KEY REFINEMENTS TO STREAMLINE AUSTRALIA'S MERGER CONTROL REGIME PASSED INTO LAW: THRESHOLD FOR CONTROL INCREASED, REMOVAL OF VOIDING PROVISIONS AND CHANGES TO "STALE" NOTIFICATION TIMELINES

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By: Ayman Guirguis, Simon Leslie, James Gray, Lauren Han, Jessica Lim

On 10 September 2026, the *Treasury Laws Amendment (Strengthening Accountability for Tax Adviser Misconduct and Other Measures) Bill 2026* (the Bill) was passed by both Houses of Parliament, but is awaiting Royal Assent.

The Bill makes targeted, practical refinements to Australia's mandatory merger control regime, which has been in effect since 1 January 2026.

IN BRIEF

The Bill amends the *Competition and Consumer Act 2010* (Cth) (CCA) to address three key areas of the regime which have caused the most practical difficulty for businesses and their advisers since its introduction:

- The concepts of “control” and “associates” have been amended to prevent the over-capture of acquisitions that do not confer competitively significant influence over a target.
- In particular, ordinary commercial arrangements, such as simply being party to shareholder agreements, will no longer automatically result in otherwise unconnected parties being treated as jointly controlling a target.
- Acquisitions which were required to be notified to the Australian Competition and Consumer Commission (ACCC) under the CCA, but which are put into effect or completed without notification (Non-Notified Acquisitions), are no longer automatically void. Instead, the ACCC must apply to the Federal Court (the Court) for an order voiding the acquisition.
- Parties who are unable to complete an approved acquisition within 12 months of the ACCC's determination may now apply to the ACCC for an extension, rather than being required to re-notify the transaction. The ACCC may grant an extension for up to six months and may do so more than once where appropriate.

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IN MORE DETAIL

Australia's mandatory merger control regime has, since its introduction on 1 January 2026, led businesses and their advisers to adopt a cautious approach to notification, given the significant consequences of an incorrect assessment.

Schedule 4 to the Bill seeks to address this issue by refining three key aspects of the regime: the scope of the concepts of “control” and “associates” (which has implications for the scope of the control exemption under s 51ABS of the CCA), the consequences of a failure to notify, and completion timelines for approved mergers where there are reasonable delays.

Significantly, the Bill preserves the ACCC's status as a first-instance decision maker and is not intended to give merger parties scope to bypass the notification process. Rather, the amendments are intended to reduce the compliance burden and risk associated with the regime for acquisitions that are unlikely to result in any degree of competitively significant influence.

The practical implications of each of these changes are considered below.

Clarifying “Control” and “Associates”

Section 51ABS of the CCA provides that an acquisition of shares in a body corporate generally does not require notification if it does not result in the acquirer obtaining control of the target (subject to certain voting power thresholds that may still trigger notification).

Prior to the changes effected by the Bill, a person is treated as controlling a target if that person, together with one or more “associates” – as defined in Chapter 6 of the *Corporations Act 2001* (Cth) (Corporations Act) – jointly has the capacity to determine the target's financial and operating policies.

The definition of “associates” under the Corporations Act includes circumstances where two persons have entered, or propose to enter, into a “relevant agreement for the purpose of controlling or influencing the composition of [a] designated body's board or the conduct of the designated body's affairs.”

This definition of “associates” is broad, and on a natural reading, treats parties as associates merely because they are party to the same shareholders' agreement. This could have the result that an investor who acquires an interest in a target may be treated as obtaining joint control of that target, even if their acquisition does not confer any practical influence over the target.

Given the very severe consequences of failing to notify the ACCC of an acquisition that is required to be notified, this drafting led many businesses and advisers to adopt highly cautious approaches to their notification obligations – and resulted in notifications of many acquisitions even where the acquirer did not obtain a competitively significant degree of influence over the target.

The Bill and the new position have rectified this issue by introducing a new s 51ABSA that narrows the definition of “associate” and increases the threshold for what amounts to “control”.

