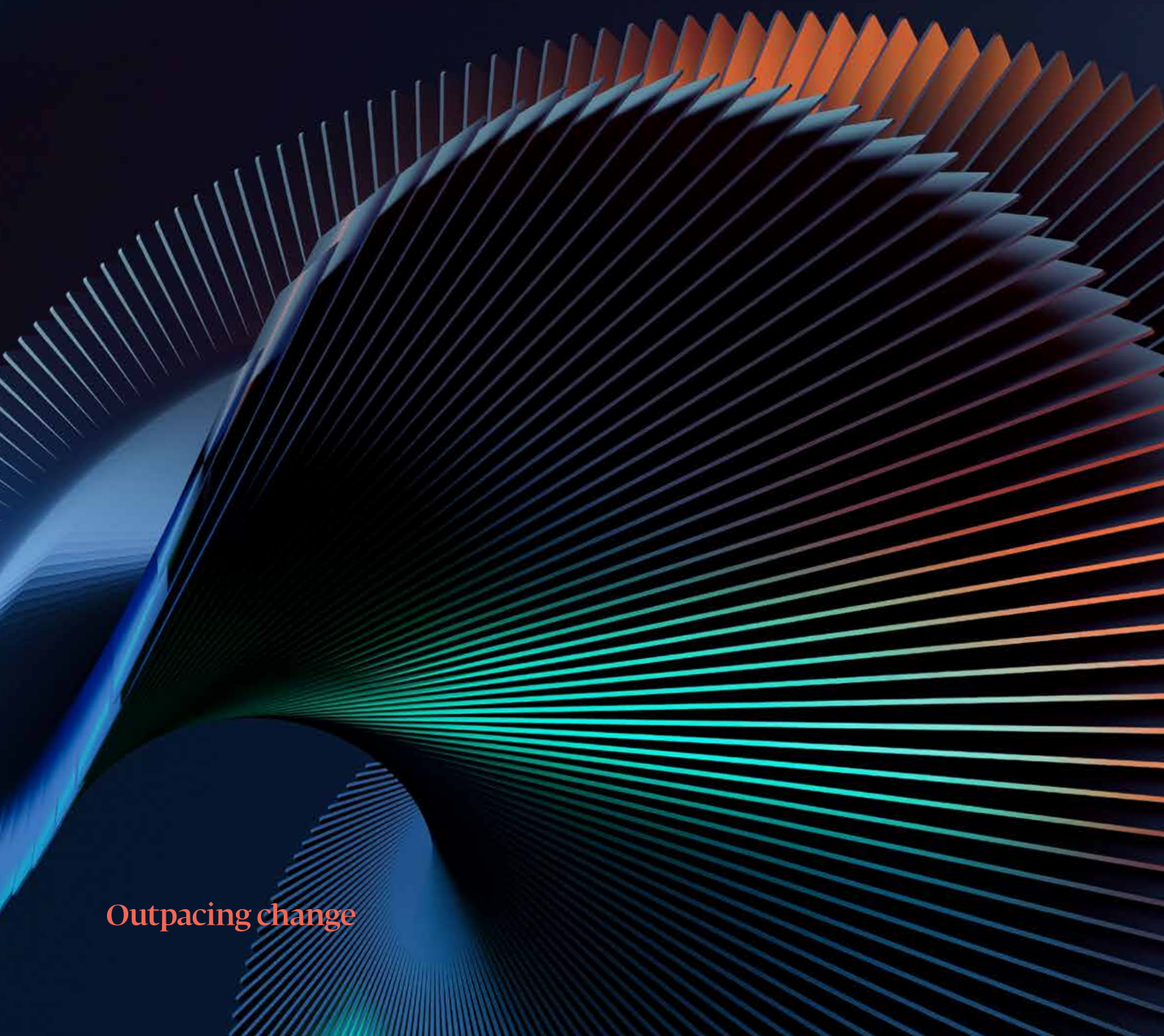
Ashurst

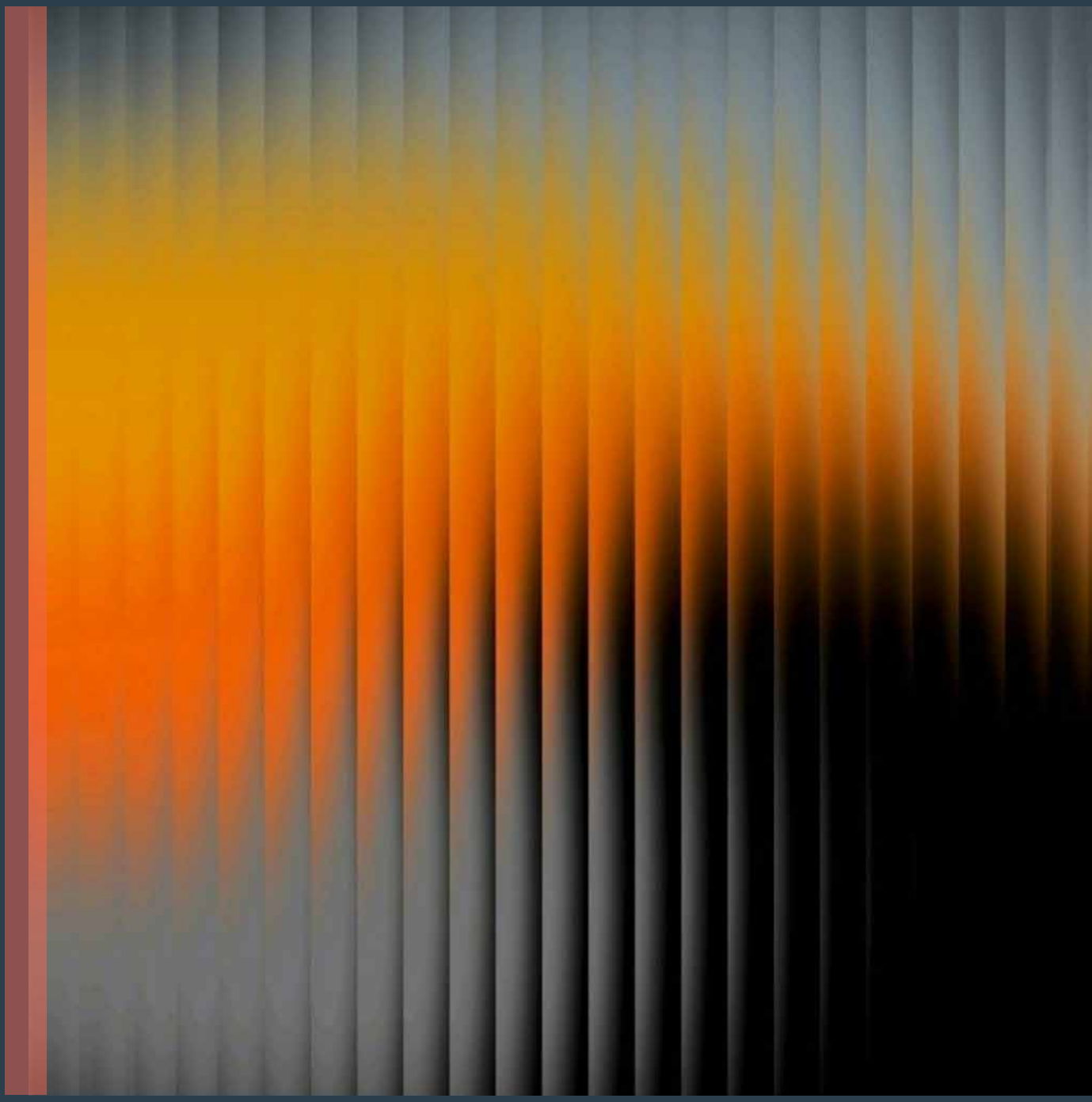
The M&A Deal Report 2026

An analysis of Australian public mergers & acquisitions



Outpacing change

8 Deal Conditions and Terms



Key takeaways

MAC provisions were the most commonly included condition in deals in 2025, being included in 83% of all deals – in all the schemes, and in 50% of takeovers.

Despite ASIC's views that MAC conditions should only contain quantitative triggers, a majority (64%) of MAC conditions in 2025 included both qualitative and quantitative triggers; however, no MAC conditions featured only qualitative triggers.

While a majority (57%) of the takeover bids included a minimum acceptance condition, this was a decline from 73% of takeover bids including a minimum acceptance condition in both 2023 and 2024, and no deals contained a 90% threshold (which would allow a bidder to proceed to compulsory acquisition) in 2025.

Break fees were present in 75% of deals in 2025 (and in 81% of friendly deals), which was broadly consistent with the three prior years.

Reverse break fees featured in 65% of deals in 2025 (and in 70% of friendly deals), continuing to trend up from 63% in 2024, 56% in 2023 and 51% in 2022.

The number of deals with reverse break fees that were larger than the target break fee has decreased compared to 2024, with only two deals in 2025 including a reverse break fee that is larger than the target break fee.

Material adverse change (MAC) conditions

MAC provisions were the most commonly included condition in deals in 2025, being included in 83% of all deals – in all the schemes and in 50% of takeovers.

MAC provisions are designed to protect the bidder from events or changes in circumstances that have a material negative impact on the target's business, financial condition, or operations that occur or arise between the date of a binding deal and completion. Scheme implementation agreements can also include MACs in relation to the bidder (typically only in the case of deals with a scrip component). This Report analyses data on MACs in relation to the target only.

