

A close-up photograph of a Bird of Paradise flower (Strelitzia reginae) with vibrant yellow, blue, and red petals. The flower is the central focus of the slide, set against a blurred background. The text is overlaid on the left side of the image.

NEW ACCC MERGER REGIME: WHAT THE 2026 CHANGES MEAN FOR YOU

CRAM WEEK

PRESENTED BY

PETER CAMPBELL | PARTNER | ADELAIDE

CAITLIN SURMAN | SPECIAL COUNSEL | ADELAIDE

March 2026

HWLE
LAWYERS

A close-up photograph of a Bird of Paradise flower, showing its vibrant yellow and orange petals and blue and red bracts. The flower is set against a blurred background of green foliage. A white semi-transparent rectangular box is overlaid on the image, containing text. The top-left corner of the image is cut off by a dark green geometric shape.

ACKNOWLEDGEMENT OF COUNTRY

HWLE would like to acknowledge the Traditional Custodians of the land on which we are today. We would also like to pay our respects to Elders past and present.

Why is this important?

- ▶ Australia's former voluntary informal merger clearance process has been replaced by a new mandatory and suspensory merger regime
- ▶ Many transactions that would not have previously been notified to the ACCC will now require clearance, with implications for deal timelines and documentation
- ▶ Completing a notifiable transaction without ACCC clearance or waiver will make the acquisition void and attract significant financial penalties
- ▶ **THIS IS THE BIGGEST CHANGE TO AUSTRALIA'S MERGER REGIME IN 50 YEARS**

Roadmap

- Overview of former regime
- Acquisitions covered by new regime
- Exemptions (including “Ordinary Course of Business” Exemption)
- Notification Thresholds
- Waiver Process
- Merger Notification Process (ACCC Review Timelines, Forms & Fees)
- Consequences for failure to notify
- Changes to substantial lessening of competition test
- Practical considerations

Former law (pre January 2026)

- ▶ A corporation must not acquire shares or assets if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market (CCA, s 50)
- ▶ No legislative requirement to notify or seek approval from the ACCC
- ▶ Options
 - Formal merger authorisation
 - Informal merger review
 - Declaration from Federal Court
 - Self assessment

New regime: A snapshot

- ✔ An acquisition, which will be 'put into effect' after 1 January 2026, must be notified where each of the following are satisfied:
 - it involves a person acquiring assets or 'control' of an entity through a share sale;
 - it meets the monetary thresholds and/or is subject to a targeted threshold; and
 - the target is 'connected' with Australia.
- ✔ certain exemptions may apply which remove the need to notify.
- ✔ Parties may be able to seek a waiver from the ACCC if there are no competition concerns.
- ✔ If the proposed acquisition meets either the control or monetary thresholds, you must notify or seek a waiver.
- ✔ Competition issues are only considered after that point.

What acquisitions are covered?

- ▶ New regime applies to the following acquisitions:
 - an **acquisition of shares** in the capital of a corporation; and
 - an **acquisition of any assets** of *a person or a corporation* (legal or equitable).
 - Tangible assets – eg options for land, agreements to lease
 - Intangible assets – IP rights and licences
 - acquisition of **units in a unit trust**
 - acquisition of an **interest in a managed investment scheme**
- ▶ Acquisition must also be **“connected to Australia”**
 - Share acquisition: body corporate must carry on business in Australia
 - Acquisition of asset: asset is used/or forms part of business carried out in Australia

What acquisitions are exempt?

Land Exemptions	Financial Market	Other
Acquisitions of a legal or equitable interest in land for the purpose of developing residential premises	Certain routine acquisitions relating to financial market infrastructure, including clearing and settlement facilities, exercising a contractual right of set-off, or of combination of accounts, or to close out a transaction	Internal restructures and reorganisation
Acquisitions of land for a business primarily engaged in buying, selling, leasing or developing land	Certain routine trading and fundraising / capital-raising activities	The transfer of members' benefits between superannuation entities
Land entities: acquisitions of an interest in an entity that holds the land (and no other substantive non-cash assets) for the above two purposes	Certain routine acquisitions relating to debt instruments	Acquisitions resulting from a change of trustee of a superannuation entity
Acquisitions of a subsequent interest in land or quasi-land rights where the acquirer already holds an equitable interest in the same land/right	Certain acquisitions by nominees and other trustees	Acquisitions as an external administrator or by persons in an analogous statutory capacity
Acquisitions of a land development right, which would have been covered by another exemption if it were an equitable right	Certain routine acquisitions relating to derivatives	Contracts to supply goods or services
lease extensions and renewals		
sale and leaseback arrangement		

