



A practical guide to the new Australian merger regime

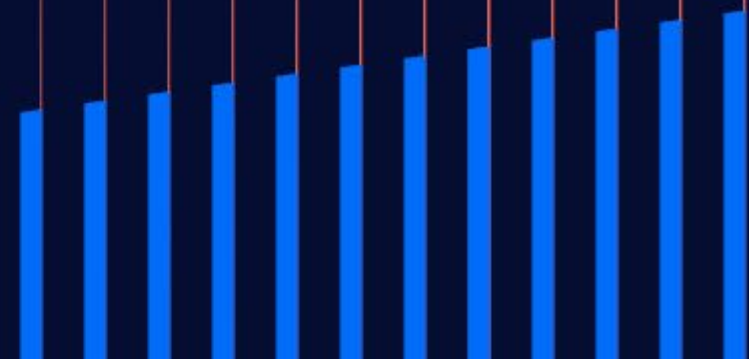
Session 1: Are you prepared for the new world?

Elizabeth Avery, Partner

Louise Klamka, Partner

Jeremy Jose, Partner

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Acknowledgement of Country

We acknowledge and pay respect to the traditional custodians of the lands and waters of this nation. We particularly acknowledge the custodians of the lands from which we deliver this webinar – the Gadigal people (Sydney). We also extend our acknowledgement to those joining us across the country and pay our respects to their Elders past and present.



Artwork by Jessica Johnson for Nungala Creative

Presenters



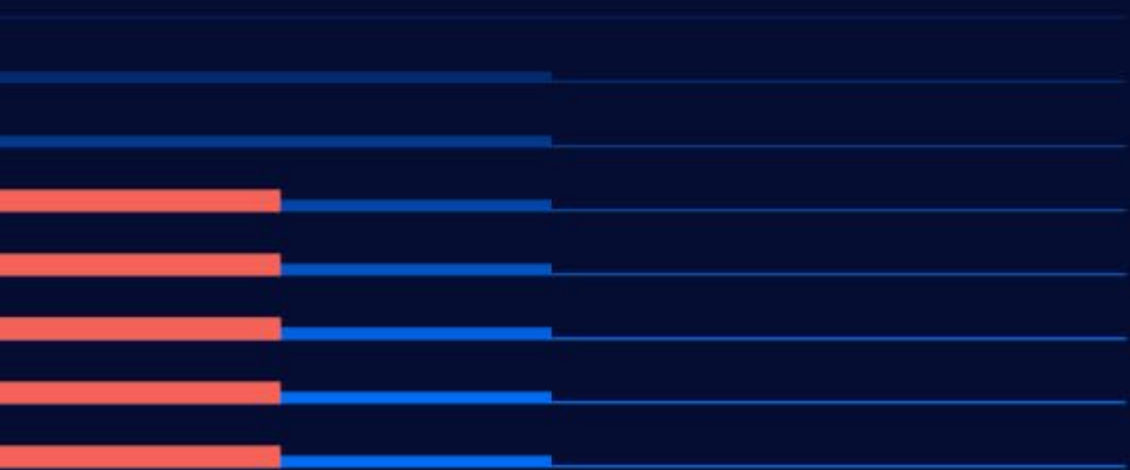
Elizabeth Avery
Partner
+61 411 314 505
eavery@gtlaw.com.au



Louise Klamka
Partner
+61 458 121 100
lklamka@gtlaw.com.au



Jeremy Jose
Partner
+61 425 808 970
jjose@gtlaw.com.au



What we are covering

- 1 Practical implications of the new regime
- 2 What it means for different types of deals and market players
- 3 Transitional arrangements and what they mean for deals during the rest of CY25



What's happened recently?



Many of these are subject to open consultation processes

Key practical implications of the new regime

New mandatory and suspensory regime



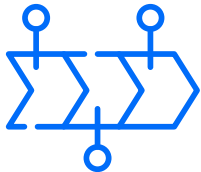
Must engage in the process and **must not complete** unless the ACCC has been notified of a notifiable deal **and the deal has been cleared**



Failure to notify a notifiable deal renders it **legally void** and triggers **substantial penalties** (the greater of \$50m, 3x value of benefit, 30% of annual turnover)



No merger authorisation option, however new **public benefit process** has similar utility



The ACCC will be able to **waive the notification requirement**

New notification obligation and waivers

Notification obligation

- **Must notify** acquisitions:
 - of **shares** where the transaction involves a change of control in the relevant business; or
 - of relevant business **assets**; and
 - where the acquisition meet the **transaction thresholds**

Notification waivers

- Available for deals from **1 Jan 2026**
- Waiver applications must comply with requirements set by the Minister – details TBC

