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The M&A Deal Report 2026

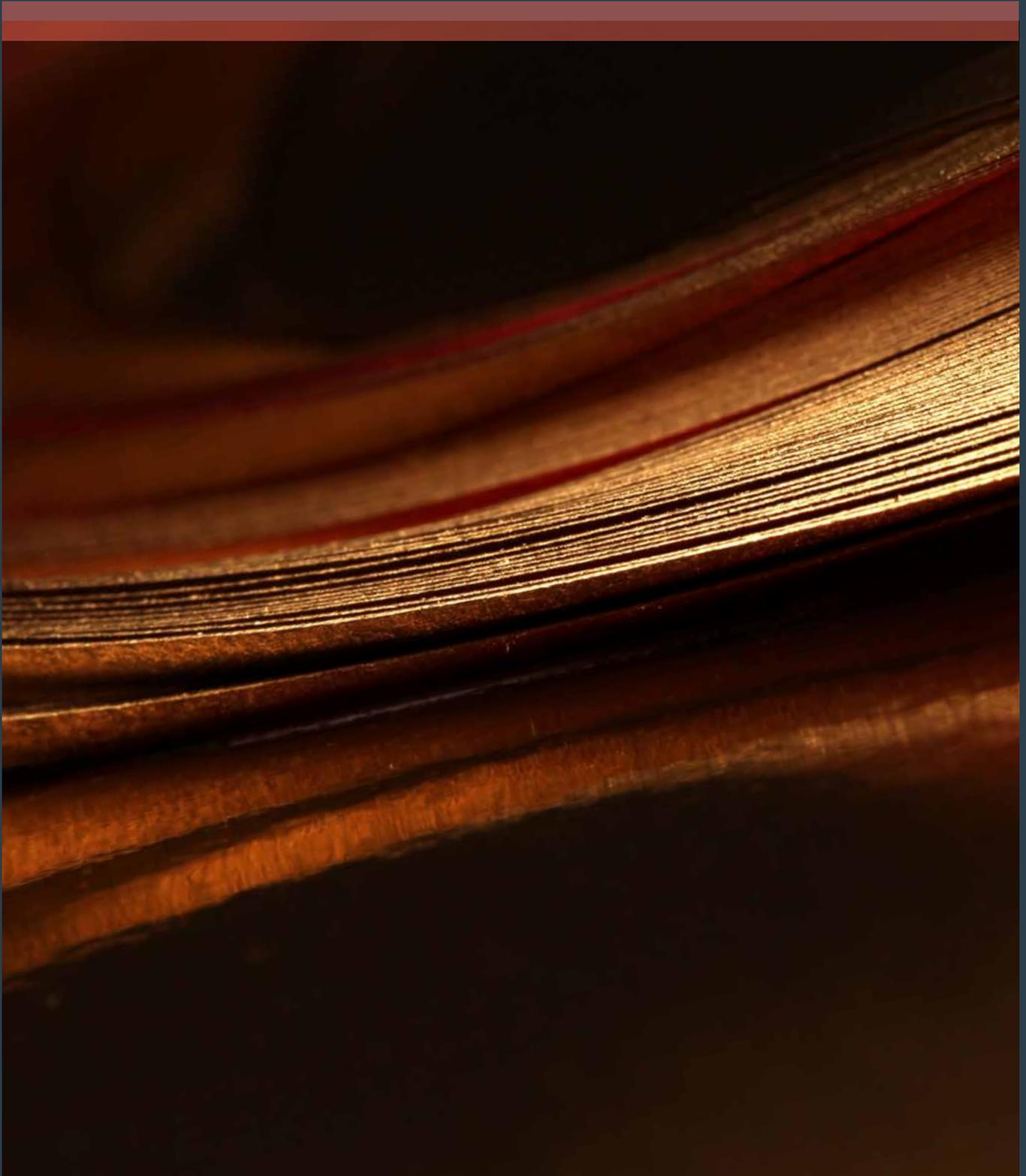
An analysis of Australian
public mergers & acquisitions

Outpacing change



11

Competition Regime



In this Chapter, we explore the latest developments from Australia's competition regulator, the Australian Competition and Consumer Commission (ACCC) in relation to mergers and acquisitions and the recent changes to the merger regime.