Ordinary Course of Business Exemption

- ✔ It is the type of activity the business normally and routinely undertakes as part of its day-to-day operations. It is unremarkable, follows the business's usual processes, and is not prompted by any special or unusual circumstances.
- ✔ Acquisitions that could benefit from this exception include:
 - the acquisition of an interest in land for the purpose of an office, headquarters or other routine trading activities
 - an energy generator acquiring land for a solar farm, or an energy distributor acquiring land to build pylons on.
 - a property development company acquiring land to develop residential premises
- ✔ Does not extend to:
 - "land banking";
 - Land a competitor is operating a business on; or
 - Acquisition involving transfer or production or supply capacity from one competitor to another.

Key Thresholds



MONETARY THRESHOLDS

1. Threshold 1 (large or large merged firms)
2. Threshold 2 (very large corporate groups)



NEW CONTROL THRESHOLDS



TARGETED THRESHOLD

Supermarket acquisitions

Control thresholds

Acquirer gains control over target (from 1 January 2026)

Acquirer (alone or with its associates) gains 'control' over the target

Acquirer's voting power exceeds thresholds (From 1 April 2026)

Unlisted entity (<50 shareholders)	from $\leq 20\%$ to $> 20\%$.
Any bodies corporate	from $\geq 20\%$ (but $< 50\%$) to $\geq 50\%$
Listed entity (or widely held unlisted entity with >50 shareholders) already controlled by Acquirer	from $\leq 20\%$ to $> 20\%$
Listed entity (or widely held unlisted entity with >50 shareholders) where Acquirer will not have control before or after	from $< 20\%$ to $> 50\%$

Key concepts - Monetary Notification Thresholds

▸ 'Australian revenue':

- entity's gross revenue that is attributable to transactions or assets within Australia, or transactions into Australia, determined in accordance with accounting standards for the entity's **most recently ended 12-month financial reporting period**.

▸ 'Transaction Value':

- the consideration received or receivable for all the shares and assets being acquired; or the sum of the market values of all the shares and assets being acquired

▸ 'Contract Date':

- the date on which a contract, arrangement or understanding has been entered into

Key concepts - Monetary Notification Thresholds

Connected Entities

Test 1 (Legal Control)	Test 2 (Practical Control)
s 4A of the Competition and Consumer Act 2010 (Cth)	s 50AA of the Corporations Act 2001 (Cth)
Related bodies corporate of the acquirer. Includes: <ol style="list-style-type: none">1. Subsidiary of acquirer2. holding company of acquirer; and3. where entity and acquirer are subsidiaries of the same holding company	<ol style="list-style-type: none">1. an entity that controls, or is controlled by, either alone or together with one or more associates, the acquirer within the meaning of; and/or2. an entity and the acquirer are both controlled by another entity.

▸ 'Foreign entities within a corporate group

- "Connected entity" likely captures any foreign bodies corporate that 'carry on a business within Australia': s 5, CCA

▸ Connected Entity Revenue

- Connected entity of acquirer at the contract date - must include Australian revenue for most recent financial reporting period
- Connected entity of Target – do not include Australian revenue of any other entity not acquired as a result of the acquisition (for example, seller revenue) in target group revenue.