Merger notification thresholds

Economy-wide threshold	Acquisitions by “very large” corporate groups	“Creeping” or “serial” acquisitions
<ul style="list-style-type: none">• Acquirer + target have turnover \geq \$200m; and• Either:<ul style="list-style-type: none">• target has turnover \geq \$50m; <u>OR</u>• transaction value \geq \$250m (market value or consideration)	<ul style="list-style-type: none">• Acquirer has turnover \geq \$500m; and• Target has turnover \geq \$10m	<ul style="list-style-type: none">• Same turnover thresholds apply, except all transactions involving substitutable goods / services (disregarding geography) in past 3 years are considered in calculating target turnover• Excludes sub-\$2m turnover acquisitions

Note: For purpose of above thresholds, “acquirer” includes all connected entities and “target” includes all connected entities other than entities that are not being indirectly acquired. In all cases, target must have a material connection to Australia. All of the above figures are indexed annually.

Exemptions

1.

Acquisitions in the ordinary course of business (except land or patents)

2.

Certain land acquisitions (e.g. residential property, commercial property developers)

3.

Succession

4.

Certain activities relating to financial securities

5.

Security interests (subject to certain conditions)

6.

Nominees and other trustees

7.

Exchange traded derivatives

8.

Acquisitions by an administrator, receiver, receiver and manager, or liquidator

Notification forms – prescriptive up-front information requirements

Moving forward, merger parties will need to provide Australia-specific information for all deals up-front

Short form

- Merger party details
- Details of the acquisitions
- Details of acquisitions within past 3 years
- Relevant market definition, key competitors, market shares
- Customer and competitor details
- Transaction documents, financial reports, org charts

Long form

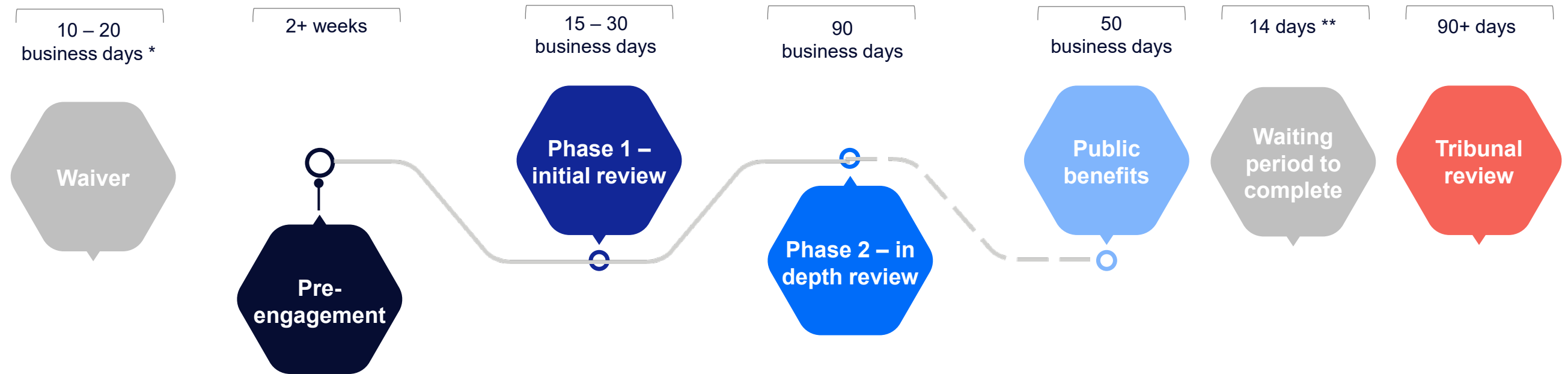
More detail on matters in short form, plus details of:

- Commercial relationship between the parties
- Sales process and alternative proposals received
- Board and other relevant documents relating to the transaction and relevant market (past 3-years)
- New entry and exit
- Third party data sets

Provisional guidance on when to use long form notification

Horizontal	Vertical	Conglomerate	Other circumstances
<ul style="list-style-type: none"> Horizontal overlap; and Combined market share: <ul style="list-style-type: none"> – ≥40% and ≥2% increment; or – ≥20% but <40% and ≥5% increment 	<ul style="list-style-type: none"> Upstream or downstream vertical merger; and Either market share criteria applies: <ul style="list-style-type: none"> – upstream party ≥30% & downstream party ≥5%; or – downstream party ≥30% & upstream party ≥5% 	<ul style="list-style-type: none"> Parties supply adjacent products or services; and One party to the deal has market share ≥30% 	<p>Acquisition of:</p> <ul style="list-style-type: none"> vigorous and effective competitor; firm developing a significant product in overlapping market; firm that supplies or controls access to a significant input or asset; or firm with significant user base or competitively sensitive data