The trigger events which are covered by MAC clauses will vary between agreements and are categorised as either qualitative triggers or quantitative triggers:

- quantitative triggers are where the impact of the event meets a specified quantitative threshold, such as a diminution of revenue or EBITDA (and / or net assets); and
- qualitative triggers are where the event impacts the target's ability to conduct its business, its reputation or its profitability in the same manner as they were conducted prior to the transaction being agreed.

MAC clauses will generally exclude as triggers any changes in law or regulation, changes in the broader economic or political environment (that do not disproportionately affect the target), force majeure events and matters that were disclosed to the bidder or publicly disclosed by the target prior to entry into the scheme implementation agreement or announcement of the offer.

Seven off-market takeovers in 2025 included MAC conditions (50% of all off-market takeovers), and all of those takeovers included a combination of both qualitative and quantitative triggers.

In contrast, all schemes included MAC conditions. Twelve schemes included MAC conditions with only quantitative triggers and the remaining 14 schemes contained both quantitative and qualitative triggers.

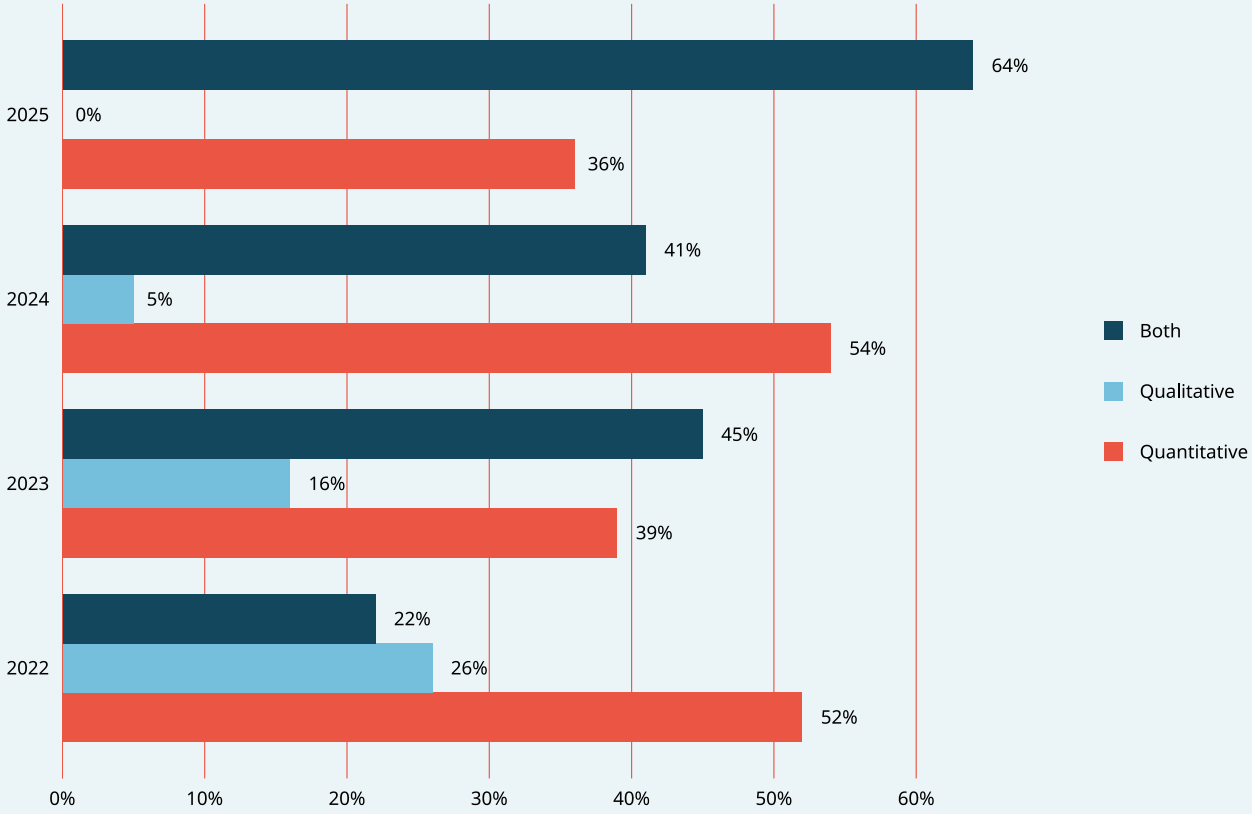
No schemes or takeovers included MAC conditions with only qualitative triggers.

There were only seven deals without MAC conditions in 2025, and all but one of these transactions were wholly unconditional (the exception being Hutchison Telecommunications BV's off-market takeover for Hutchison Telecommunications (Australia), where the ultimate owner of the bidder already held 88% of the target).

ASIC indicated in its September 2022 Corporate Finance Update that MAC clauses should be based on quantitative triggers only (which are objective) so that parties to a transaction, and their shareholders, can determine whether a material adverse change has occurred (and not qualitative triggers which are subjective, semi-subjective, unclear or self-defeating).