Monetary Notification - Threshold 1

Large merged firms

	Acquisitions resulting in large or larger corporate groups
For the acquisition of shares or the acquisition of a <u>business</u> (ie an asset that forms "all or substantially all assets of a business")	<ol style="list-style-type: none"> 1. FIRST LIMB: Combined 'Australian revenue' of the Acquirer AND Target (including 'connected entities') on 'contract date' is \geq\$200 million; <u>AND</u> 2. SECOND LIMBS: Any of the below: <ol style="list-style-type: none"> a. "Australian revenue" of target (including connected entities) is at least \$50 million; <u>OR</u> b. "Transaction value" is at least \$250 million (greater of market value or consideration); <u>OR</u> c. the combined total of the following is at least \$50 million:* <ol style="list-style-type: none"> i. The current target's Australian revenue; and ii. Australian revenue from previous acquisitions by the Acquirer (and its connected entities) over the past 3 years before the contract date involving goods or services that are the same, substitutable, or otherwise competitive with the current acquisition <p>* Excludes small acquisitions" where the Australian revenue of the target (and its connected entities) was less than \$2 million</p>
For the acquisitions of ' <u>discrete asset</u> '	<ol style="list-style-type: none"> 1. Australian revenue of the acquirer is at least A\$200m; <u>AND</u> 2. the transaction value is at least: <ol style="list-style-type: none"> a. A\$250m (until 31 Mar 2026) b. A\$200m (from 1 Apr 2026)

Monetary Notification - Threshold 2

Acquisitions by very large groups

	Acquisitions by very large groups
For the acquisition of shares or the acquisition of a <u>business</u> (ie an asset that forms "all or substantially all assets of a business")	<ol style="list-style-type: none"> 1. FIRST LIMB: 'Australian revenue' of the Acquirer (including 'connected entities') on 'contract date' is \geq\$500 million; <u>AND</u> 2. SECOND LIMB: Any of the below: <ol style="list-style-type: none"> a. "Australian revenue" of target (including connected entities) is at least \$10 million; <u>OR</u> b. "Transaction value" is at least \$250 million (greater of market value or consideration); <u>OR</u> c. the combined total of the following is at least \$10 million:* <ol style="list-style-type: none"> i. the current target's Australian revenue; and ii. Australian revenue from previous acquisitions by the Acquirer (and its connected entities) over the past 3 years before the contract date involving goods or services that are the same, substitutable, or otherwise competitive with the current acquisition <p>* Excludes small acquisitions* where the Australian revenue of the target (and its connected entities) was less than \$2 million</p>
For the acquisitions of ' <u>discrete asset</u> '	<ol style="list-style-type: none"> 1. Australian revenue of the acquirer is at least A\$500m; <u>AND</u> 2. the transaction value is at least: <ol style="list-style-type: none"> a. A\$250m (until 31 Mar 2026) b. A\$50m (from 1 Apr 2026)

Working Example – Background

- Company A (Acquirer) owns and operates a business that provides physiotherapy services to patients throughout Australia.
- Company B (the Target) is an independent physiotherapy practice in SA. The Target is owned by Company C (the Seller).
- The Acquirer and Company B (Seller) propose to enter into an agreement whereby the Acquirer will acquire the entire Target by purchasing 100% of the Seller's shares.
- Cash consideration for share purchase = \$5 million
- No past acquisitions in 3 year look back period by any party.
- Australian revenue (most recent financial reporting period)
 - Acquirer = \$30 million.
 - Target = \$10 million.
 - Seller = \$1 million
 - Company D = \$100 million
 - Company E = \$50 million
 - Company F = \$15 million

Figure 1 – Acquirer Group Structure (pre-acquisition)

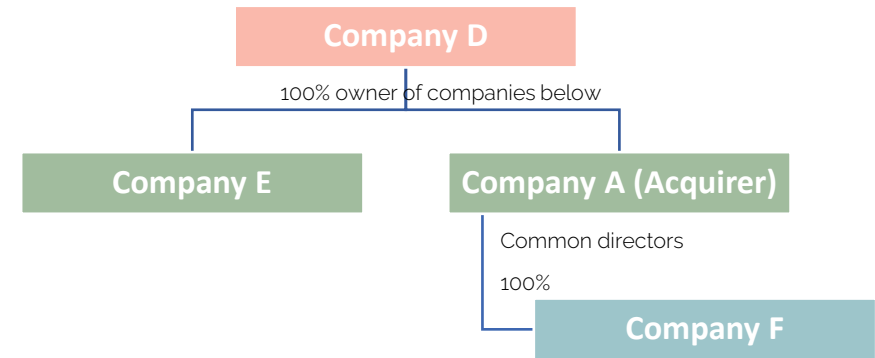
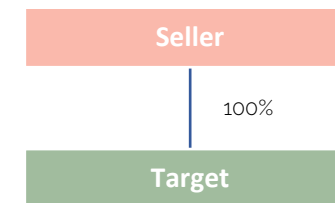


Figure 2 – Target Group Structure (pre-acquisition)



Working Example – Background

CONTROL?

