

Let's talk shop.

Treasury Laws Amendment Bill 2026: Critical Changes to the Mergers and Acquisitions Framework

April 2026

The Australian Retail Council (ARC) welcomes the opportunity to provide feedback on the Exposure Draft of the *Treasury Laws Amendment Bill 2026: Critical Changes to the Mergers and Acquisitions Framework*.

ARC represents Australia's \$444 billion retail sector, the nation's largest private sector employer. Retail employs more than 1.4 million Australians, representing one in ten workers, and is the single largest employer of young Australians aged 15 to 24.

ARC's membership spans the full breadth of Australian retail, from family-owned small and independent businesses, which comprise 95 per cent of our membership, through to large national and international retailers that support thousands of jobs and sustain communities across metropolitan and regional Australia. The sector operates more than 155,000 retail outlets nationwide, with the majority also maintaining an online or e-commerce presence. A significant portion of every dollar spent in retail flows back to employees, suppliers, superannuation funds, and local communities.

ARC is committed to supporting Australian retailers by collaborating and advocating for policy settings and reforms that drive growth, resilience, and long-term prosperity for the retail sector and the millions of Australians who rely on it.

Executive Summary

ARC supports the Exposure Draft amendments as practical and proportionate refinements to Australia's new mandatory and suspensory merger control regime.

These amendments are consistent with the concerns ARC and its predecessor bodies have raised throughout the reform process. In particular, we have consistently emphasised that the merger framework should be risk-based, targeted and proportionate; should focus regulatory attention on transactions that raise genuine competition concerns; and should avoid unnecessary cost, delay and legal uncertainty for ordinary commercial activity and low-risk transactions.

ARC supports the proposed amendments to:

1. replace automatic voiding of non-notified acquisitions with a court-supervised voidable model; and
2. refine the joint control and associates provisions so that notification obligations are better targeted to acquisitions that confer meaningful control or practical influence.

These are sensible changes that should improve legal certainty, reduce unintended consequences and better align the regime with the Government's stated objective of a faster, stronger, simpler, targeted, more transparent and streamlined merger control system.



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ARC also welcomes Treasury's continued engagement with stakeholders and the Government's willingness to respond to early feedback from the transition and implementation of the new regime.

ARC's longstanding position on merger reform

ARC supports competition policy settings that protect consumers and the competitive process, while recognising the important role that mergers and acquisitions can play in supporting business growth, investment, productivity and innovation.

Throughout the merger reform process, ARC and its predecessor bodies have raised concerns that a mandatory regime must not over-capture routine, low-risk or ordinary-course transactions. This includes routine investment activities such as site leasing, expansion into new regions and acquisitions of small independent stores, where there is minimal risk to competition.

ARC has also emphasised that low-risk retail transactions should not consume ACCC resources that are better directed towards acquisitions that raise genuine competition risks.

The Exposure Draft amendments are a welcome response to these concerns. They do not remove the obligation to notify where notification is required, nor do they weaken the ACCC's ability to scrutinise acquisitions that raise competition concerns. Rather, they improve the proportionality, legal certainty and practical operation of the regime while preserving the ACCC's ability to respond to acquisitions that raise genuine competition concerns.

Support for replacing automatic voiding with a voidable model

ARC strongly supports the proposed amendment to make non-notified acquisitions voidable rather than automatically void.

Under the current framework, acquisitions that are required to be notified but are not notified are automatically void if put into effect. As Treasury's Explanatory Materials note, automatic voiding applies regardless of whether the failure to notify was deliberate or inadvertent, and regardless of whether the acquisition substantially lessened competition.

ARC considers this consequence to be disproportionate, particularly for transactions that are competitively benign or where non-notification may arise from uncertainty about the application of the new regime.

The proposed court-supervised voidable model is a more balanced approach. It preserves strong incentives for parties to comply with the mandatory regime, including through the continued availability of civil penalties and ACCC enforcement action, while reducing the risk of unnecessary disruption to businesses, employees, counterparties and third parties who may rely on completed transactions.

