Allens

Merger reforms: a mandatory and suspensory merger regime with the ACCC as decision maker

Elements of the regime are still being finalised. This document is current as at 18 September 2025. Please contact us for advice on specific transactions.

All acquisitions of shares or assets (including legal or equitable interests) where the control and monetary thresholds are met must be notified to the ACCC. The target must 'carry on business' in Australia.

What are the control thresholds?

The transaction must result in the acquirer gaining 'control' over the target.

'Control' is the capacity to determine the outcome of decisions regarding the target's financial and operating policies. This closely aligns with section 50AA of the *Corporations Act 2001* (Cth).

But, where the target is an Australian listed company, listed scheme or a large unlisted company (ie >50 members), filing is not required if—following the transaction—the acquirer will hold 20% or less in voting power.

What are the monetary thresholds?

The transaction must satisfy one of the following tests:

Acquisitions resulting in large or larger corporate groups

- Combined Australian revenue of the acquirer and target is at least A$200 million; AND
- any of the below:
  - the target has Australian revenue of at least A$50 million; OR
  - the global transaction value is at least A$250 million; OR
  - the cumulative Australian revenue from the target and any similar acquisitions in the last three years is at least A$50 million.

Acquisitions by very large corporate groups

- Australian revenue of the acquirer is at least A$500 million; AND
- any of the below:
  - the target has Australian revenue of at least A$10 million; OR
  - the cumulative Australian revenue from the target and any similar acquisitions in the last three years is at least A$10 million.

How to measure Australian revenue

Australian revenue means gross revenue, according to most recent 12-month financial accounts, from transactions/assets within or into Australia.

Revenue of the acquirer

Include the Australian revenue of the acquirer's 'connected entities'.

Connected entities

Two entities are connected if:

- they are 'related bodies corporate';
- one controls the other (including control with an associate); or
- they are both controlled by a common entity.

Revenue of the target

For share acquisitions: include the Australian revenue of any of the target's 'connected entities' being indirectly acquired.

For asset acquisitions:

- the Australian revenue of the asset's owner attributable to the asset; or
- where attribution is not reasonably practicable, 20% of the asset's market value.

Cumulative revenue of serial acquisitions

The monetary thresholds include a 'cumulative Australian revenue' limb to address serial acquisitions. This limb aggregates the revenue of the proposed target with the revenue of previous targets acquired by the acquirer over the last three years in the same industry (NB: for any % acquired, not just control acquisitions, even if the previous target has since been divested). This includes previous targets acquired by a 'connected entity' of acquirer.

Previous acquisitions (i) that were notified (except transactions that were notified under the serial acquisitions limb), (ii) where the target's revenue was less than A$2 million, or (iii) where the target is not connected with Australia, are excluded from the calculation of accumulated revenue.

If relying on this limb, filing is not required if the proposed target's Australian revenue is less than A$2 million.

Exceptions to mandatory regime

Acquisitions that are exempt from filing include:

- Internal restructures and reorganisations
- Ordinary business transactions, other than land and patents
- Certain classes of land acquisitions, including:
  - acquisitions for the purposes of developing residential premises
  - certain commercial property acquisitions by businesses primarily engaged in buying, selling, leasing or developing land
  - extensions or renewals of leases for land
- Acquisitions by a person as an administrator, receiver, receiver and manager or liquidator
- Certain routine acquisitions in clearing and settlement activities
- Certain routine trading and fundraising / capital-raising activities
- Acquisitions of debt instruments, debt interests, asset securitisation arrangements, securities financing transactions, security interests, etc. (given they typically do not involve the acquisition of a business)
- Acquisitions that occur by automatic operation of Australian law.

Zooming in on some exceptions

1. Acquisitions of a legal or equitable interest in land for the purpose of developing residential premises

Residential premises

- occupied for residential accommodation; or
- intended to be occupied, and capable of being occupied as a residence or for residential accommodation.

Examples include houses, apartments, townhouses, retirement villages and student accommodation (EM).

2. Acquisitions of land for a business primarily engaged in buying, selling, leasing or developing land

1. Acquirer carrying on a business primarily engaged in buying, selling, leasing or developing land; and
2. Purpose is not to operate a commercial business on the land, unless ancillary to the primary property business (eg, property management, concierge, facility management).

3. Land entities: acquisitions of an interest in an entity that holds the land (and no other substantive non-cash assets) for these two purposes.

