

ARA & NRA SUBMISSION

TREASURY CONSULTATION – MERGER NOTIFICATION WAIVER AND CONTROL INSTRUMENT EXPOSURE DRAFT

NOVEMBER 2025

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to provide feedback on Treasury's consultation on the *Merger Notification Waiver and Control Instrument Exposure Draft*.

The ARA and NRA, which propose to amalgamate to form the Australian Retail Council (ARC), represent a \$430 billion sector, and employs 1.4 million Australians – making retail the largest private sector employer in the country and a significant contributor to the Australian economy.

Our membership spans the full spectrum of Australian retail, from family-owned small and independent retailers that make up 95% of our membership, through to our largest national and international retailers that employ thousands of Australians and support both metropolitan and regional communities every day.

With a significant portion of every dollar spent in retail flowing back to employees, suppliers, super funds, and local communities, a thriving retail sector benefits all Australians. After a uniquely challenging five-year period, which has had significant impacts on the sector, we are united in advocating for policies, reform and collaboration that will drive growth, resilience, and prosperity for the retail sector and all Australians.

EXECUTIVE SUMMARY

The ARA and NRA broadly support the intent of the Exposure Draft as part of the new mandatory merger regime commencing 1 January 2026. We welcome in-principle the creation of a notification waiver for low-risk transactions and clarification of control exemptions. The effectiveness of these measures will depend on clear guidance, predictable timeframes and proportionate fees, so that the system targets genuine competition risks without burdening ordinary-course retail activity (e.g. lease renewals, single-site property transactions, standard franchise arrangements).

We recommend clarifications and minor adjustments across five areas:

1. Scope, thresholds and eligibility;
2. Process, timelines and fees;
3. Binding effect and interaction with notification;
4. Transparency and guidance; and
5. Transitional arrangements and alignment with the October 2025 refinements.

SCOPE, THRESHOLD & ELIGIBILITY

We support a waiver mechanism for transactions that are low-risk on competition grounds. To deliver certainty and consistency in application, we recommend:

- Explicit eligibility signals that ordinary-course retail transactions (routine leasing, site renewals, standard property acquisitions and typical franchise structures) are in scope for waiver consideration where no material competition concerns arise.
- Indicative thresholds (monetary and/or market-share guidance) and worked examples to aid predictability across sectors and geographies, including regional settings.
- A short statement confirming that ancillary land and lease interests associated with store fit-outs, relocations and co-tenancies may qualify where competitive overlap is immaterial.

These clarifications would help the ACCC triage low-risk matters efficiently and reduce applicant hesitation driven by uncertainty.

PROCESS, TIMELINES AND FEES

The draft characterises the waiver as a “simple, fast and low-cost” pathway. To operationalise that intent:

- Introduce a decision timeframe (for example, 10–15 business days) from a complete application, with a “stop-clock” only where applicants fail to provide requested information.
- Confirm a nominal or capped fee for waiver applications (or nil fee), recognising that waiver cases should involve materially lower ACCC effort than standard notifications.
- Publish a concise application checklist (core facts, overlap screen, transaction rationale) to streamline submissions and reduce back-and-forth.

These steps will provide commercial certainty for time-sensitive transactions and avoid unnecessary cost or delay.

BINDING EFFECT AND INTERACTION WITH NOTIFICATION

We support that a granted waiver removes the requirement to notify; we recommend Treasury confirm that it also removes any associated notification fees to maintain cost-recovery integrity.

To minimise duplication:

- State that a waiver, once granted, is binding unless material facts change (e.g. scope, parties, or market overlaps).
- Where conditions are attached, clarify that compliance with those conditions preserves the waiver’s effect and avoids a second, duplicative process.
- Encourage early engagement but confirm that seeking a waiver does not prejudice a subsequent decision to notify if facts change.

TRANSPARENCY AND GUIDANCE

To support consistent national application while protecting confidentiality, we recommend:

- Implementation guidance issued prior to commencement, including eligibility examples by sector, a documentation guide, and a short list of common pitfalls.
- Anonymised summaries of waiver outcomes (periodic bulletins) to establish clear precedent and reduce variability in first-instance decision-making.

- A single public point-of-truth (ACCC page) linking the instrument, guidance, application checklist and contact routing.

These measures will lower process frictions for applicants and the ACCC alike.

TRANSITIONAL AND ADMINISTRATIVE MATTERS

We recommend clarifying that transactions signed prior to 1 January 2026 will not be retrospectively captured. Where signing and completion straddle commencement, publish practical transitional guidance (e.g. whether a waiver is appropriate or unnecessary given the October 2025 exemptions).

We also support explicit alignment between this instrument and the Federal Government's October 2025 refinements (leases and other land interests in the ordinary course, streamlined serial-acquisition treatment, and adjustments to automatic voiding provisions) to avoid interpretive gaps between instruments.

CONCLUSION

The ARA and NRA recognise Treasury's work to implement a merger regime that is more transparent, proportionate and risk-based. We support in-principle the waiver and control framework; its success will hinge on clear eligibility signals, predictable timelines, modest fees and binding effect to ensure low-risk retail transactions are treated consistently and efficiently.

We look forward to continued engagement with Treasury and the ACCC as the subordinate instruments are finalised ahead of commencement on 1 January 2026.

Any queries regarding this submission can be directed to our policy team at policy@retail.org.au