- ✔ Does the acquisition result in the purchaser acquiring control of the company?
 - **YES:** The Acquirer will acquire 100% of the shares in the capital of the Target

CONNECTION TO AUSTRALIA

- ✔ Does the acquisition include shares or assets that are connected with Australia?
 - **YES:** The Acquirer carries on a business in Australia by providing physiotherapy services to patients throughout Australia

CONNECTED ENTITY ANALYSIS

- ✔ Who are the Acquirer's connected entities and what is their combined revenue?
 - Company D (holding company – s 4A) - \$100 million

revenue

- Company E (subsidiary of the same holding company – s 4A) – \$50 million
- Company F (wholly owned subsidiary – s 4A) - \$15 million
- **Combined Revenue Of Acquirer Connected Entities = \$165 Million**
- ✔ Who are the Target's connected entities and what is their combined revenue?
 - The Seller (owner/holding company of Target – s 4A) - \$ 1 million revenue.
 - BUT: Seller revenue is not included in calculation so disregard. Only Target revenue is relevant (\$10million)
 - **Combined Revenue Of Target Connected Entities = \$0**

Working Example – Analysis (cont'd)

THRESHOLD 2 – FIRST LIMB?

- ✔ Is the combined annual Australian revenue of the Acquirer and its 'connected' entities \geq \$500m?
 - **NO**: \$195 million (\$30 million + \$165 million), so not an “acquisition by a very large corporate group”

THRESHOLD 1 – FIRST LIMB?

- ✔ Is the combined annual Australian revenue of the Acquirer, the target and their 'connected' entities \geq \$200m?
 - **YES**: Total combined revenue is \$205 million (Acquirer: \$30 million; Acquirer Connected Entities: \$165 million; Target \$10 million)

THRESHOLD 1 – ANY SECOND LIMBS?

- ✔ Is revenue of Target \geq \$50m?
 - **NO**: Revenue of Target is \$10million
- ✔ Is the total transaction value \geq \$250m.
 - **NO**: Acquirer is purchasing 100% of the shares in the Target for cash consideration of 5 million.

Working Example – Answer

FINAL ANSWER - IS TRANSACTION NOTIFIABLE UNDER THRESHOLD 1 or THRESHOLD 2? **NO.**

Threshold 1: meets control threshold and combined revenue threshold in first limb (ie >\$200 million) BUT does **not** satisfy any of the secondary limbs.

Threshold 2: does **not** meet the acquirer revenue threshold (>\$500m)

Example Serial Acquisitions – Threshold 1

Assumptions

- ▼ Acquisition of a business
- ▼ The combined 'Australian revenue' of the Acquirer and current Target is \geq \$200 million;
- ▼ The Australian revenue of the current Target is \$20 million
- ▼ Neither party have any connected entities.

Past relevant Acquisitions:

Year	Target	Target's Australian revenue (at time of historical contract date)	Aggregated revenue for past 3 years
2023	A	\$1.5 million	not counted (small acquisition)
2023	B	\$15 million	\$15 million (A+B)
2024	C	\$10 million	\$25 million (B+C)
2024	D	\$10 million	\$35 million (B+C+D)

Notifiable under Threshold 1? **YES**

- ▼ Combined total of Australian revenue of the current Target (\$20 million) and aggregated revenue (\$35 million) = **\$55 million**