Merger review timeline – an overview



* **business day** means a day that is not a Saturday, Sunday, public holiday in the ACT, or 23 December – 10 January (inclusive)

** **days** refers to calendar days

Filing fees and administrative considerations



Remedies

Conditions

ACCC can only impose conditions if satisfied the deal **'could' SLC**

Timing

ACCC considers remedies only if offered within:

- **20 days** in Phase 1
- **60 days** in Phase 2
- **35 days** in Public Benefits Phase

Review timeframes

Extensions of time also extend date for when a remedy may be offered

Remedies offered within timeframes extend the relevant phase by **15 business days**

Level of detail

Remedy proposals must provide enough detail for **ACCC review and market consultation**, but don't need to be immediately acceptable

Multiple remedies

If multiple remedies offered, ACCC can **include conditions** it considers most appropriate and likely to enhance the welfare of Australians

Substantive test – substantial lessening of competition

Merger will be permitted to proceed unless it would have the effect or likely effect of SLC

SLC Test

Test has been explicitly clarified to include '***creating, strengthening or entrenching substantial market power***'

Deal rationale

Will be critical to understand, ACCC will be focussing on acquisitions involving **startups and potential competitors**

Roll-up strategies

3-year lookbacks will drive a focus on industries where an **incumbent is acquiring multiple potential competitors**

Sale of business non-competes

Sale of business non-competes will remain exempt from the cartel prohibition if they are for the purpose of protecting the purchaser's goodwill

New regime

ACCC will be able to declare a non-compete to be unlawful if it's not necessary to protect the purchaser's goodwill, risking parties' arrangements being declared a cartel



Managing gun jumping risks

Increased risk of gun jumping

- Mandatory regime means **that inappropriate pre-clearance integration** (i.e. “gun jumping”) will be prohibited, even for transactions that do not involve competitors
- Failure to comply may attract **significant penalties**, strict compliance with regime will be an ACCC enforcement priority

Risk mitigation

- Implement **information sharing protocols**
- Get **legal advice** on permissible information exchange
- Continue to operate as **independent companies**
- Keep customer and supplier dealings and decisions **separate**
- Do not represent merger parties as a **single entity**

Appeal rights

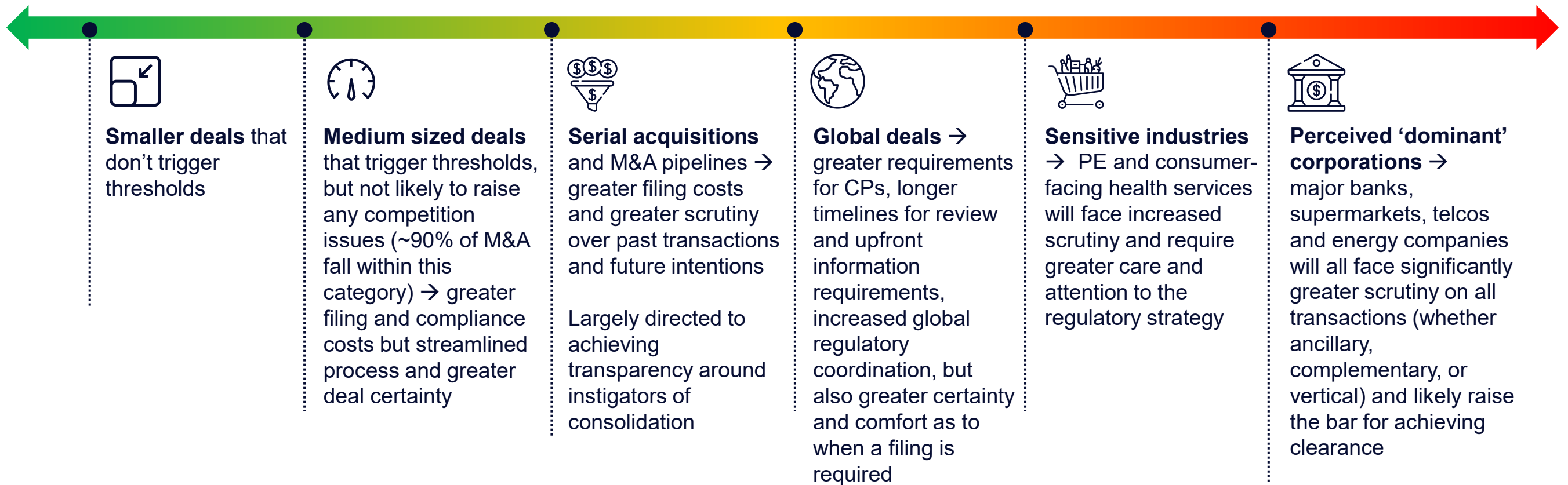
- Enforcement model shifts to **administrative** – ACCC will be first instance, administrative decision-maker
- Tribunal will be able to undertake a **limited merits review** of ACCC's determination
- Parties will **no longer** be able to challenge ACCC decisions in the Federal Court
- Tribunal will permit parties to provide **new information** in limited circumstance
- Scope for new evidence to be introduced as part of **expert evidence**



What the new regime means for different types of deals and market players

What deals will feel the difference?