4. Acquisitions of a subsequent interest in land where the acquirer already holds an equitable interest in the same land

1. The land must be materially the same size.
2. The ownership proportions must remain the same.
3. The previous acquisition must have been notified. Waivers and s189 letters do not count as notification.

5. Acquisitions of a land development right, which would have been covered by another exemption if it were an equitable right

- Includes a right to **develop** or **redevelop** (eg, construct, refurbish, expand or subdivide).
- Only applies where the rights relate to land development purposes covered by another property exemption, ie, unrelated or broader commercial rights are not covered.

6. Acquisitions that are an extension or renewal of a lease

Includes, for example, situations where:

- a lease is terminated, and a new lease is granted over the same land.
- an option to renew is exercised.

Applies regardless of whether the lease is for vacant or developed land.

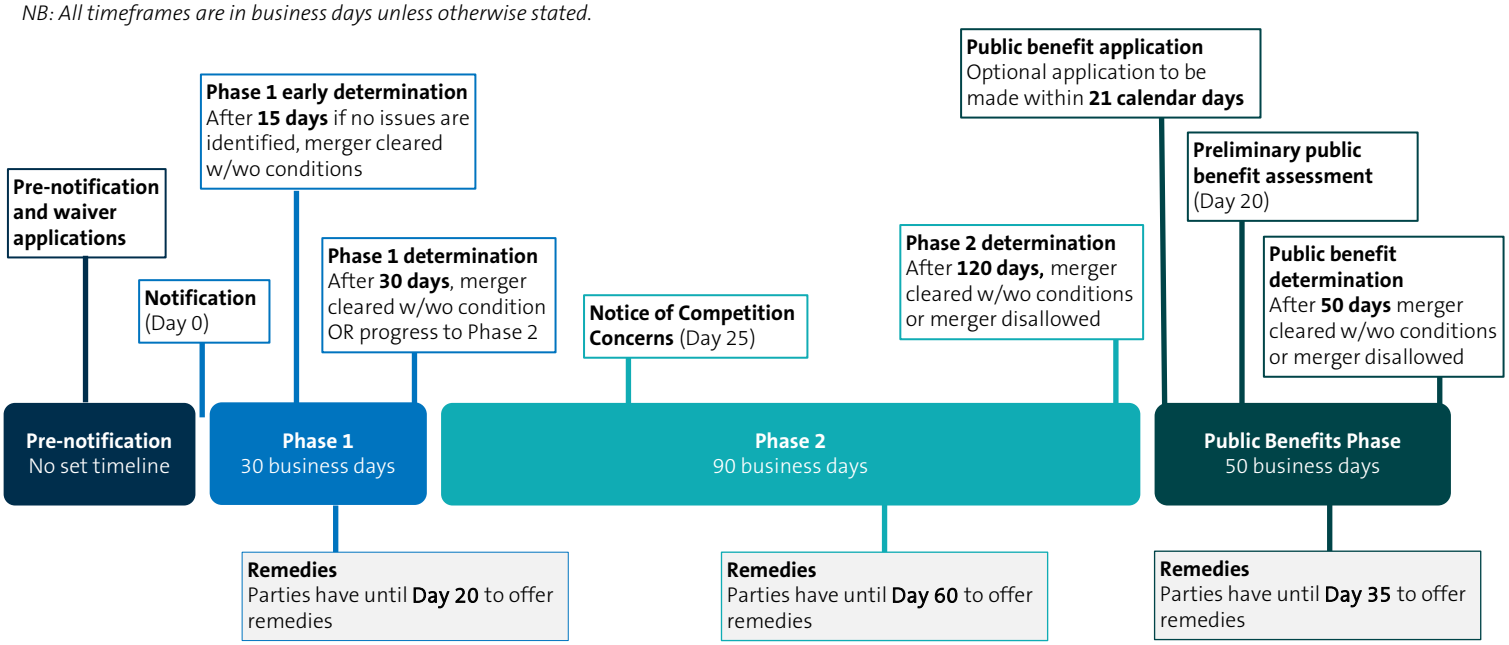
Does not apply where there are changes in lease terms that materially alter the scope or nature of the interest or change in the relevant parcel of land.

7. Acquisitions that relate only to a sale and leaseback arrangement

- Where property is sold and leased back to the vendor.
- Example: A retailer sells the freehold title to land where it is operating a store and leases it back to itself to continue operating the store.
- Does not cover any ancillary or additional acquisitions.