ARC particularly supports that:

- only the ACCC may apply to the Federal Court for an order voiding a non-notified acquisition;
- the Federal Court may make other appropriate orders, including divestiture or orders dealing with the consequences of voiding;
- affected parties may seek orders to address the consequences of a voiding declaration; and



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- a six-year limitation period will apply to ACCC applications for voiding declarations.

These features provide a more proportionate framework that maintains the integrity of the regime while avoiding the unnecessary commercial uncertainty associated with automatic voiding.

ARC therefore welcomes the Exposure Draft's proposed shift from automatic voiding to a court-supervised voidable model as an important and practical improvement.

Support for refining the joint control and associates provisions

ARC supports the proposed amendments to clarify when an acquisition results in control.

Under the current settings, some ordinary commercial arrangements could be treated as giving rise to control, even where the acquirer does not have any real ability to influence how the business operates or competes. This could include minority investments, standard investor protections, financing arrangements, governance rights, leasing arrangements, franchise structures or other arrangements common in the retail sector.

These arrangements may protect a party's investment or commercial position, but they do not necessarily mean that party controls the business.

The Exposure Draft helps address this issue by focusing on whether the acquirer, alone or together with others, has the real and practical ability to determine the target business's key financial and operating decisions. ARC supports this approach.

Businesses should not be required to notify a transaction simply because a party has standard rights that protect its investment, or because there is uncertainty about whether those rights could be treated as control. Notification should be focused on transactions where a party gains meaningful influence over how a business is run or how it competes.

The proposed amendments should help reduce unnecessary or defensive notifications where a transaction does not raise substantive competition concerns, but is notified because the rules are uncertain or overly broad.

ARC supports the proposed narrowing of the associates concept and the inclusion of carve-outs for relationships or rights that are unlikely to be competitively significant. These changes better align the regime with its risk-based design and should help ensure the ACCC's resources remain focused on acquisitions that raise genuine competition concerns.

Practical guidance, consultation and review

While ARC supports the proposed amendments, practical guidance will be critical to ensuring the regime operates as intended.

ARC recommends that Treasury and the ACCC provide clear guidance and worked examples on the application of the amended provisions, including examples relevant to ordinary-course retail transactions. This should include guidance on:



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- the application of the voidable model and the circumstances in which the ACCC may consider seeking a voiding declaration;
- the types of minority shareholder protections and governance rights that are unlikely to give rise to joint control;
- the treatment of standard financing, shareholder, franchise and leasing arrangements;
- the practical application of the “real and practical capacity” test; and
- the interaction between the amended primary law, notification thresholds, waiver processes and ACCC guidance.

ARC also recommends that Treasury monitor whether the amendments reduce unnecessary defensive notifications and whether further refinements are needed through the planned 12-month review of notification thresholds and the broader 2029 review.

Future review processes should consider whether businesses and advisers have sufficient certainty to avoid defensive notification; whether ACCC resources are being appropriately directed towards transactions that raise genuine competition concerns; and whether the regime is operating in a way that supports investment, productivity and economic growth.

Conclusion

ARC supports the Exposure Draft amendments and encourages the Government to progress them as a priority.

The proposed changes are practical, targeted and proportionate. They preserve the integrity of the mandatory merger control regime while addressing unintended consequences that could otherwise create unnecessary uncertainty, delay and regulatory burden.

ARC particularly welcomes the move from automatic voiding to a court-supervised voidable model and the refinement of the joint control and associates provisions. These amendments are consistent with the issues ARC has raised throughout the reform process and represent an important step toward ensuring the regime operates as intended.

ARC looks forward to continued engagement with Treasury and the ACCC as the regime is implemented and reviewed. Any queries regarding this submission can be directed to ARC's policy team at policy@retail.org.au.