These amendments focus on the acquirer's practical influence, including whether the acquirer and one or more (more narrowly defined) associates can jointly determine decisions about the body corporate's financial and operating policies.

Narrowed Definition of “Associates”

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The Bill narrows the definition of “associates” such that two persons will only be considered associates in relation to a body corporate if one or more of the following apply:

- The two persons are connected entities (i.e. part of the same corporate group);
- The two persons have entered, or propose to enter into, a relevant agreement for the purpose of controlling or influencing the outcome of decisions about the designated body corporate's financial and operating policies; or
- The two persons are acting, or propose to act, in concert in relation to controlling or influencing the outcome of decisions about the designated body's financial and operating policies.

The Bill also exempts certain common commercial arrangements from, on their own, causing parties to be treated as associates. These include minority shareholder protection rights, arm's-length financing arrangements and standard shareholder agreements about governance processes, dividend policy agreements, and rights to dispose of securities.

Consequential Increase in Threshold for “Control”

The effect of these amendments is that joint control will only arise where the acquirer is an associate of another entity under the narrowed definition, and the acquirer and that associate jointly have the capacity – *in a real and practical sense* – to determine the outcome of decisions about the target's financial and operating policies.

The “associates” and “control” amendments introduced by the Bill should have the effect of reducing the number of ordinary commercial arrangements that inadvertently give rise to a notification obligation.

A Failure to Notify No Longer Automatically Voids an Acquisition

Under the current provisions, acquisitions which are required to be notified must not complete unless they have first received a determination from the ACCC that the acquisition may be put into effect (or the ACCC has granted a notification waiver in respect of that acquisition).

Non-Notified Acquisitions are currently automatically deemed void. The severity of this outcome has led businesses and legal practitioners to take a conservative approach when assessing whether a proposed transaction is notifiable.

The Bill or the new position amends the CCA such that acquisitions which are required to be notified will only be automatically void in a much narrower range of circumstances, being:

- Where an acquisition is put into effect prior to it being “finally considered” by the ACCC – that is, where the acquisition was notified to the ACCC, but the ACCC has not yet issued its determination or the determination is subject to a review;
- Where the acquisition was notified, but the ACCC has issued a determination that it must not be put into effect (and the acquisition has not received favourable public benefit determination); and
- Where the acquisition was notified to the ACCC, but the ACCC's determination that the acquisition may be put into effect has since become “stale”.

In all other circumstances, Non-Notified Acquisitions will not be automatically void.

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Rather, the ACCC must apply to the Court for a declaration that the Non-Notified Acquisition "is, and is taken always to have been, void" (void *ab initio*).

The Court must grant this declaration, unless it considers that it would be undesirable to make such an order – for example, where the order would result in significant harm to innocent third parties, or where the vendor company has been wound up and no longer exists.

The Bill emphasises that, in deciding whether to make such an order, the Court must not consider competition effects. The explanatory statement to the Bill clarifies that this is intended to preserve the ACCC's role as first-instance decision-maker on substantive competition assessments and maintains incentives to notify acquisitions under the existing thresholds and requirements.

The ACCC has a six-year limitation period to apply to the Court for an order that a Non-Notified Acquisition is void *ab initio*.

Granting Extensions for "Stale" Notifications

If the ACCC makes a determination in relation to:

- A notification (that the notified acquisition may be put into effect or must not be put into effect); or
- A public benefit application (that the acquisition would be of public benefit, or not to make the determination applied for in the public benefit application),

the notification becomes "stale" 12 months after the date of the ACCC's determination (the Relevant Period).

When a notification becomes "stale", the notifying parties must submit a fresh notification to receive a renewed clearance from the ACCC. Acquisitions that are put into effect after the Relevant Period are deemed automatically void (both under the current regime and, as above, post the amendments introduced by the Bill).

However, the Bill has introduced an administrative mechanism that allows parties to seek multiple extensions (of up to six months each) for the period in which the acquisition can be put into effect after approval. There is no limit to the number of extension requests that can be made.

In deciding whether to grant an extension, the ACCC must have regard to the following factors:

- Whether there are reasonable reasons why the acquisition has not been put into effect;
- Whether there have been material changes to the market since the initial determination; and
- Whether another notification of the acquisition is more appropriate.