ACCC – The year in review

In the financial year ending 30 June 2025, the ACCC reviewed 323 mergers or acquisitions under the informal clearance process. This is similar to the number of acquisitions reviewed in previous years. Of these:

- 289 were pre-assessed (i.e. not publicly reviewed due to a low risk of competition concerns).
- 34 were subject to public review. Of these:
 - none were opposed outright;
 - 22 were not opposed without requiring any revision to the deal;
 - eight were not opposed after acceptance of a remedy;
 - three were withdrawn, two of which occurred after a Statement of Issues was published by the ACCC; and
 - one was discontinued by the ACCC following concerns about an approach contemplated by the merger parties to providing information to the ACCC.

Also in this period, the ACCC completed 13 investigations of completed acquisitions, details of which are not publicly available.



A tale of two regimes – 1 July 2025 to 31 December 2025

Australia's new merger clearance laws commenced on 1 January 2026, transforming the previous informal system into a mandatory and suspensory regime. The new regime is described further on pages 98 to 99 of this Report. From 1 July 2025 to 31 December 2025, the ACCC operated the "old" informal merger regime and the new regime in parallel.

Detailed statistics have not yet been released for this period, but we observed the following:

- The number of deals pre-assessed in this period is not yet published, but it is clear that a high number of informal applications were made in this six month period, taking advantage of the transitional arrangements ahead of the commencement of the new regime. Where the ACCC decided to pre-assess or not oppose an acquisition in this period, parties were not required to notify under the new regime, so long as they received a document known as a "section 189 letter" from the ACCC, and the acquisition is put into effect within 12 months of the section 189 letter. Where the ACCC was not able to pre-assess a proposed transaction ahead of 31 December 2025, applicants were informed and invited to refile notifiable transactions under the new regime.
- The ACCC managed to clear the decks on all public informal applications ahead of the 31 December 2025 end date of the old regime. In the six month period from 1 July 2025 to 31 December 2025, the ACCC opposed three deals, cleared 13 deals without any remedy and cleared three deals with structural undertakings. Two deals were voluntarily discontinued by merger parties.
- Only a small number of deals opted into the new regime voluntarily. In the period 1 July 2025 to 31 December 2025, only 12 applications were made under the new regime. The ACCC completed eight of these reviews by 31 December 2025, all of which were cleared in Phase 1. These reviews were in a variety of industries including mining, renewable energy, electronics and paint and coatings.

Our top 5 themes for merger clearance in Australia in 2026

1

Waivers will play an important role

Under the new regime, the requirement to notify a deal to the ACCC depends on whether it exceeds the various thresholds, rather than solely its likely competitive effect. This means that the new merger regime captures deals that do not raise substantive competition concerns and would not have been notified to the ACCC under the previous regime. In this context, waivers have an important role to play.

The ACCC's [Interim Guidance on Merger Notification Waivers dated 1 December 2025](#) indicates that waivers will be most appropriate for deals that are capable of being assessed on the information provided in the application, and without the need for further investigation. These are likely to be "straightforward" deals that do not give rise to any plausible competition issues and do not present a material risk of harm to competition or consumers (e.g. no or very limited overlap and clear market definition; no vertical or conglomerate issues; no complex scenarios or legal issues; there is unlikely to be a risk of harm to consumers; and there are no issues that are likely to warrant consultation by the ACCC and/or inquiries with third parties). As at 9 February 2026, there have been 20 waiver applications, (17 of which have been granted by the ACCC, and three have not).

From the applicant's perspective, a waiver represents a much more efficient and cost-effective option than a full notification, with a slightly reduced information burden in the application form and a fee of \$8,300. The ACCC has also said it expects to deal with the bulk of waiver applications quickly. As a backstop, waivers must be decided in 25 Business Days, or they will be refused. Where a waiver is refused, applicants whose deals exceed the thresholds will have to notify the ACCC.

From the ACCC's perspective, waivers should help it manage an otherwise potentially significant volume of notifications, many of which will not raise substantive competition concerns.

Waiver details will be posted on the ACCC's Acquisitions Register only after the ACCC has made a decision on a waiver. This approach will help streamline the waiver process, as third parties will not have the opportunity to intervene in waiver applications. However, one potential downside of the waiver process is that it does not provide protection from section 50 of the [Competition and Consumer Act 2010 \(Cth\)](#), so third parties may still challenge the deal in Court.