The data shows that, in accordance with ASIC's guidance, the percentage of deals with only qualitative triggers has trended downwards from 26% in 2022 to 16% in 2023, 5% in 2024 and now 0% in 2025. However, the percentage of deals that contain a combination of both quantitative and qualitative triggers has increased significantly over the same period, being present in 64% of deals in 2025, compared to 41% of deals in 2024, 45% of deals in 2023 and 22% of deals in 2022.

MAC triggers, by proportion of deals



Therefore qualitative triggers for MAC conditions remain a feature of public M&A. The most commonly included qualitative trigger for MAC conditions in 2025 was an event that has or could reasonably be expected to have a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the target group as a whole.

Other triggers can be transaction specific. Examples of these triggers included in deals in 2025 are:

- the imposition of any terms, conditions or restrictions or an investigation by any governmental or regulatory body to any gambling licence held by the target group which would affect (or reasonably could be expected to affect) the target's underlying regulated wagering business, having a monetary impact of $20 million or more: MIXI, Inc / PointsBet Holdings;
- an event which has, has had or is reasonably likely to have the effect or result in the Special Mining Licence being revoked, varied, altered, not-renewed, suspended or terminated or the terms or rights attaching to the Special Mining Licence being adversely affected: Shenghe Resources / Peak Rare Earth; and
- an event in relation to the ongoing advancement of the permitting, development, and financing of the Antler Copper Project in the ordinary course or on an expedited basis: Central Asia Metals / New World Resources.

Deal Spotlight

The Cosette Pharmaceuticals / Mayne Pharma decision

Australian courts have historically approached MAC clauses with caution, applying a narrow interpretation and requiring clear contractual language before permitting a bidder to terminate a deal. Deal termination on the basis of MAC clauses is unusual and there is limited Australian judicial guidance directly addressing MAC clauses, with guidance often found in decisions by the English courts.

The decision of the NSW Supreme Court in *Mayne Pharma Group Ltd, Re* [2025] NSWSC 1204 therefore presented a rare opportunity for listed companies, potential bidders and their advisers to obtain an insight into when a bidder may or may not be able to rely on a MAC clause to walk away from a deal.

Background

On 20 February 2025, Mayne Pharma Group (**Mayne Pharma**) entered into a scheme implementation deed (**SID**) with US-based Cosette Pharmaceuticals (**Cosette**) in relation to the acquisition by Cosette of all of the shares in Mayne Pharma for $7.40 cash per share by way of scheme of arrangement, conditional on, among other things, no Mayne Pharma MAC occurring under the SID and receipt by Cosette of FIRB approval.

The relevant MAC definition, called "Mayne Material Adverse Change", referenced "*[a]ny event, occurrence, change, circumstance or matter … occurring before, on or after the date of [the SID] … which has… (either individually or when [aggregated]) … [the] effect of diminishing the consolidated Maintainable EBITDA over a 12-month period of the Mayne Group, taken as a whole, by at least A$10.76 million*".

On 15 May 2025, Cosette released an explanatory statement in relation to the scheme (**Scheme Booklet**) which stated, subject to certain qualifications, that Cosette intended to, among other things, "*continue the business and operations of Mayne Pharma largely in the same manner as it is currently operated and to investigate opportunities to integrate and grow Mayne Pharma's business;… and retain Mayne Pharma's existing employees to the extent it is commercially appropriate to do so…*". Cosette's application for FIRB approval included substantially similar disclosure as the Scheme Booklet in relation to Cosette's intentions.

From 17 May 2025, Cosette sought to walk away from the deal, on the basis that:

- Mayne Pharma's (arguably) material business underperformance in Q3 FY25 (compared to the historical trend and forecast), and a potentially significant regulatory issue asserted in a letter issued by the US Food & Drug Administration constituted a Mayne Material Adverse Change;
- Mayne Pharma had breached its continuous disclosure obligations; and
- Mayne Pharma had misled Cosette into entering into the SID.

On 4 June 2025, Mayne Pharma commenced proceedings in respect of the termination notices in the Supreme Court of New South Wales (**Court**) seeking orders that Cosette had not validly terminated the SID.

Cosette notified FIRB on 24 June 2025 that it had reevaluated its intentions concerning Mayne Pharma's business in Australia and determined that "*its current intention is to seek to dispose of or close*" Mayne Pharma's site in Salisbury, South Australia - an intention not disclosed to the market until 8 September 2025, following media reports.

