

# Australia's new merger regime

## What you need to know

Australia's new merger reforms have commenced and mark the most significant overhaul in how mergers and acquisitions are regulated in decades.

The changes introduce a mandatory and suspensory regime, giving the Australian Competition and Consumer Commission (**ACCC**) greater power to assess deals before they can proceed. The regime is complex and any failure to notify applicable transactions to the ACCC results in a deal being automatically void – so it is critical that you understand how the rules will affect you.

This briefing note offers an overview of the new rules and how they may affect you.

## Compulsory notification and penalties for non-compliance

From **1 January 2026**, notifiable acquisitions must not close or be put into effect until after they have been approved by the ACCC (or the Competition Tribunal, on review).

### The consequences of not notifying are very significant:

- the transaction is legally void (i.e. it will be automatically treated as if it never occurred)
- substantial penalties and other orders can also apply.

## Notifiable transactions and thresholds

Under the new regime, an acquisition must be notified where each of the following are satisfied:

- it involves the acquisition of assets, or **'control'** of an entity through a share sale
- it meets the monetary thresholds or is subject to a specific ministerial designation
- the target is **'connected'** with Australia.

There is the ability for parties to seek a waiver from the ACCC and certain **exemptions** may apply.

Importantly, it is no longer relevant whether an acquisition is likely to raise a potential competition concern, e.g., due to combined market shares. If your deal meets the monetary and other thresholds, you must notify the ACCC regardless.

## Understanding 'control' under the new ACCC merger rules

In the case of a share sale, notification is required if a transaction gives the acquirer 'control' of a body corporate. This concept is defined broadly and will apply in any case where either:

- you are acquiring a majority stake
- you (either alone or together with associates) are in a position to practically determine or influence the outcome of decisions about the financial and operating policies of the company (noting there is a carve-out in certain circumstances where there is an agreement that provides minority shareholder protection rights).

There are exemptions for acquisitions of shares where:

- the acquirer does not, immediately post transaction, control the target; or
- the acquirer already controlled the target pre transaction.

A safe harbour applies to listed companies (or unlisted companies with more than 50 members (widely held companies)) where the acquirer obtains less than 20% voting power or already has over 20% and is acquiring additional shares.

From 1 April 2026 acquisitions falling within the following scenarios must be notified if they meet the monetary thresholds:

- Acquisition of shares in a company that is not a Chapter 6 entity or listed on a foreign approved stock exchange, where the acquirer's voting power increases from <20% to >20%. However, to ensure that only acquisitions of material voting power over the entity are captured, when calculating an acquirer's voting power, the votes of entities which are considered associates only because they have entered into, or have proposed to enter into, an agreement with the person for minority shareholder protection rights should be disregarded.
- Acquisition of shares in any body corporate (listed or unlisted, foreign or domestic), where the acquirer's voting power moves from >20% but <50%, to an end point that is >50%. In calculating an acquirer's voting power, the votes of entities who are considered associates only because they have entered into or have proposed to enter into an agreement with the person for minority shareholder protection rights are also to be disregarded.

- Where the target is a Chapter 6 entity, and:
  - the principal party already controls the target, and the voting power moves from <20% to >20%
  - the principal party does not control the target immediately before or after the acquisition, and the voting power moves from <20% to >50%.

In some cases, minority stakes (under 50%) will offer sufficient influence to be considered a controlling interest. There is uncertainty about how this test applies to companies subject to shareholder agreements, joint venture agreements, or similar documents that give all members joint influence over the company.

The uncertainty surrounding the control test means that it is recommended you seek advice about notification, even for minority stakes, if your deal meets the financial thresholds.

## ACCC merger thresholds – notification revenue and value

The primary test for notification is based on the revenue of the parties or total transaction value. Lower thresholds apply for corporate groups with more than \$500 million turnover in Australia. Revenue refers to revenue in Australia in the last 12-month reporting period, as defined under applicable accounting standards.