Waivers will be a popular route for many transactions, but it is unclear whether they will be feasible for deals with complex structures yet simple competition analyses. It will be important for the success of the regime that these types of deals are capable of being addressed via a waiver. A question mark also currently exists over whether the information burden on the parties applying for a waiver is appropriately weighted for a no-issues transaction. If the downsides of the waiver process begin to outweigh the upsides, the ACCC may find itself reviewing a much larger number of notifications, with no greater insight into the deals that really matter from a competition perspective.

2

Phase 1 may take longer than anticipated

One feature of the new regime is that applicants will now have to pay a filing fee in order to have their deal assessed by the ACCC. The fee for a Phase 1 assessment is \$56,000. If the ACCC decides that a deal needs a Phase 2 review, the fees vary according to the size of the deal, from \$475,000 for smaller deals, up to \$1,595,000 for deals exceeding \$1 billion.

The fee structure creates a substantial incentive for applicants to try to achieve a positive determination from the ACCC at the end of Phase 1, as opposed to Phase 2. This will be challenging for applicants seeking to achieve this, as Phase 1 is subject to a short 30 Business Day time frame.

Strategically, it may be in some parties' interests to request that the ACCC stop the clock in Phase 1, to try to avoid the time and costs of a Phase 2 review. The ACCC may allow this if the parties are seeking to provide it

with further information and data, for instance in response to questions it has asked. This approach could result in deals spending longer in Phase 1 than the 30 Business Day timeline suggests, and may create some uncertainty for deal timelines.

For other deals, it will make sense to keep the time pressure squarely on the ACCC by gathering all potential information, data and reports upfront, and ensuring (as far as possible) that the minimum timeframes are adhered to by the applicant.

3

Prospect of voiding will drive higher filings

The new merger regime is complex to navigate, yet there are significant consequences for non-compliance. Acquisitions that should be notified but are not, will face significant penalties and will be void ab initio. This means that there is no need for the ACCC to take the parties to court in order to achieve the voiding.

This aspect of the regime has been the source of significant criticism from a variety of stakeholders. It presents major issues if, for instance, a deal is discovered as void years after it has been put into effect.

On 15 October 2025, the Assistant Minister for Competition [announced](#) that the Government will make a number of refinements to the merger regime, including what was described as “practical adjustments to the automatic voiding provisions that still preserve the incentives for parties to notify proposed mergers”. At the time of publishing this Report, no further details were available. We expect these amendments will be progressed in 2026.

Until the voiding issue is resolved, applicants are likely to take a very conservative approach to notification, which will drive higher waiver applications and notifications.

4

Potential for inadvertent non-compliance

While the primary legislation for the new merger regime was passed in late 2024, significant elements of the regime continued to evolve late into 2025, including substantive elements of the threshold tests. As a result, businesses are still coming to grips with how the regime applies to their deals and building this understanding will take some time.

Coupled with this, the regime has been extended beyond traditional business and share sales, to potentially include many other commercial transactions. This is due to the expansive definition of acquisition of an “asset”, which includes any kind of property and legal and equitable rights that are not property. As a result, where the thresholds are met, the regime will now capture various commercial transactions that would not traditionally have been considered by the ACCC.

These two factors (the late changes to the regime and the expansion of the regime to a broader set of commercial arrangements) are likely to result in some inadvertent non-compliance, particularly in the first year. Although the regime has been widely discussed in competition law circles, there will be businesses who are unaware of the details or who make errors when applying the complicated thresholds.

The ACCC has stated that it will actively monitor for non-compliance with the notification requirements, but it is not yet known how it will approach instances of inadvertent non-compliance, particularly in the first 12 months. Perhaps the greater concern for these deals will be (once businesses do become aware of the issue) how to deal with the potential voiding of their arrangements, described above.

5

Further refinements still to come

As noted above, the Assistant Minister for Competition [announced](#) in October 2025 that the Government would make a number of refinements to the merger regime. The first part of these refinements were registered on the Federal Register of Legislative Instruments on 18 December 2025, but some (such as the voiding issue) are yet to be made.

We expect the remaining refinements will be progressed in the course of 2026. In addition, a statutory review of the regime (including thresholds) will take place three years from commencement, and this review will be supported by annual ACCC reporting on merger activity, ex-post merger analysis, and data analytics.