The Supreme Court decision

On 15 October 2025, the Court rejected Cosette's attempt to invoke the MAC clause, reaffirming that MAC clauses set a high threshold for termination. The Court emphasised that a bidder seeking to invoke a MAC and rely on it to terminate the deal must prove, on the balance of probabilities, that the adverse event or circumstance has, or is reasonably expected to have, the specified effect. Importantly, the focus is on actual events and their impact, not on missed forecasts or revised projections. As the Court observed, a downward revision of a forecast is not itself a MAC – it may be evidence of it (indicative of the underlying factual developments) but did not in this case constitute the adverse circumstance. The Court's approach is to look for a sustained, material adverse effect on the target's business, not mere change in sentiment.

The Court also found Cosette's conduct after it became aware of the facts giving rise to the purported right to terminate - including Cosette supporting the scheme at the first Court hearing and entering a deed of amendment to the SID which expressly confirmed that the SID remained in full force and effect - was *"wholly inconsistent with any intention to terminate"* and amounted to an election to affirm the contract and precluded reliance by Cosette on the alleged termination rights. For further discussion of the Court decision, see our earlier article: No easy exit: Key Takeaways from the Cosette / Mayne Pharma decision.

The Takeovers Panel and FIRB

Following an application by Mayne Pharma, the Takeovers Panel made a declaration of unacceptable circumstances on 19 November 2025, finding that Cosette's change of intentions in relation to the Salisbury site was contrary to an efficient, competitive and informed market. The Panel made final orders requiring Cosette to agree to any conditions reasonably required by the Treasurer (in relation to FIRB approval) in connection with the Salisbury site.

Two days after the Panel decision, the Treasurer announced that he had decided to block the acquisition by Cosette of Mayne Pharma, in order to protect Australia's national interest, the security of critical medicine supply chains, jobs and the local community. For further discussion on the decisions by the Takeovers Panel and FIRB, see pages 92 to 93 of this Report.

Key lessons and takeaways relating to the negotiation of terms and conditions in a SID

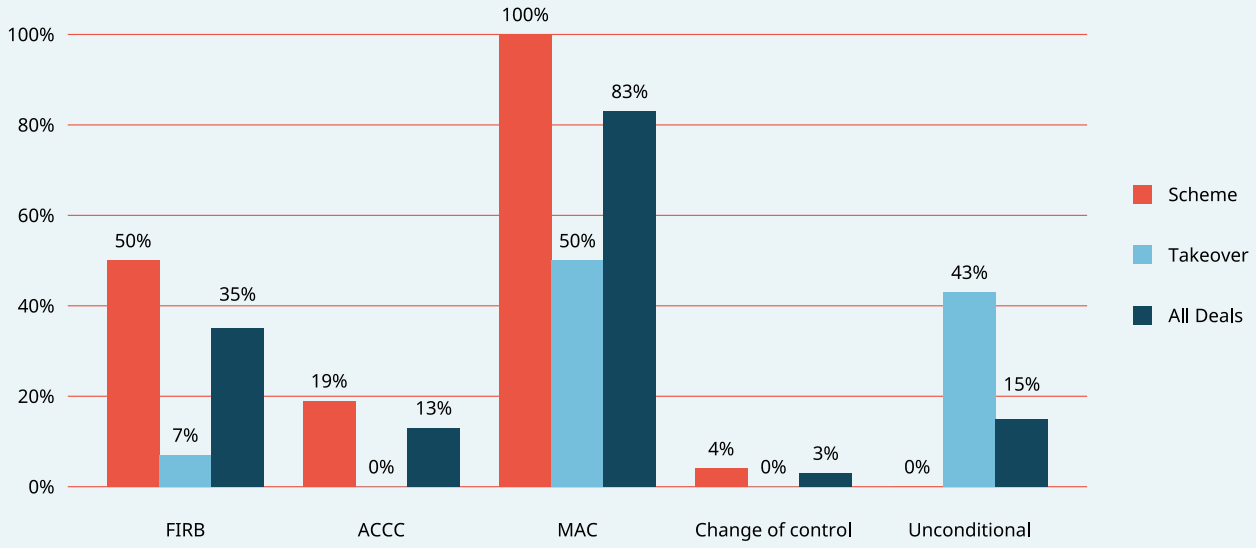
- **Proving a MAC involves a high bar:** The Court reaffirmed that MAC clauses impose a high evidentiary threshold. Unmet expectations, such as missed financial forecasts, in isolation, are not MACs (especially when forecasts are expressly disclaimed against). The Mayne Pharma / Cosette decision illustrates that reliance by bidders on a MAC to terminate a deal can be difficult in practice. Bidders seeking meaningful protection from MAC clauses should incorporate objective financial thresholds, clearly defined event-based triggers and carefully calibrated carve-outs. Absent this, a MAC may continue to operate more as a basis for renegotiation rather than an enforceable termination right.
- **Termination rights may be lost through conduct:** If a party, with knowledge of facts giving rise to a purported right to terminate, acts in a manner consistent only with affirming the contract, it could risk giving up the ability to exercise that right. This creates tension between a potential right to terminate and the general obligation in the SID to support the scheme which can create a 'use it or lose it' situation for a bidder considering termination rights before a first court hearing. Bidders must carefully manage communications and interim conduct once potential termination grounds related to a MAC emerge.
- **Provisions regarding regulatory approvals conditions:** From a target board perspective, the Mayne Pharma / Cosette saga highlights the need to ensure SIDs contain provisions that provide visibility with respect to bidder regulatory approval processes. We expect that targets will push for greater visibility over bidder regulatory submissions and enhanced information and consultation rights. Bidders should expect these points to become increasingly contested in SID negotiations, particularly in politically sensitive sectors.