Review process timeframes

NB: All timeframes are in business days unless otherwise stated.



Standstill for appeals: Where the ACCC clears the transaction, parties must still wait 14 calendar days after the ACCC's determination to allow for the Tribunal appeal period to elapse before proceeding with the transaction.

Appeals: Parties (including third parties with sufficient standing) may apply for limited merits review, within 14 calendar days of the ACCC's assessment, before the Australian Competition Tribunal. Merits review can take 45–90 calendar days (extendable by up to 150 calendar days).

Filing formalities

- **Who files?** The party or parties acquiring control.
- **When can you file?** Once the acquisition is not 'speculative'—eg the transaction documents or a non-binding indicative offer have been signed. Confidential pre-notification discussions can commence earlier. For competitive auctions, public reviews won't commence until the bid is awarded, but bidders can pre-notify before then.
- **Is there a form?** Yes, both a short-form and long-form one, depending on the market shares of the parties. See next page for more info.
- **Will the notification be public?** Yes. Following notification, the ACCC will publish on its website a summary of the proposed transaction. The ACCC must keep the website updated with the status and outcome of the review, including (for Phase 2) a summary of the ACCC's competition concerns. The notification itself and third-party submissions will not be published. The ACCC can withhold or redact commercially sensitive info.

How will the ACCC assess acquisitions?

'Substantial lessening of competition' test

- First, the ACCC assesses whether the transaction substantially lessens competition. This can include creating, strengthening or entrenching a substantial degree of power in a market (in addition to 'preventing or hindering competition').
- The ACCC can also consider the cumulative effect of similar acquisitions by the merging parties in the three calendar years prior to the notification date, whether those prior acquisitions were individually notifiable or not.

Public benefit

- For transactions that do not satisfy the competition assessment, and if the parties apply, the ACCC will consider in the alternative if the acquisition would result, or be likely to result, in a net public benefit.

Is there a fee?

Yes, a fee will be payable at each stage of the review:

Stage	Fee
Notification waiver application	A$8,300
Phase 1 assessment	A$56,800
Phase 2 assessment ▪ If global transaction value ≤ A$50 million ▪ If A$50 million < global transaction value ≤ A$1 billion ▪ If global transaction value > A$1 billion 'Global transaction value' is the higher of the market value of the acquired shares / assets or consideration.	 A$475,000 A$855,000 A$1,595,000
Public benefits application	A$401,000
Tribunal review	TBC

NB: no additional fees for timeline extensions.