Recent amendments have introduced higher thresholds for acquisitions that do not represent all, or substantially all, of the assets of a business. These updated thresholds **do not come into effect until 1 April 2026**.

When assessing these revenue thresholds, the turnover of the firms as well as any 'connected' entities will be relevant. In simple terms, a connected entity of the acquirer captures:

- related bodies corporate of the acquirer
- an entity that controls, or is controlled by, either alone or together with one or more associates, the acquirer
- an entity that is under common control with the acquirer by another entity.

The reference to 'associates' is as per the meaning in Chapter 6 of the Corporations Act and the reference to 'control' is as per the meaning in section 50AA of the Corporations Act.

## Economy-wide thresholds

The combined revenue of merger parties (including relevant connected entities) on contract date is ≥\$200 million and either:

- For the acquisition of shares:
  - revenue of target (including connected entities) is ≥\$50 million
  - transaction value is ≥\$250 million (calculated as the greater of market value or consideration under sale agreement).
- For the acquisition of assets where the assets form all or substantially all assets of a business:
  - revenue of assets being acquired is ≥\$50 million
  - transaction value is ≥\$250 million (calculated as the greater of market value or consideration under sale agreement).
- From **1 January 2026 to 31 March 2026**, for acquisitions of assets where the asset does not form all or substantially all assets of a business:
  - The transaction value is ≥\$250 million (calculated as the greater of market value or consideration under sale agreement).
- From **1 April 2026**, for acquisitions of assets where the asset does not form all or substantially all assets of a business:
  - The transaction value is ≥\$200 million (calculated as the greater of market value or consideration under sale agreement).

**Note:** Where the acquisition is of all, or substantially all, of the assets of a business, the amount to be calculated for the purposes of determining whether the monetary threshold has been met is the Australian revenue of the target to the extent that revenue is attributable to the business.

## Acquisitions by very large groups

The acquirer (including connected entities) has revenue on contract date of ≥ \$500 million and:

- revenue of the target (including connected entities) is ≥ \$10 million (where the asset(s) form all or substantially all assets of a business)

- from **1 January 2026 to 31 March 2026**, revenue of assets being acquired is  $\geq$  \$10 million (where the asset(s) form all or substantially all assets of a business)
- from **1 April 2026**, transaction value is  $\geq$  **\$50 million** (calculated as the greater of market value or consideration under sale agreement), where the asset does not form all or substantially all assets of a business.

**Note:** Where the acquisition is of all, or substantially all, of the assets of a business, the amount to be calculated for the purposes of determining whether the monetary threshold has been met is the Australian revenue of the target to the extent that revenue is attributable to the business.

#### **Cumulative (or serial) acquisitions**

As well as thresholds that apply to the standalone revenue of a target business, there are also thresholds that apply to similar transactions undertaken over the last three years. These are either:

1. if the combined revenue of the merger parties (including connected entities) is  $\geq$ **\$200 million** and the cumulative revenue from acquisitions by the acquirer (including connected entities) in the past three years involving competitive goods or services is  $\geq$ **\$50 million**
2. if the combined revenue of the merger parties (including connected entities) is  $\geq$ **\$500 million** and the cumulative revenue from acquisitions by the acquirer (including connected entities) in the three years before the contract date involving competitive goods or services is **million**.

When applying this three-year cumulative test, the following are excluded:

- transactions involving revenue of less than \$2 million
- share acquisitions where the acquirer has not begun, or cannot begin to control, the target body corporate
- assets that have subsequently been divested or disposed of
- if the acquisition is of an asset, the acquisition does not have the effect that a person will, or can, acquire all, or substantially all of the assets of a business, and the market value of the asset is  $<$ \$2 million.



## What is involved and what does it cost?

### The notification forms

If you need to notify, there is a choice of three forms:

- **A waiver notification form** – which is suitable for straightforward transactions that do not raise any competition risks.
- **A short form notification** – which is suitable for transactions that may involve competitors (or a supplier and customer), but where there is unlikely to be any concern.
- **A long form notification** – which is for transactions that are more complex, or which are likely to require more detailed consideration by the ACCC.