If an extension request is made, the ACCC must give written notice of its decision to grant or not grant the extension. If an extension is granted, conditions from the original approved notification will continue to apply. Once an extension is granted, details of this extension will be published on the ACCC's acquisitions register within one business day of the decision.

Importantly, the explanatory statement notes that a decision by the ACCC to grant (or not grant) an extension is not subject to merits review, as it does not impact the substance of the notification that has already been approved.

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WHEN THE PROVISIONS BEGIN TO APPLY

Schedule 4 to the Bill commences the day after it receives Royal Assent (Effective Date).

The changes outlined above in relation to the “associates” and “control” provisions, and the transition from automatically voiding Non-Notified Acquisitions to a Court-supervised voidable process, will apply to acquisitions which are put into effect from the Effective Date.

The new extension mechanism for stale notifications will apply to any notification of an acquisition if, at the time of the Effective Date, no more than 12 months has elapsed since the ACCC made its notification or public benefits determination (i.e. it will apply to all notifications that are not already “stale” by the Effective Date).

WHERE TO FROM HERE?

The changes introduced by the Bill will no doubt assist in refining the application of the merger regime, along with the scope and number of acquisitions captured in due course.

Businesses should, in light of these amendments, “take a step back” and re-focus their current approach to merger analysis to incorporate the new mechanisms, refined concepts and reconsider their timelines accordingly.

In addition to these changes, Treasury is undertaking consultations about “threshold-related changes” that may need to occur as part of the review that is to take place following the first 12 months of the laws' operations.

If you have any queries about the new changes introduced by the Bill, please contact our competition and consumer law team or corporate team and we can provide you with additional details, or clarify your queries accordingly.

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KEY CONTACTS



AYMAN GUIRGUIS
PARTNER

SYDNEY
+61.2.9513.2308
AYMAN.GUIRGUIS@KLGATES.COM



LAUREN HAN
LAWYER

SYDNEY
+61.2.9513.2349
LAUREN.HAN@KLGATES.COM



SIMON LESLIE
PARTNER

SYDNEY
+61.2.9513.2340
SIMON.LESLIE@KLGATES.COM



CLIVE CACHIA
PARTNER

SYDNEY
+61.2.9513.2515
CLIVE.CACHIA@KLGATES.COM



HARRY KINGSLEY
PARTNER

MELBOURNE
+61.3.9205.2093
HARRY.KINGSLEY@KLGATES.COM



RUSSELL LYONS
PARTNER

SYDNEY
+61.2.9513.2510
RUSSELL.LYONS@KLGATES.COM



DIVESH PATEL
PARTNER

SYDNEY
+61.2.9513.2477
DIVESH.PATEL@KLGATES.COM



PARIS PETRANIS
PARTNER

MELBOURNE



JAMES GRAY
SENIOR ASSOCIATE

SYDNEY
+61.2.9513.2428
JAMES.GRAY@KLGATES.COM



JESSICA LIM
LAWYER

SYDNEY
+61.2.9513.2501
JESSICA.LIM@KLGATES.COM



DANIEL ATKIN
PRACTICE GROUP COORDINATOR - CORPORATE AND MERGERS AND ACQUISITIONS

SYDNEY
+61.2.9513.2356
DANIEL.ATKIN@KLGATES.COM



ANDREW GAFFNEY
PARTNER

MELBOURNE
+61.3.9640.4329
ANDREW.GAFFNEY@KLGATES.COM



ADAM LEVINE
PARTNER

PERTH
+61.8.9216.0965
ADAM.LEVINE@KLGATES.COM



CHRIS NIKOU
PRACTICE AREA LEADER - CORPORATE

MELBOURNE
+61.3.9640.4354
CHRIS.NIKOU@KLGATES.COM



LUKE PATERSON
PARTNER

PERTH
+61.8.9216.0948
LUKE.PATERSON@KLGATES.COM



NAOMI PHILP
PARTNER

SYDNEY

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