

EXPOSURE DRAFT



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Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025

I, Andrew Leigh, Assistant Minister for Productivity, Competition, Charities and Treasury, make the following determination.

Dated 2025

Dr Andrew Leigh **[DRAFT ONLY—NOT FOR SIGNATURE]**
Assistant Minister for Productivity, Competition, Charities and Treasury
Parliamentary Secretary to the Treasurer

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1 Name

This instrument is the *Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	The later of: (a) The day after this instrument is registered; and (b) 1 January 2026.	
3. Schedule 2	The same as for item 2.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments relating to acquisitions requiring notification

Schedule 1—Amendments relating to acquisitions requiring notification

Competition and Consumer (Notification of Acquisitions) Determination 2025

1 At the end of Part 3

Add:

Division 2—Certain classes of acquisition that do *not* result in control still required to be notified

Note 1: Under subsection 51ABS(1) of the Act, an acquisition by a person of shares in a body corporate is *not* required to be notified if immediately after the acquisition is put into effect the person does not control the body corporate, or the person controlled the body corporate before the acquisition was put into effect. However, subsection 51ABS(1) does *not* apply to an acquisition that is in a determined class of acquisition. This Division sets out those determined classes of acquisition.

Note 2: Certain acquisitions in the capital of a body corporate that is a Chapter 6 entity are *not* required to be notified—see section 51ABT of the Act.

3-10 Voting power moves from 20% or below to more than 20%—unlisted bodies corporate not widely-held

- (1) Under subsection 51ABS(6) of the Act, the class of acquisitions covered by subsection (2) of this section is determined for the purposes of paragraph 51ABS(5)(b) of the Act.
- (2) A class of acquisitions is covered by this subsection if:
 - (a) it is an acquisition of shares in the capital of a body corporate; and
 - (b) the body corporate is *not*:
 - (i) a Chapter 6 entity; or
 - (ii) listed for quotation in the official list of an approved stock exchange;and
 - (c) the acquisition results in someone's voting power (within the meaning of the *Corporations Act 2001*) increasing from 20% or below to more than 20%.

3-11 Voting power increases from 20% or more to 50% or more—all bodies corporate

- (1) Under subsection 51ABS(6) of the Act, the class of acquisitions covered by subsection (2) of this section is determined for the purposes of paragraph 51ABS(5)(b) of the Act.
- (2) A class of acquisitions is covered by this subsection if:
 - (a) it is an acquisition of shares in the capital of a body corporate; and

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Amendments relating to acquisitions requiring notification
Schedule 1

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- (b) the acquisition results in someone's voting power (within the meaning of the *Corporations Act 2001*) increasing from a starting point that is 20% or more to 50% or more.

3-12 Voting power moves from 20% or below to more than 20%—already controlled widely held body corporate

- (1) Under subsection 51ABS(6) of the Act, the class of acquisitions covered by subsection (2) of this section is determined for the purposes of paragraph 51ABS(5)(b) of the Act.
- (2) A class of acquisitions is covered by this subsection if:
 - (a) it is an acquisition of shares in the capital of a body corporate; and
 - (b) the body corporate is a Chapter 6 entity; and
 - (c) the principal party controlled (within the meaning of section 50AA of the *Corporations Act 2001* after applying the modifications set out in subsection 51ABS(2) of the Act) the body corporate immediately before the acquisition was put into effect; and
 - (d) the acquisition results in someone's voting power (within the meaning of the *Corporations Act 2001*) increasing from 20% or below to more than 20%.

3-13 Voting power moves from below 20% to 50% or more—do not control widely held body corporate before or after acquisition

- (1) Under subsection 51ABS(6) of the Act, the class of acquisitions covered by subsection (2) of this section is determined for the purposes of paragraph 51ABS(5)(b) of the Act.
- (2) A class of acquisitions is covered by this subsection if:
 - (a) it is an acquisition of shares in the capital of a body corporate; and
 - (b) the body corporate is a Chapter 6 entity; and
 - (c) the principal party does *not* control (within the meaning of section 50AA of the *Corporations Act 2001* after applying the modifications set out in subsection 51ABS(2) of the Act) the body corporate immediately before, or immediately after, the acquisition was put into effect; and
 - (d) the acquisition results in someone's voting power (within the meaning of the *Corporations Act 2001*) increasing from below 20% to 50% or more.

2 Paragraph 5-2(1)(d)

Repeal the paragraph, substitute:

- (d) if the Commission gives a person written notice inviting them to make a submission under paragraph 51ABZZD(2)(a) of the Act for the purposes of making the acquisition determination in respect of a notification—a statement that consultation is occurring in relation to the acquisition determination and details about the consultation process;

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Schedule 2 Amendments relating to notification waiver applications

Schedule 2—Amendments relating to notification waiver applications

Competition and Consumer (Notification of Acquisitions) Determination 2025

1 After section 1-3, note 4

Insert:

Note 4A: Subsection 51ABU(3) of the Act provides that the Minister may determine requirements for a notification waiver application. Further, subsection 51ABV(3) of the Act provides that the Minister may determine requirements with which the Commission must comply when making a determination in relation to a notification waiver application.

2 Paragraph 5-2(1)(a)

Repeal the paragraph, substitute:

- (a) if a person has applied for a notification waiver in relation to an acquisition:
 - (i) a statement to that effect, and a summary of the details of the acquisition; and
 - (ii) a summary of any decision of the Commission in relation to the application;

3 Before paragraph 5-2(2)(a)

Insert:

- (aa) for information or a document mentioned in paragraph (1)(a)—within 1 business day of the relevant decision on the notification waiver application being made or, if that is *not* practicable, as soon as practicable after that day;

4 At the end of subsection 5-2(2)

Add:

Note: In certain circumstances, some information and documents may *not* be included on the acquisitions register, or can only be included at a later time—see sections @6-5 and @6-6.