Snapshot of Australia's new merger clearance regime

Australia's new merger regime commenced on 1 January 2026. Below is a snapshot of the key elements.

Mandatory	<p>Acquisitions of shares and assets that exceed specified thresholds or fall into certain classes must be notified to the ACCC, unless the ACCC has determined that the acquisition does not require notification (via a waiver).</p> <p>"Assets" is broadly defined and will capture some commercial transactions not previously included in the merger regime. "Shares" includes units in a unit trust and interests in a managed investment scheme.</p>
Suspensory	<p>A notifiable acquisition cannot complete without ACCC approval or waiver.</p>
Filing fees	<p>Phase 1 assessment: \$56,800</p> <p>Phase 2 assessment (if required): fees are scaled by deal value, calculated as the greater of the market value of shares or assets being acquired or consideration received:</p> <ul style="list-style-type: none">• deals of ≤\$50 million: \$475,000• deals of >\$50 million but ≤\$1 billion: \$855,000• deals of >\$1 billion: \$1,595,000.
ACCC primary decision-maker; limited review by Tribunal	<p>The ACCC is the primary decision-maker, with limited merits review by the Australian Competition Tribunal.</p>
Timelines	<p>The following timelines will apply, but are subject to pre-filing discussions, extensions and clock-stopping:</p> <ul style="list-style-type: none">• Phase 1: 15-30 business days• Phase 2: A further 90 business days• Public benefit application: 50 business days (commencing after conclusion of Phase 2)• Tribunal review: 90 calendar days• Post-review waiting period: 14 calendar days after ACCC clearance
Notification thresholds	<p>Detailed notification thresholds apply.</p> <p>See Ashurst's Australian Merger Reforms web page.</p>
Control	<p>"Control" means the capacity of one entity to determine the outcome of decisions about another entity's financial and operating policies. Acquisitions that do not confer or change "control" are, in general, not required to be notified. However, from 1 April 2026, this position will be qualified and certain acquisitions that do not confer control will nonetheless still need to be notified if they meet the thresholds. See Ashurst's Australian Merger Reforms web page for further details.</p>

Chapter 6 acquisitions	A carve-out has been created to provide a safe-harbour for acquisitions involving publicly listed companies, widely held (unlisted) companies and listed registered schemes (such as managed investment trusts) that do not result in a person having voting power above 20%. These deals will not need to be notified to the ACCC. See also the comments on Transparency and Confidential review below.
Waivers	<p>Parties are able to seek a “notification waiver” from the ACCC. Upon application, the ACCC will be able to determine that an acquisition is not required to be notified.</p> <p>Only straightforward acquisitions that are capable of being assessed by the ACCC “on the papers” without further investigation by the ACCC are appropriate for a waiver. Straightforward acquisitions are those that clearly do not give rise to any competition concerns and do not present a material risk of harm to competition or consumers.</p>
Pre-notification discussions	Parties may engage in pre-notification discussions with the ACCC. While not compulsory, these discussions are strongly recommended in most cases. There is no fixed timeline for this part of the process but, the ACCC has indicated that very straightforward matters may be completed in approximately two weeks. For more complex matters, the ACCC recommends allowing at least four weeks for pre-notification discussions.
Transparency	Information about notified acquisitions and waivers is published on a public register maintained by the ACCC.
Surprise hostile takeover bids - confidential review	Confidential review will be available for certain deals involving surprise hostile takeover bids but various conditions apply. These include requirements that the body corporate is subject to the takeover laws in the <i>Corporations Act 2001</i> (Cth) i.e. is a Chapter 6 entity; that the acquisition is a takeover acquisition in relation to a proposed takeover bid; the proposed bid has not been publicly proposed; and the notifying party makes a written request for confidentiality at the time of notifying the ACCC. The legislation also prescribes various additional requirements for the written request. Confidential applications will not be listed on the public register for 17 business days.
Land	<p>Acquisitions of interests in land, including entry into leases (and agreements for lease) do not require notification if they are in the “ordinary course of business” and not subject to targeted notification requirements (currently limited to major supermarkets).</p> <p>As the concept of “ordinary course of business” has, to date, been interpreted narrowly, some land transactions may need to be notified to the ACCC if they meet the thresholds. However, there are also a number of exemptions that may apply in relation to land and leases, including in relation to certain property development activities, among others.</p>
Penalties	Penalties will apply for failure-to-file (i.e. notify) and gun-jumping (i.e. failure to suspend completion pending the ACCC’s decision), consistent with existing penalties for contravention of the <i>Competition and Consumer Act 2010</i> (Cth). Penalties will also apply for providing false or misleading information. New ACCC surveillance capabilities will monitor for non-compliance with notification requirements.