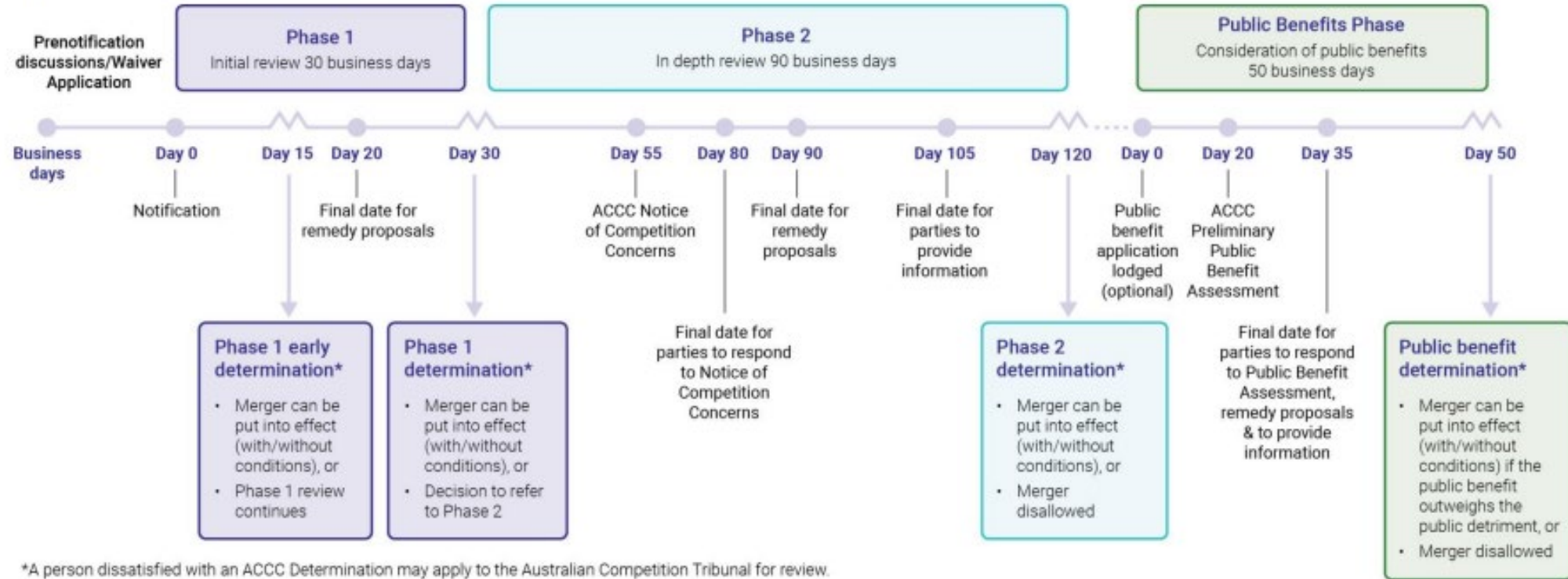
Targeted Notification Threshold

- ▶ Minister has the power to designate certain classes of acquisitions as requiring notification (even if thresholds not met)
- ▶ Coles and Woolworths (including their connected entities) – must notify the ACCC of acquisitions of shares or assets where they are acquiring:
 - A supermarket business (in whole or in part)
 - Land for supermarket business that meets certain land size requirements
- ▶ ACCC has flagged intention to impose targeted notification requirements in respect of:
 - Fuel, liquor, oncology-radiology sectors; and
 - 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

Merger Notification Process

Timelines for Review

Key timeframes



Merger Notification Process Fees

Stage	Fee
Notification waiver application	\$8,300
Phase 1 assessment	\$56,800
Phase 2 assessment	
If transaction value ≤ A\$50 million	\$475,000
If A\$50 million < transaction value ≤ A\$1 billion	\$855,000
If transaction value > A\$1 billion	\$1,595,000
Public benefits application	\$401,000

Merger Notification Process Forms

- ▶ Three types of forms.
 - Request for Pre-Notification Engagement or Early Discussion Form
 - Short Form Notification Form
 - Long Form Notification Form
- ▶ Acquirer is responsible for completing and submitting forms
- ▶ All forms must be submitted via the ACCC's "Acquisitions Portal"

Requests for pre-notification engagement or early discussions

- **Why?** ACCC encourages businesses to initiate pre-notification engagement
- **When?** Two weeks before lodging application
- **How?** Submit a draft notification and the relevant transaction documents via the ACCC Acquisitions Portal.
- **What to expect?** ACCC will contact you within 5 business days (usually earlier) to arrange a time. No one size fits-all approach to discussions.
- **Early Discussion:** If draft notification is not ready, can still request early discussions using specific form via the Acquisitions Portal.