Postscript: Mayne Pharma announced on 15 January 2026 that Cosette has moved 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.

Bid conditions

Conditions in off-market takeover bids and schemes included minimum acceptance conditions, material adverse change (MAC), failure to receive third party consent under material contracts for change of control, FIRB approval and ACCC approval.

Bid conditions (2025)



As discussed above, MACs were the most commonly included condition in deals in 2025. MAC conditions featured in 83% of all deals in 2024, including all schemes and in 50% of takeovers.

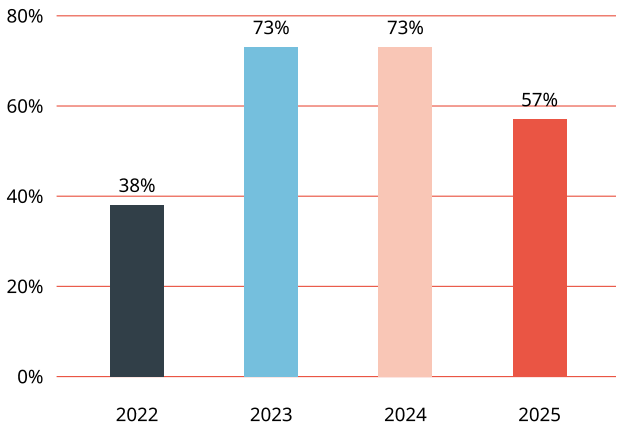
The next most common condition was FIRB approval, which was included in 35% of all deals, including 50% of schemes and 7% of off-market takeovers. Foreign bidders in larger deals prefer a scheme of arrangement structure as it provides certainty that if the scheme is approved by target shareholders and all other conditions are satisfied, the bidder will acquire 100% of the target, that is, it is an all or nothing outcome. Several deals involving foreign bidders did not require FIRB approval as a condition because the relevant monetary thresholds which trigger the FIRB approval requirement were not exceeded, including Shenghe Resource's successful $131 million acquisition of Peak Rare Earths.

In 2025, third party consents for change of control conditions were included in 3% of deals, and ACCC approval conditions were included in 13% of deals.

Minimum acceptance conditions

In 2025, 57% of takeovers included a minimum acceptance condition, reflecting a decline from 73% in 2024 and 2023, but still greater than 2022 where only 38% of takeovers included a minimum acceptance condition.

Minimum acceptance conditions in takeovers



Of those takeovers including a minimum acceptance condition, four deals (50%) included a 50.1% minimum acceptance threshold, which was a decrease on 2024 (88%) and 2023 (64%). This is the key threshold that enables the bidder to obtain majority ownership and the ability to pass ordinary resolutions to appoint and remove directors from the target board.

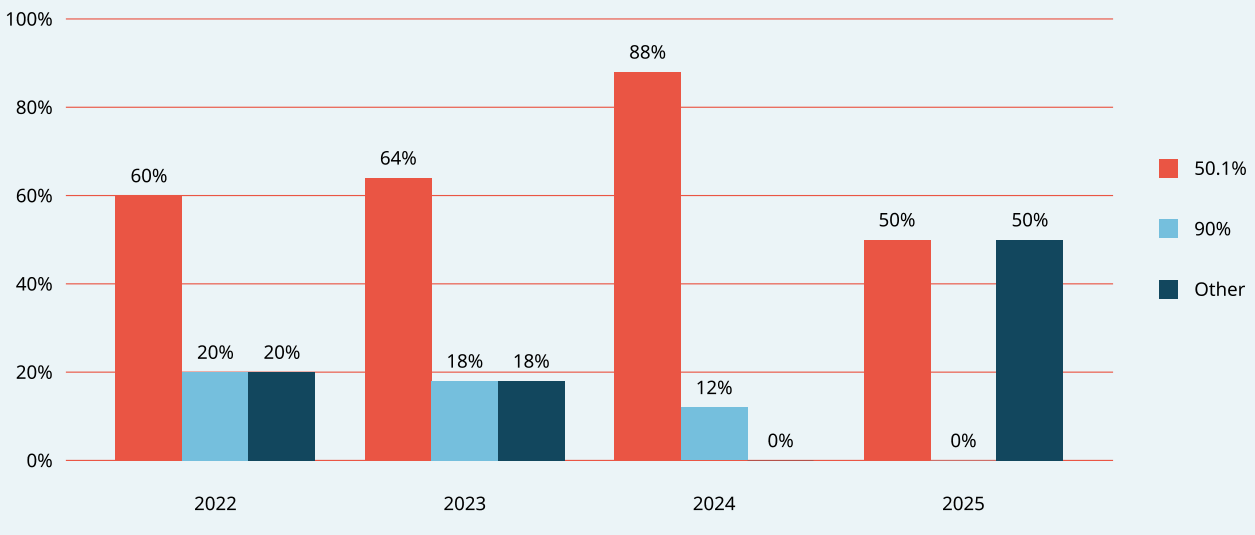
No deals included a minimum acceptance threshold of 90%, being the ownership threshold at which a bidder can then proceed to compulsory acquisition of the remaining target shares. This amounts to a continued decline from 2024 (20%), 2023 (18%) and 2024 (12%). That said, two deals (being the Elphinstone Group / Engenco and Hutchison Telecommunications BV / Hutchison Telecommunications (Australia) transactions) each included a minimum acceptance condition which exceeded the 90% threshold, due to the respective bidders already holding pre-existing controlling stakes in the relevant targets (68.53% and 88.48%, respectively).