Further information

For more detailed information on the new regime including the calculation of thresholds, timelines, waivers, publications and more, please refer to Ashurst’s [Australian Merger Reforms](#) web page.

Authors



Eliza Blandford

Eliza has 18 years' experience advising on acquisitions, divestments, corporate governance, strategic investments and contracting.

[View Profile](#)



Anita Choi

Anita advises on significant M&A transactions with a particular focus in the energy, energy transition and infrastructure sectors.

[View Profile](#)



Carl Della-Bosca

Carl advises on public and private M&A, JVs and equity capital raisings with extensive experience in the mining and energy sectors.

[View Profile](#)



Anton Harris

Anton is Head of Private Capital in APAC with significant experience leading large public and private M&A transactions.

[View Profile](#)



Kylie Lane

Kylie is a member of our global board, and corporate practitioner with extensive expertise advising on M&A in the energy, resources and infrastructure sectors.

[View Profile](#)



Susannah Macknay

Susannah specialises in acting for corporate and private equity clients on large M&A transactions.

[View Profile](#)



Amelia Morgan

Amelia specialises in public and private M&A with significant expertise advising corporate and private capital backed investors on their most important and strategic transactions.

[View Profile](#)



Neil Pathak

Neil is Head of Australia and Co-Head of M&A Australia with extensive expertise in listed takeovers, cross-border acquisitions and capital raisings.

[View Profile](#)



John Brewster

John is Head of our Australian Corporate Practice with 20 years' experience leading complex public and private M&A transactions.

[View Profile](#)



Tony Damian

Tony is Co-Head of M&A Australia with 30 years' experience advising on strategic and complex M&A transactions and board advisory matters.

[View Profile](#)



Melissa Fraser

Melissa is head of our APAC antitrust, regulatory and trade practice with particular expertise in complex merger clearance matters.

[View Profile](#)



Andrew Kim

Andrew has 20 years' experience in public M&A and equity capital markets transactions.

[View Profile](#)



Bruce Macdonald

Bruce specialises in M&A and equity capital markets work advising on significant and innovative transactions.

[View Profile](#)



Will Mason

Will specialises in corporate M&A, with a particular focus on private equity transactions.

[View Profile](#)



Ratha Nabanidham

Ratha specialises in M&A and corporate advisory with extensive experience advising on public and private M&A transactions.

[View Profile](#)



Murray Wheeler

Murray advises on M&A transactions with particular expertise in the infrastructure, energy and mining sectors.

[View Profile](#)

Editor



Lisa d'Oliveyra

Senior Corporate Development Counsel

Corporate Transactions

Other authors and contributors



Jonathan Bisset

Senior Associate

Corporate Transactions



Venthan Brabaakaran

Expertise Lawyer

Competition



Bronte Campion

Lawyer

Corporate Transactions



Joshua Chin

Lawyer

Corporate Transactions



Alyssa Croce

Lawyer

Corporate Transactions



Joshua Hanegbi

Lawyer

Corporate Transactions



Brandon Lam

Lawyer

Corporate Transactions



Daniel Lucanus

Lawyer

Corporate Transactions



Rosie Maguire

Senior Associate

(admitted in England & Wales,
not admitted in Australia)

Corporate Transactions



Giselle McLeod

Graduate

Corporate Transactions



John McMeniman

Senior Associate

Corporate Transactions



Joseph Nguyen

Senior Associate

Corporate Transactions



Bonnie Paton

Senior Associate

Corporate Transactions



Shenaye Ralphs

Lawyer

Corporate Transactions



Nikita Reid

Lawyer

Corporate Transactions



Lucas Ryan

Graduate

Corporate Transactions



Jade Stuart

Lawyer

Corporate Transactions



Amanda Tesvic

Expertise Counsel

Competition



Josh Walsh

Senior Associate

Corporate Transactions

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