Short Form v Long Form

Short Form	Long Form
<p>Straightforward acquisitions that are unlikely to raise competition concerns</p>	<p>Acquisition that may raise greater competition risks and/or complexity. For example:</p> <ul style="list-style-type: none"> - Horizontal acquisitions where parties operate in same market; - Vertical acquisitions where one party operates upstream; the other downstream; or - Conglomerate acquisitions where parties supply adjacent or complementary goods/services
<p>Most notifications will be appropriate for the short form, aiming for approval in Phase 1 for a vast majority of cases.</p>	
In both cases	
<p>Details will be available on ACCC's public Acquisitions Register</p>	
<p>Forms require more detail than waiver applications, but generally include:</p> <ul style="list-style-type: none"> • transaction description and rationale; • corporate structure charts pre and post-transaction; • financial statements (for previous three financial years) for parties' Australian and global operations; • detailed revenue data by product/service and customer segment for the past three years; • market-share estimates and key competitors; • copies of the executed transaction documents or the latest versions of each relevant draft document; • internal strategy, synergy and competition assessments prepared for the transaction (so-called "hot docs"); and • an FIRB application (if any) and foreign filing list. 	

Waivers

▸ **Waiver** = the acquisition is not required to be notified, even if it meets the notification thresholds

▸ **Types of acquisitions suitable for waiver:**

- no or very limited competitive overlap, market definition is clear, and market concentration is low (i.e. 5%) across the narrowest plausible markets;
- no vertical or conglomerate issues;
- no complex scenarios or legal issues
- risk of harm to consumers unlikely
- no issues likely to warrant consultation by ACCC

▸ **Waiver process**

- Lodge waiver form via Acquisitions Portal
- No requirement for pre-lodgment engagement with ACCC
- No substantive engagement with ACCC should be expected once lodged via the portal
- ACCC must make decision within 25 Business Days
- Waiver applications are not published – only decisions.
- ACCC will provide written notice of decision (including reasons) and publish decision on the ACCC's Acquisitions Register within one business day of making the decision
- If initial waiver application is insufficient or raises concerns, the ACCC will reject it without any further consultation and acquirer will be required to lodge full notification and pay additional filing fee

Substantial Lessening of Competition Test

- The ACCC will assess the acquisition against the new and expanded 'substantial lessening of competition test'
- New test applies in context of mergers only.
- Will be applied by the ACCC **AFTER** notification occurs.
- An acquisition may have the (likely) effect of substantially lessening competition if it **creates, strengthens or entrenches a substantial degree of power in a market.**
- The ACCC may now treat the effect of an acquisition as being the combined effect of that acquisition and earlier acquisitions (that involve competing goods or services) that have been put into effect by at least one of the parties to the transaction in the three years prior to the notification date

Consequences of Failure to comply



VOID TRANSACTIONS

Transaction automatically void if put into effect without notification and clearance



FINANCIAL PENALTIES

Maximum penalty per breach (for corporations) is greater of:

1. \$50million
2. 3 x benefit
3. 30% of adjusted turnover



INJUNCTIONS

ACCC can apply to Federal Court for injunction to stop merger proceeding



INDIVIDUAL LIABILITY

Persons who aid, abet or attempt to contravene the notification obligation may also be liable for pecuniary penalties (\$2.5 million maximum)


Practical Considerations

- ▶ Early due diligence should be conducted on both parties to determine if the notification thresholds will be met.
- ▶ Non-compliance, even if unintentional, will render a transaction automatically void. Avoid gun jumping. Do not integrate merging businesses or share information pending ACCC approval.
- ▶ Include a condition precedent for deals that may require notification or waiver.
- ▶ Regime will likely be subject to refinement in future.



Questions?