The forms are available from the ACCC website. In all cases, the ACCC can require more detailed information and supporting documents from merger parties.

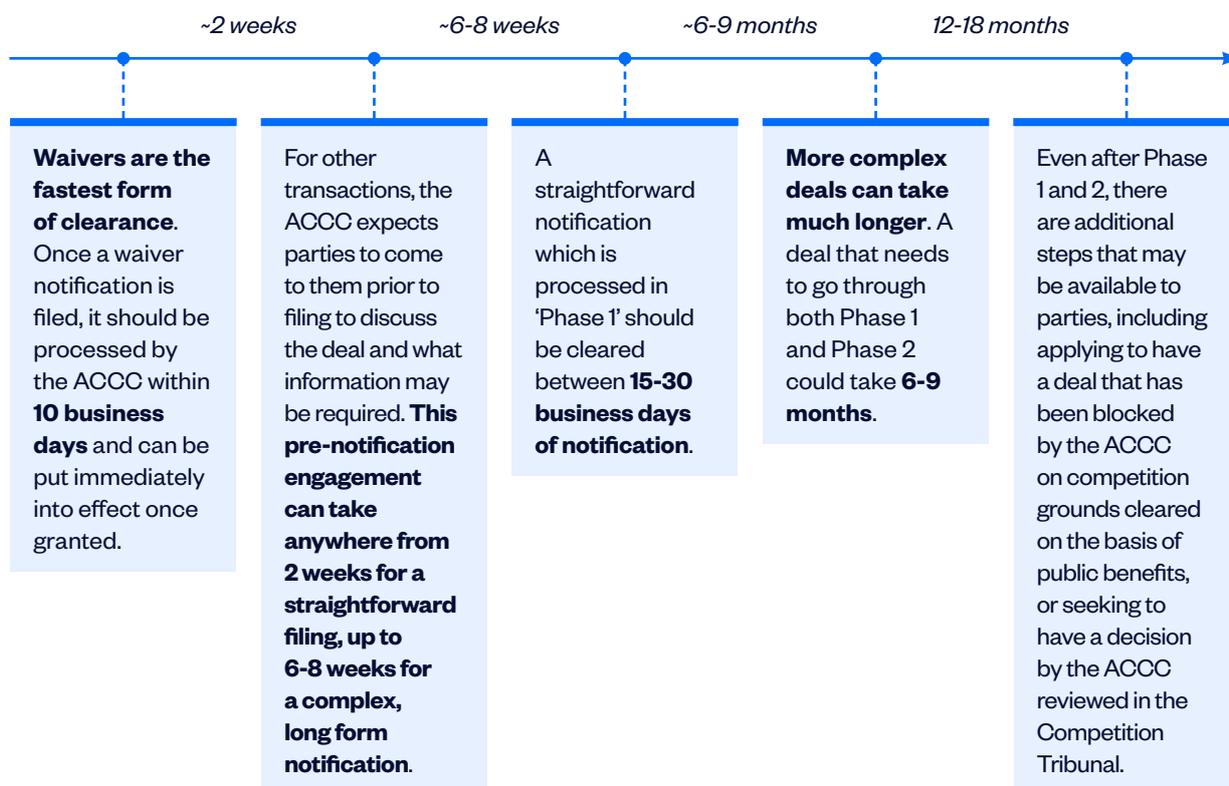
### The test

A merger will be permitted to proceed unless the ACCC is satisfied that the acquisition would, in all circumstances, have the effect or likely effect of substantially lessening competition (**SLC**) in any market. Consistent with global trends, the proposed amendments clarify that SLC can result from creating, strengthening or entrenching a position of substantial market power so this may increase scrutiny of small transactions being undertaken by large players or those with a leading market position.

### The process

The timeframes associated with the process vary depending upon the complexity of your deal. The ACCC expects that 80% of deals will be processed within 20 business days.