Two other deals included minimum acceptance thresholds which ranged between 50% and 90%, likely because each involved competing bidders for the same target. These included Iris Capital / Reef Casino Trust (80% threshold) and Fenix Resources / CZR Resources (75% threshold).

Minimum acceptance conditions were not included in four takeovers where the bidders had pre-existing shareholdings, being:

- betr Entertainment's hostile takeover of PointsBet Holdings, as the bidder had acquired a 19.6% holding in the target in an attempt to block a competing proposal from MIXI, Inc; and
- Novomatic AG's unsuccessful takeover of Ainsworth Game Technology, TT Investment Trust's takeover of 360 Capital Group and Lederer Group's unsuccessful takeover of Elanor Commercial Property Fund, where in each case the bidder already held a significant pre-existing shareholding in the target and was therefore likely to have been more willing to proceed without a minimum acceptance condition.

Threshold for minimum acceptance condition



Unconditional takeover bids

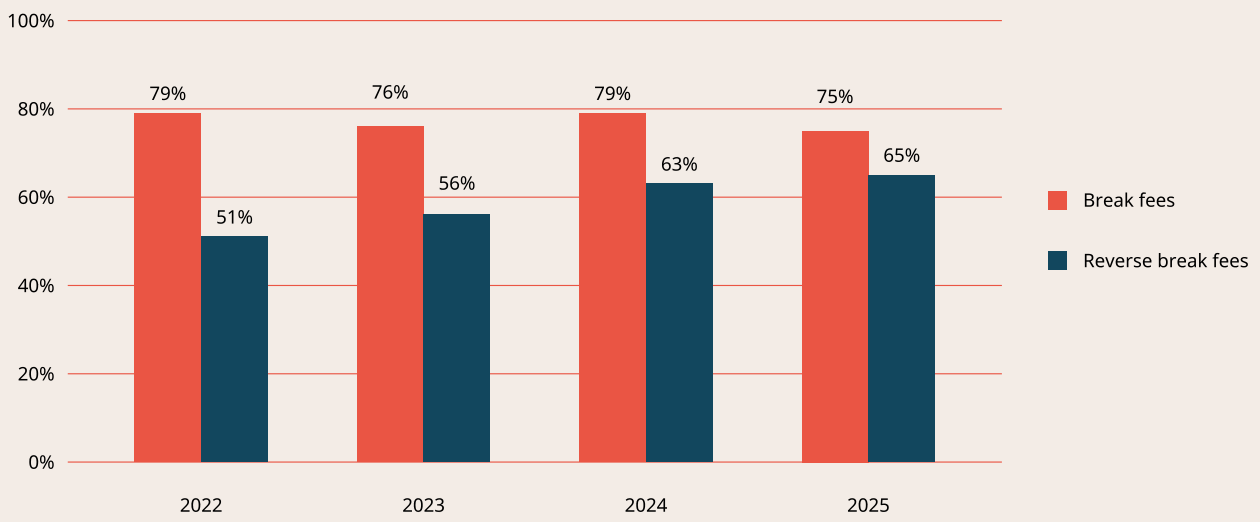
There were no on-market takeovers (which must be unconditional under section 625(1) of the *Corporations Act* 2001 (Cth)) valued at more than $50 million during 2025.

However, there were six unconditional off-market takeover offers. This is equal to 43% of the total number of takeovers in 2025, which is lower than the percentage of unconditional takeovers in 2024 (50%).