HWLE
LAWYERS

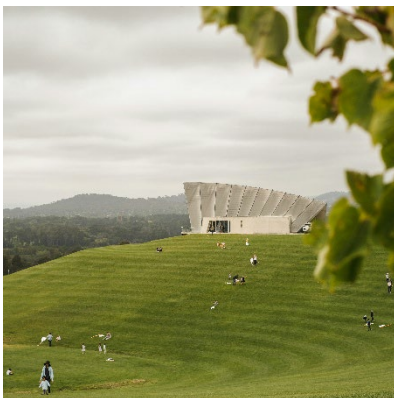
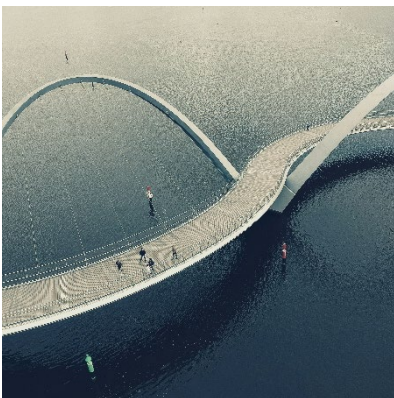
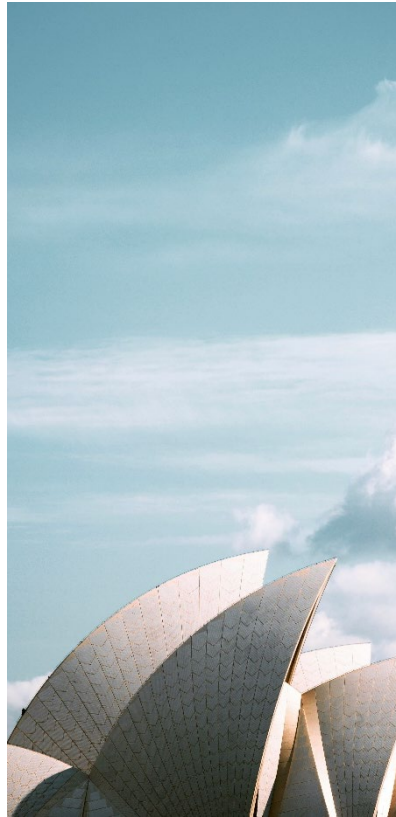
A close-up photograph of a Bird of Paradise flower (Strelitzia reginae) with vibrant orange and yellow petals and a blue and white crest. The flower is set against a blurred background of green leaves and a white surface. A dark green geometric shape is in the top-left corner, and a white semi-transparent box is centered over the flower.

**This seminar and accompanying
documentation is not intended to be legal
advice and should not be relied upon as such.**

The copyright of this material is and will remain the property of
HWLE Lawyers.



Legal solutions
that make
commercial
sense



Different for
all the right
reasons

Our locations

ADELAIDE

Level 14
83 Pirie Street
Adelaide SA 5000
P +61 8 8205 0800
F 1300 464 135

DARWIN

Level 9
Mitchell Centre
59 Mitchell Street
Darwin NT 0800
P +61 8 8943 0400
F 1300 307 879

NORWEST

Level 3
21 Solent Circuit
Norwest Business Park
Norwest NSW 2153
P +61 2 9334 8555
F 1300 369 656

BRISBANE

Level 24
360 Queen Street
Brisbane QLD 4000
P +61 7 3169 4700
F 1300 368 717

HOBART

Level 9
85 Macquarie Street
Hobart TAS 7000
P +61 3 6210 6200
F 1300 377 441

PERTH

Level 20
240 St Georges Terrace
Perth WA 6000
P +61 8 6559 6500
F 1300 704 211

CANBERRA

Level 5
HWL Ebsworth Building
6 National Circuit
Barton ACT 2600
P +61 2 6151 2100
F 1300 769 828

MELBOURNE

Level 8
447 Collins Street
Melbourne VIC 3000
P +61 3 8644 3500
F 1300 365 323

SYDNEY

Level 9
5 Martin Place
Sydney NSW 2000
P +61 2 9334 8555
F 1300 369 656