In summary:



You also cannot complete or put a deal into effect until 15 days after the ACCC publishes its reasons in relation to the notification (although you can do so immediately if you get a waiver).

## The cost

The filing fees are as follows:

Category	Fee for 2025-2026
Notification waiver application	\$8,300
Notification of proposed acquisition (Phase 1)	\$56,800
Additional fee for mergers that proceed to Phase 2	<p>If the transaction value (being the greater of the market value or consideration receivables of all shares and assets being acquired) is:</p> <ul style="list-style-type: none"><li>▪ ≤\$50 million, the fee is <b>\$475,000</b></li><li>▪ &gt;\$50 million and ≤\$1 billion, the fee is <b>\$855,000</b></li><li>▪ &gt;\$1 billion, the fee is <b>\$1,595,000</b></li></ul> <p>This fee must be paid within 7 business days commencing from the day the ACCC advises the notifying party that the notification is subject to Phase 2 review.</p>
Public benefits application	\$401,000
Tribunal review	Will be subject to separate government decisions and consultation.

## Other factors

The ACCC is required to publish all notifications it receives on a public register, so the clearance process will be public.

## Are there any exemptions?

There is a range of exemptions and safe harbours that apply to particular types of transactions – for example: acquiring <20% of shares in a listed company, ordinary course-of-business transactions (including those involving land, but excluding patents), deals where the target's Australian revenue is under \$2 million, and other financial market exemptions.

Other exemptions may apply to internal restructures or sale and leaseback arrangements, but legal advice should always be sought to confirm eligibility.

## Sale of business non-competes

Non-competes in relation to the sale of a business are exempt from the prohibition on cartel conduct if they are solely for the purpose of protecting the goodwill acquired by the purchaser.

However, under the new reforms the ACCC now has power to declare that the exemption does not apply if it finds a non-compete or other sale restraint is not necessary to protect the purchaser's goodwill.

## What does it mean for me?

The regime is new and complex and will continue to change over coming months. However, here are some practical tips and recommendations for navigating the next 12 months or so:



**Err on the side of caution:** if you are not sure, seek advice. The consequences of not notifying a transaction are severe – it is automatically void.

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**Remember that it applies to more than just M&A:** the regime now extends to a very wide range of commercial arrangements, including leases (and agreements for lease), project agreements, energy and infrastructure deals, concession agreements and more.

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**Consider who are “connected entities”:** this will be important in determining whether an acquisition is notifiable, as well as having implications for what information needs to be included in any notification form.

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**Allow time for the ACCC:** even a straightforward deal should now allow at least 6-8 weeks for ACCC clearance, and often more. Filing also needs to wait until after a deal has been done (that is, you cannot approach the ACCC until both parties intend to complete the transaction). If you're a seller, you need to provide for the ACCC process in any process letter.

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**Up-front information:** the process now requires considerable up-front information about the parties, relevant markets, the deal itself as well as all transaction documents. You will also need to provide information about any other relevant acquisitions over the last 3 years.

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**All transactions now need to have an ACCC condition precedent:** we can help you to identify the right clearance process for your deal.

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**Be aware that your deal will be public:** the register will include general information about the deal, including the parties and the asset or entity being acquired.

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**Check any non-competes or other restraints:** the ACCC has a new power to disallow non-competes in sale agreements (or other documents, such as restrictive covenants in leases), so get these checked before filing.

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**Be careful not to ‘gun jump’:** you cannot start to put a deal into effect until after the ACCC clearance process is completed. This means being extra careful about any pre-completion integration activities.

# Competition, Consumer and Market Regulation

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## Market recognition

### Chambers Asia-Pacific 2026

🏆 Ranked band 1 for Competition / Antitrust in Australia

### Legal500 2026

🏆 Ranked tier 1 for Competition and Trade in Australia

### Global Competition Review 2026

🏆 Recognised as an 'Elite' practice in GCR100 Australia

### Beaton Australia Client Choice Award 2025

🏆 Gilbert + Tobin is recognised in the category of 'Best Client Service'. We have now won this award for four consecutive years.

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