamic forms to guide users through the application. Key changes include:

- **Investor profiles:** Investors can set up a profile for their entity within the Foreign Investment Portal. Once created, the profile is saved and automatically populates other forms on the platform, allowing details to be shared across applications and compliance reports.
- **Centralised communication:** The Portal replaces the previous email-based system. All interactions with FIRB now occur through an integrated in-platform messaging system, and investors no longer receive direct contact details for the Treasury case officer or assessment team. The application will still be assigned a case number and team, but investors are directed to communicate with the case team via the portal messaging interface rather than by email or phone.
- **Application format:** Cover letters are no longer accepted. Investors must complete all required fields in the dynamic online form, with limited ability to attach additional documents. An application cannot be submitted until all required information is provided.
- **Consolidated compliance reporting:** All compliance reports – including annual officer reports, acquisition reporting, and condition compliance reports – must be submitted via the Portal. Email submissions are no longer accepted.

Spotlight

The Regulators weigh in: The Cosette Pharmaceuticals / Mayne Pharma saga

The Cosette Pharmaceuticals / Mayne Pharma transaction provides a case study of how disputes in Australian public M&A transactions can cross over the courts, the Takeovers Panel and the FIRB approval process.

Timeline

20 February 2025: Mayne Pharma enters into a scheme implementation deed (**SID**) with US-based Cosette Pharmaceuticals in relation to the $615 million acquisition by Cosette of all of the shares in South Australian drug manufacturer Mayne Pharma, conditional on, among other things, no Mayne Pharma material adverse change (**MAC**) occurring and receipt by Cosette of FIRB approval.

15 May 2025: Cosette discloses in the Scheme Booklet that it intends to *"continue the business and operations of Mayne Pharma largely in the same manner as it is currently operated;... and retain Mayne Pharma's existing employees to the extent it is commercially appropriate to do so..."*. Similar disclosures are made in Cosette's application for FIRB approval.

17 May 2025: Cosette seeks to terminate the SID alleging that the MAC had been triggered, Mayne Pharma had breached its continuous disclosure obligations and Mayne Pharma had misled Cosette into entering into the SID.

4 June 2025: Mayne Pharma seeks orders from the Supreme Court of New South Wales (**Court**) that Cosette had not validly terminated the SID.

24 June 2025: Cosette seeks to use the FIRB approval process to exit the deal, notifying FIRB that it has re evaluated its intentions concerning Mayne Pharma's business in Australia and now intends to dispose of or close Mayne Pharma's site in Salisbury, South Australia, which employs over 200 people, should its bid be successful.

8 September 2025: Cosette's intention to close Mayne Pharma's Salisbury site is disclosed to the market, following media reports.

15 October 2025: The Court holds that no MAC had occurred and Cosette's termination notices were invalid (for further discussion on the Court's decision on the MAC clause, see pages 68 to 69 of this Report).

30 October 2025: The Treasurer writes to Cosette indicating a preliminary view that the acquisition would be contrary to the national interest, and that the Treasurer was "considering whether he should make orders prohibiting the acquisition".

6 November 2025: Mayne Pharma applies to the Takeovers Panel.

19 November 2025: The Panel makes a declarations of unacceptable circumstances.

21 November 2025: FIRB approval not granted.

15 January 2026*:* Mayne Pharma announces that Cosette has sought leave to appeal the Court's decision, including challenging the Court's findings that a MAC did not occur in relation to Mayne Pharma's Q3 FY25 sales performance. The appeal comes as the parties go head-to-head on whether break fees or reverse break fees are payable.

Takeovers Panel decision

The Panel made a declaration of unacceptable circumstances on 19 November, finding that Cosette's change of intentions in relation to the Salisbury Site "*means that the market for control of Mayne Pharma is not proceeding in a manner generally expected for schemes and is contrary to an efficient, competitive and informed market*".

The Takeovers Panel also found that the market was uninformed of Cosette's change of intentions for the Salisbury Site between 24 June 2025 and 8 September 2025.

The Panel made final orders requiring Cosette to agree to any conditions reasonably required by the Treasurer (relating to FIRB approval) in connection with the Salisbury Site (including conditions reasonably restraining its closure) that were not inconsistent with Cosette's intentions previously disclosed in the Scheme Booklet.

FIRB approval not granted to protect national industry

Despite the Takeovers Panel order requiring Cosette to accept any conditions reasonably imposed by the Treasurer, FIRB recommended that the Treasurer made orders prohibiting the acquisition.

On 21 November 2025 the Treasurer announced that he had decided to block the acquisition by Cosette of Mayne Pharma. The Treasurer stated that this was necessary to protect Australia's national interest, to safeguard critical medicine supply chains, preserve local jobs and the local community, and was on the basis of advice from Treasury and FIRB that no conditions could adequately mitigate those risks, particularly unique risks to the supply of critical medicines.

Some key lessons

- **Takeovers Panel's potential role in resolving disputes in schemes of arrangement:** The Panel's decision in Mayne Pharma illustrates how the Panel can move quickly and make orders that require a bidder to act consistently with previous public statements of intentions, in parallel with court supervision of a scheme. In addition, while the Panel does not have jurisdiction to determine "as a matter of law" whether a MAC has occurred, it can make orders where it determines that conduct by an acquiror in a scheme, which could potentially include a bidder seeking to rely on a MAC, constitutes "unacceptable circumstances" applying the principles in Chapter 6, including the need for takeovers to occur in an efficient, competitive and informed market. Scheme parties should consider in each case whether the Panel is a preferred forum to the Court for resolving time critical disputes in schemes of arrangement where there is a basis for an argument of unacceptable circumstances.
- **FIRB's independence from other regulators:** The Mayne Pharma decision highlights that FIRB's national interest test extends beyond ownership to include operational decisions affecting critical supply chains. It underscores FIRB's independence from other regulators, including the Takeovers Panel, and its prioritisation of national interest over commercial or market efficiency considerations. Deal timing, management intentions, and strategic changes are relevant to FIRB's assessment, as are broader economic and employment impacts. The ruling signals heightened scrutiny for foreign investment in healthcare and other critical sectors, regardless of the acquirer's reputation or sophistication. Even in competitive, well-informed markets, FIRB will place national interest at the forefront of its review.

For further discussion on the Court's decision on the MAC clause, see pages 68 to 69 of this Report.

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