Significant shift in the merger control regime, but the practical implications are more nuanced. At a high level, a map of impacts for execution of M&A would be as follows (from low to high):



The government's target areas – large companies will face regulatory scrutiny

1.

Private equity and large companies

“The government also intends to use this power to get the competition regulator to review purchases of an interest above 20 per cent in an unlisted or private company, if one of the companies involved in the deal has turnover more than \$200 million. This is all about lifting the level of scrutiny and transparency for private markets transaction”

2.

Mergers in the supermarkets sector

*“The government intends to make sure the **ACCC is notified of every merger in the supermarket sector...**”*

The ACCC also said it will “very carefully consider” future expansion by **big box retailers** (including hardware retailers).

3.

Consumer-facing health or caring-related services

Minister Leigh said the top 4 sub-industries for serial acquisitions are **childcare, aged care, medical GPs and dentists**.

4.

Fuel, liquor and oncology-radiology

The government will also consider designation requirements for sectors such as **fuel, liquor and oncology-radiology**.

Transitional arrangements and what they mean for deals during the rest of CY25

Transitional arrangements



Transitional arrangements – timing considerations

Between now and 30 June 2025

Option 1: Informal Merger Clearance

- **Clearance before 1 July 25**
 - Completed by 1 Jan 26 → no further approvals
 - If not → updated clearance or notify under new regime
- **Clearance after 1 July 25**
 - Completed within 12 months → no further approvals
 - If not → updated clearance or notify under new regime

Option 2: Merger Authorisation (no longer viable)

- Authorised between 1 July and 31 Dec 25 and completed within 12 months → no further approval needed

Between 1 July and 31 Dec 2025

Option 1: Informal Merger Clearance

- **Clearance before 31 Dec 25**
 - Completed within 12 months → no further approvals
 - If not → notify under new regime or apply for waiver
- **Review not completed by 31 Dec 25**
 - → Notify under new regime or apply for waiver
 - Requests after Oct 25 may not be reviewed in time

Option 2: Voluntarily notify under the new regime

- → No need to re-notify if deal is notifiable after 1 Jan 26

Snapshot of key changes

Snapshot of what's changing

Current regime

Voluntary and **non-suspensory** regime

No notification **thresholds**

No **waiver** process

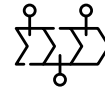
Court enforcement model

Process guidelines only – no fixed timeline

Public benefits assessed under **merger authorisation** process

Prohibits acquisitions with the effect or likely effect of **SLC**

No merger filing fee



New regime

Mandatory and **suspensory** regime

Notification thresholds, including 3-year lookback

Notification waiver process available for very low-risk deals

Administrative process, with **limited merits review**

Fixed mandatory timelines (subject to clock stops)

Public benefits integrated into **same merger review process**, but only after SLC determination

SLC test expanded to include **creating, strengthening or entrenching a substantial degree of power in the market**

\$50K - \$100K depending on size of business and deal complexity

Next sessions

Session 2: A new merger regime hits the road

Wednesday 18 June 2025

12:00pm – 1:00pm AEST

Presenters: Charles Coorey, Andrew Low and Liana Witt

In our second webinar, we explore the practicalities you need to understand as the regime launches:

- Fees, information requirements and the new process and engagement model.
- What to expect from the ACCC's updated process and analytical guidance.
- How should I navigate 'Day 1'?

Session 3: Early lessons and what they may mean for 2026 regime

Tuesday 18 November 2025

12:00pm – 1:00pm AEDT

Presenters: Simon Muys, Tanya Macdonald and Geoff Petersen

In our third and final webinar for 2025, we look at early experiences and lessons from the regime and what to expect as it becomes mandatory on 1 January 2026.

Thank you.

If you have any questions, please don't hesitate to contact us.



Elizabeth Avery
Partner

+61 411 314 505
eavery@gtlaw.com.au



Louise Klamka
Partner

+61 458 121 100
lklamka@gtlaw.com.au



Jeremy Jose
Partner

+61 425 808 970
jjose@gtlaw.com.au