The unconditional takeovers offers in 2025 were:

- Novomatic AG's unsuccessful $337 million takeover bid for Ainsworth Game Technology, where Novomatic had a pre-existing shareholding of 52.9%;
- Kinterra Capital's $254 million competing hostile bid for New World Resources, which had received an earlier unconditional bid from Central Asia Metals;
- Lederer Group's unsuccessful $278 million hostile bid for Elanor Commercial Property Fund; and
- TT Investment Trust's successful $59 million bid for 360 Capital Group.

Break fees and reverse break fees



Break fees

Break fees were present in 75% of deals in 2025 (and in 81% of friendly deals), which was broadly consistent with the three prior years. Break fees are fees payable by the target to a bidder if certain trigger events occur that prevent the deal from proceeding, or cause it to fail, including a failure by a target director to recommend the scheme, a change in recommendation by the target board or a material breach of the implementation agreement by the target.

Break fees in the deals in 2025 mostly adhered to the Takeovers Panel's general guidance that break fees payable by a target should generally not exceed 1% of the equity value of the target at the offer price.

There were eight deals with slightly larger break fees in 2025 (ranging from 1.01% to 1.98%), including:

- Rover Group's successful $62 million acquisition of Mad Paws which included a break fee of $1.22 million, representing 1.98% of the target's equity value; and
- Shenghe Resource's successful $131 million acquisition of Peak Rare Earths. This proposed transaction included a break fee of $1.55 million, representing 1.18% of the target's equity value.

The Takeovers Panel's guidance is that break fees exceeding 1% of the target's equity value may be justifiable if the bidder has incurred significant costs in connection with the deal and the break fee is a genuine and reasonable estimate of the costs incurred and expected to be incurred by the bidder. In 2025, we saw various examples of break fees of more than 1% in lower value deals, given out of pocket transactions costs can exceed 1%

of equity value in these deals, which seems to have been accepted by the Takeovers Panel, ASIC and the Courts. The Shenghe Resources / Peak Rare Earth and Rover Group / Mad Paws deals appear to fall into this category.

Some commentators have suggested that with the effects of inflation and other regulatory challenges or situations where considerable transaction costs and expenses have been incurred by a bidder, it might be time to revisit the Panel's guidance that target break fees be capped at 1%.

In 2025, there were seven recommended deals which did not have a break fee, including:

- Kinterra Capital's unconditional bid for New World Resources, which is likely due to the fact that New World Resources had already received an unconditional bid from competing bidder, Central Asia Markets; and
- Novomatic AG's unsuccessful bid for Ainsworth Game Technologies, likely due to the fact that Novomatic was already an existing majority shareholder of the target, holding 52.9%.

Reverse break fees

Reverse break fees are fees that are payable by the bidder to the target company if certain trigger events occur that prevent the deal from proceeding or cause it to fail, including material breach by the bidder or failure by the bidder to obtain regulatory approvals or approval of the bidder's shareholders. They were initially popularised in the US by private equity firms to manage the risk of financing failures in leveraged buyouts with the reverse break fee being subject to a cap. Reverse break fees were therefore viewed mostly as a bidder-friendly tool to cap their liability in these circumstances and were sometimes referred to as an option fee. In Australia, they are often viewed more as a deal protection measure for the benefit of the target, and have become more prevalent due to the volatile economic environment and risks associated with obtaining regulatory approvals.

These fees are perceived as serving two main purposes:

- to provide certainty as to the amount payable to compensate the target for the costs incurred and opportunities lost if the transaction fails due to the bidder's actions or inactions (rather that the target having to prove loss); and
- to incentivise the bidder to complete the transaction.

The Takeovers Panel has no guidance or policy position on reverse break fees, leaving parties to contract as they wish provided it does not lock up control of the target in an inefficient or unacceptable manner (which reverse break fees generally do not).

Over the past few years, the prevalence of reverse break fees has increased, being agreed in 65% of deals in 2025 (and in 70% of friendly deals), up from 63% of deals in 2024, 56% of deals in 2023 and 51% of deals in 2022.

The quantum of reverse break fees has historically mirrored that of target break fees (1% of the target's equity value based on the offer price) due to simple reciprocity although there is no requirement or guidance requiring it to be so.

Following some high profile deals with significant reverse break fees in 2024 (including Renesas Electronics Corporation's successful $9.1 billion acquisition of Altium, which had a reverse break fee equal to 4.5% of the target's equity value, compared to the target break fee which was equal to 1% of the target's equity value), only two deals in 2025 had reverse break fees which exceeded the value of break fees. These included:

- Montage Gold's proposed $333 million acquisition of African Gold, which had a reverse break fee equal to 4.39% of the target's equity value, compared to the target break fee which was equal to 0.88% of the target's equity value; and
- Svava's successful $65 million acquisition of SelfWealth, which had a reverse break fee equal to 2% of the target's equity value, compared to the target break fee which was equal to 1% of the target's equity value.

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 Wheater

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

Ashurst

ashurst.com

Design Ref: R015916 Feb 26