5 Part 6 (heading)

Repeal the heading, substitute:

Part 6—Forms and manner of determining applications

6 Division 1 of Part 6 (heading)

Repeal the heading, substitute:

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Amendments relating to notification waiver applications **Schedule 2**

Division 1—Determination of forms, information and documents, and manner for determining applications

7 After section 6-2

Insert:

6-3 Notification waiver applications

For the purposes of subsection 51ABU(3) of the Act, the requirements for making a notification waiver application are that the application is:

- (a) made in the form set out in Division 5 of this Part; and
- (b) accompanied by the information and documents as set out in the form, and the determined fee (if any).

Note: A fee must accompany a notification waiver application—see subsection 7-50(1).

6-4 Determining notification waiver applications: general case

Under subsection 51ABV(3) of the Act, for the purposes of paragraph 51ABV(2)(a) of the Act, if the Commission has *not* made a determination in relation to a notification waiver application (other than a waiver application covered by section 6-5 or 6-6 of this instrument) during the period beginning on the first day after the application is received, and ending on the 25th business day after that day, the Commission must make a determination under paragraph 51ABV(1)(b) of the Act in relation to the application on the first business day after the period ends.

6-5 Determining notification waiver applications: surprise hostile takeovers

- (1) This section applies to a notification waiver application that relates to an acquisition of shares in the capital of a body corporate if:
 - (a) the acquisition and body corporate satisfy paragraphs 51ABZZL(1)(a), (b) and (c) of the Act; and
 - (b) the application includes a request that this section apply to the application and the request satisfies subsection (2).
- (2) A request satisfies this subsection if the request states:
 - (a) the information set out in paragraphs 51ABZZL(2)(a) and (b) of the Act; and
 - (b) that the bidder (within the meaning of the *Corporations Act 2001*) will, if the Commission makes a determination under paragraph 51ABV(1)(a) of the Act, give a bidder's statement (within the meaning of the *Corporations Act 2001*) to the Commission and target no later than 5 business days after the day on which the Commission gives the applicant the written notice and explanation required by subsection 51ABV(5) of the Act; and
 - (c) that the bidder will, after the proposed bid has been made public, notify the Commission, in writing, that the bid has been made public within 1 business day of the bid having been publicly proposed, or if that is *not* practicable, as soon as practicable after that day.

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Schedule 2 Amendments relating to notification waiver applications

Delay in information to be included on the acquisition register

- (3) Despite paragraphs 5-2(1)(a) and 5-2(2)(aa) of this instrument, the Commission must *not* include information or documents on the acquisitions register in relation to the waiver application before receiving the bidder's notification (as mentioned in paragraph (2)(c) of this section) in relation to the acquisition to which the application relates, and once the bidder's notification is received, the information mentioned at paragraph 5-2(1)(a) is to be included on the register within 2 business days, or if that is *not* practicable, as soon as practicable after that day.

Timing for Commission decision

- (4) For the purposes of subsection 51ABV(3) of the Act, if the Commission has *not* made a determination in relation to an application to which this section applies during the period beginning on the first day after an application is received, and ending on the 25th business day after that day, the Commission must make a determination under paragraph 51ABV(1)(b) of the Act in relation to the application on the first business day after the period ends.

Commission can refuse request for this section to apply

- (5) The Commission may, at any time on or before the 15th business day after the day on which an application to which this section applies is made, determine that this section does *not* apply to the application if the Commission is satisfied that a matter set out in paragraph 51ABZZL(5)(c), (d) or (e) of the Act applies in relation to the acquisition.
- (6) If the Commission makes a determination under subsection (5):
- (a) the Commission must give the applicant written notice of the determination; and
 - (b) this section is taken never to have applied in relation to the application.

6-6 Determining notification waiver applications: voluntary transfers under the *Financial Sector (Transfer and Restructure) Act 1999*

- (1) This section applies to a notification waiver application where the acquisition to which the application relates is one that satisfies paragraphs 51ABZZQ(1)(a) and (b) of the Act.

Delay in information to be included on the acquisition register

- (2) Despite paragraphs 5-2(1)(a) and 5-2(2)(aa) of this instrument, the Commission must *not* include information or documents on the acquisitions register in relation to the waiver application before:
- (a) if the Commission makes a determination under paragraph 51ABV(1)(a) of the Act in relation to the application—the determination is made, but once made the information or a document mentioned in paragraph 5-2(1)(a) of this instrument is to be included on the register within 1 business day after the determination is made or, if that is *not* practicable, as soon as practicable after that day; and

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Amendments relating to notification waiver applications **Schedule 2**

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- (b) if the Commission makes a determination under paragraph 51ABV(1)(b) of the Act in relation to the application and a decision under subsection 51ABZE(1) of the Act in relation to the acquisition to which the application relates—the determination is made, but once made the information or a document mentioned in paragraph 5-2(1)(a) of this instrument is to be included on the register within 1 business day after the determination under subsection 51ABZE(1) of the Act is made or, if that is *not* practicable, as soon as practicable after that day.

Note: If neither event mentioned in paragraph (a) or (b) happens in relation to a waiver application, then no information or documents are to be published on the acquisitions register in relation to the application.

Timing for Commission decision

- (3) For the purposes of subsection 51ABV(3) of the Act, if the Commission has *not* made a determination in relation to an application to which this section applies during the period beginning on the first day after an application is received, and ending on the 25th business day after that day, the Commission must make a determination under paragraph 51ABV(1)(b) of the Act in relation to the application on the first business day after the period ends.