Forms

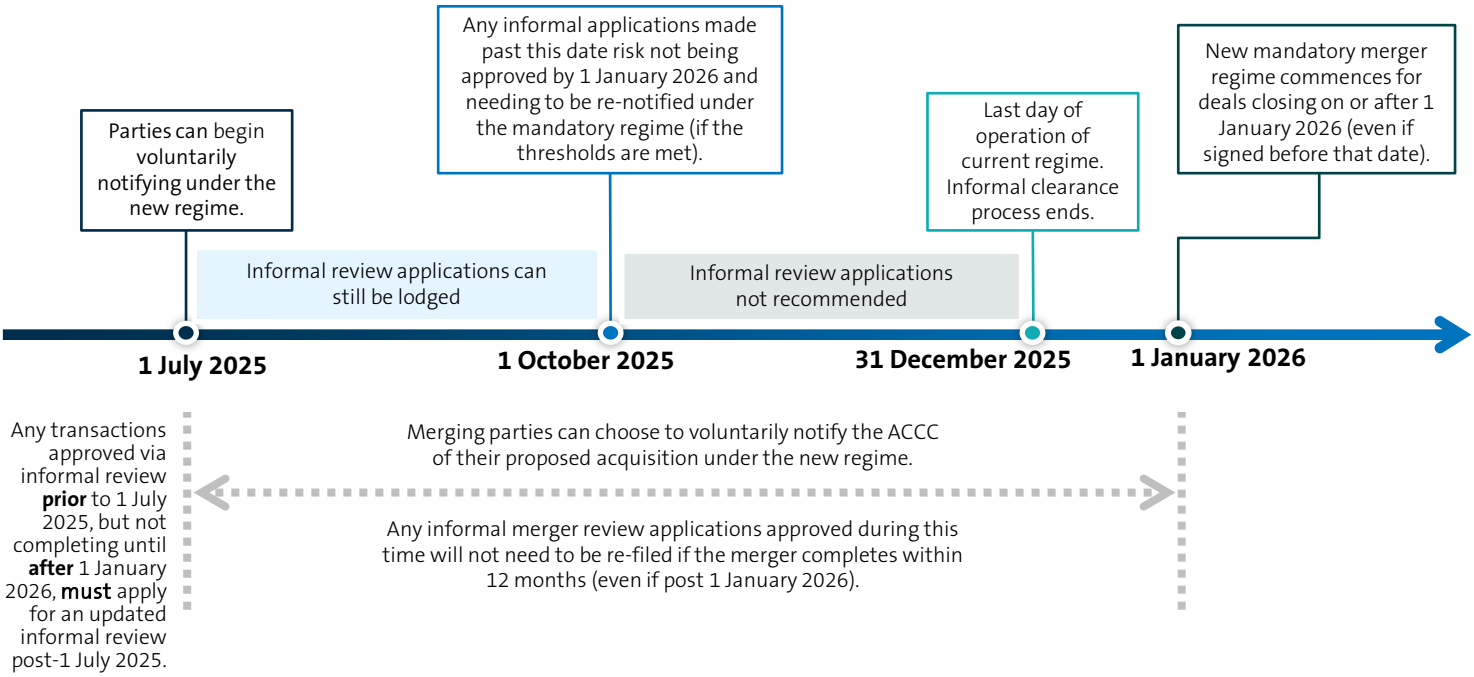
Short form	Long form	Public benefits
▪ Description of parties, transaction, rationale, consideration and main industries etc ▪ Type of acquisition (ie horizontal, vertical, conglomerate) ▪ Details of acquisitions in last three years for each party (NB: any % interest, not just control) ▪ Market definition ▪ Overlaps, three years x shares, third parties, ANZSIC codes ▪ Competitor and customer contacts ▪ Non-compete provisions ▪ Transaction documents ▪ Accounts ▪ Detailed structure charts (including directors) ▪ Declaration.	Short form material plus: ▪ Non-controlling shareholdings / cross-directorships ▪ Sales process / alternative bids ▪ Barriers to entry (inc $ estimates, exits/entry to market in three years, etc) ▪ Horizontal / vertical / conglomerate '**appendices**' ▪ Third party data / reports ▪ Two years internal board / shareholder documents re deal or markets + misc.	▪ Identification of public benefits, including supporting information/evidence ▪ Identification of known or reasonably ascertainable public detriments ▪ Reasons for there being a *net* public benefit ▪ Contact details of interested parties ▪ Declaration. **Waiver?** Draft form (with information requirements similar to the short form) released for consultation, but yet to be finalised. Likely for deals where there are no overlaps, still subject to finalisation.

When to use long form (per ACCC guidance)

Horizontal merger		
≥40% combined share	AND ≥2% increment	
40% > combined share ≥ 20%	AND ≥5% increment	
Vertical merger		OR ▪ One party is a maverick ▪ Party developing significant product merges with actual or potential competitor
≥30% upstream AND ≥30% downstream		
Conglomerate merger		
One party ≥ 30% share		

NB: Apply market definition giving largest % share or increment. The short form can be used for acquisitions involving only an interest in land.

Transitional arrangements



Contacts

Jacqueline Downes
Practice Leader
T +61 2 9230 4850
M +61 411 498 505
Jacqueline.Downes@allens.com.au

Fiona Crosbie
Partner
T+61 2 9230 4383
M +61 404 042 879
Fiona.Crosbie@allens.com.au

Carolyn Oddie
Partner
T +61 2 9230 4203
M +61 404 074 203
Carolyn.Oddie@allens.com.au

Rosannah Healy
Partner
T +61 3 9613 8421
M +61 411 776 662
Rosannah.Healy@allens.com.au

Robert Walker
Partner
T +61 3 9613 8879
M +61 478 527 188
Robert.Walker@allens.com.au

Felicity McMahon
Partner
T +61 2 9230 5242
M +61 450 123 681
Felicity.McMahon@allens.com.au

Anita Thompson
Partner
T +61 2 9230 5981
M +61 439 421 975
Anita.Thompson@allens.com.au

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Allens is ranked

BAND 1: Competition /Antitrust — Australia (Chambers Asia-Pacific 2025)

TIER 1: Competition and Trade—Australia (The Legal 500 Asia Pacific 2025)

TOP TIER: `Elite' ranking—Australia (Global Competition Review, GCR100 2025)

For more thought leadership on the future of mergers in Australia, please visit this link.

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