

ARA/NRA SUBMISSION

MERGER REFORM – NOTIFICATION WAIVER FORM

September 2025

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to provide a submission on the ACCC's exposure draft of the merger notification waiver form.

The ARA and NRA, which propose to amalgamate into 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 support the introduction of a notification waiver process under the new merger regime as a proportionate, risk-based mechanism to reduce unnecessary regulatory burden on low-risk transactions. A streamlined, low-cost waiver form is a sensible feature that can provide businesses with greater certainty and reduce the volume of full notifications lodged with the ACCC.

However, we remain concerned that the current draft waiver application form risks replicating many of the complexities and cost burdens associated with a full merger notification. The form requires extensive upfront information, including detailed ANZSIC classifications, market definitions, and revenue-based market share estimates, that may be disproportionate for straightforward retail acquisitions.

For retailers, the vast majority of acquisitions involve routine site leases, small format expansions, and acquisitions of independent operators, transactions that present minimal competition concerns. It is critical that the waiver process does not become a de facto second notification process that adds cost and delay without corresponding regulatory benefit.

Without a well-calibrated waiver process, standardised transactions like routine site leases or service station acquisitions will face unnecessary costs and delays. This makes the waiver mechanism critical to ensuring the new regime does not impose disproportionate burdens on low-risk, pro-competitive activity.

KEY ISSUES

While the ARA and NRA recognise the value of a waiver process in principle, our assessment of the exposure draft highlights several concerns with its practical design and implementation. In particular, the requirements as currently drafted risk creating unnecessary complexity and cost for routine transactions that are unlikely to raise competition issues. The following issues are of greatest concern to our sector:

1. Waiver form complexity

The draft form requires extensive information akin to a full merger filing, including transaction documents, market share calculations, and supporting evidence. This risks undermining the purpose of the waiver process, which is to provide a simple, fast and low-cost pathway for clearly low-risk acquisitions. Much of this burden stems from the detailed requirements in Items 2–7 of the draft form, which go well beyond what should reasonably be required at waiver stage.

We recognise that some degree of upfront information is necessary for the ACCC to efficiently assess waiver applications and to ensure waiver decisions are robust. However, the current drafting risks tipping into disproportionate detail that effectively recreates the notification process, rather than streamlining it. The objective should not be to strip the form of meaningful content, but to calibrate requirements to the level of risk, ensuring the ACCC has sufficient information while avoiding unnecessary duplication.

2. Burden on routine retail acquisitions

The retail sector’s most common acquisitions are low-risk and repetitive in nature. Requiring detailed market share data and ANZSIC coding for each transaction creates unnecessary duplication and administrative burden. Smaller and mid-sized retailers, which often operate on thin margins despite turnover above the exemption thresholds, may find these requirements prohibitive.

In practice, retail mergers are typically everyday expansion activities, such as acquiring additional sites or integrating smaller operators, which pose little or no risk to competition.

This challenge is not about whether any information is required, but whether the form requests the right information in a way that reflects sector realities. For retail, a more targeted approach would reduce duplication while still giving the ACCC the “critical mass” of information needed to make sound waiver decisions.

3. Risk of deterring pro-competitive activity

If the waiver form is overly burdensome, businesses may be discouraged from pursuing expansion and growth opportunities. This would be counterproductive to the Government’s stated objectives of encouraging investment, competition, and productivity-enhancing reforms.

4. Practical Example – Low-Risk Site Acquisition

To illustrate the potential impact of the draft waiver process on retail, we highlight a routine transaction scenario. This shows how the former regime, the new mandatory regime without a waiver, and the new regime with a waiver would compare in terms of process, cost and timing.

For example, the \$18.4 million Greystanes service station sale (*AFR, June 2025*), unlikely to raise any substantive competition concerns, would nonetheless trigger a full Phase 1 notification and fee of \$56,800 under the new mandatory regime, despite being routine, low-risk, and passive in nature. Under the former voluntary regime, no notification would have been required and no fee would apply.

Scenario	Process	Cost / Timing
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Former voluntary regime (pre-2025)	No notification required for routine low-risk acquisitions.	\$0; no material delay.
New mandatory regime – no waiver	Purchaser must notify ACCC even for low-risk acquisitions.	\$56,800 Phase 1 fee; 20–30 business days
New mandatory regime – with waiver	Purchaser applies for waiver with proportionate information requirements.	Minimal fee; faster turnaround; 5–10 business days

This example highlights why the waiver process is critical. Without it, standardised retail transactions will face unnecessary costs and regulatory burdens that deliver no additional competition benefit. To be effective, the waiver pathway must remain genuinely low-cost and light-touch, with only a nominal fee attached and paperwork requirements kept proportionate. Otherwise, businesses will face a process that is too onerous to use in practice, defeating the very purpose of its design.

RECOMMENDATIONS

The ARA and NRA recommend the following adjustments to the draft waiver form:

1. **Streamline upfront information requirements:** Limit the waiver application to essential details (e.g. parties, transaction description, rationale), with flexibility for the ACCC to request more where warranted. This ensures sufficient information for robust waiver decisions without replicating a full notification process.
2. **Proportionate requirements for low-risk transactions:** Introduce tailored or short-form requirements for routine retail acquisitions such as site leases or small independent store purchases, ensuring the ACCC receives necessary information without unnecessary burden.
3. **Remove unnecessary duplication:** Avoid requiring ANZSIC references, detailed market definitions, and revenue-based market share calculations unless there is a reasonable basis to expect competition concerns.
4. **Reduce document burden:** Limit the requirement for full transaction documents at the waiver stage, recognising that these may not yet be finalised. For retail acquisitions, where standardised site lease templates are commonly used, requiring full contracts upfront is unnecessary and adds little value.
5. **Address declaration duplication:** Requiring separate declarations from each principal party (Item 9) risks adding formality and delay without improving the quality of information provided. This should be streamlined to avoid unnecessary repetition.
6. **Ensure waiver fees remain minimal:** Fees for waiver applications should be nominal, consistent with the objective of a low-cost pathway. We note that Note 2 of the draft form requires applications to be accompanied by a fee; this reinforces the importance of ensuring charges remain proportionate and not a barrier to use.

CONCLUSION

The ARA and NRA support the principle of a notification waiver process as a constructive feature of the new merger regime. However, the current draft risks undermining that principle by replicating the burdens of a full notification process.

We urge Treasury and the ACCC to refine the waiver form to ensure it is genuinely simple, proportionate and efficient, particularly for low-risk and routine transactions in the retail sector.

More broadly, right-sized regulation is a key enabler of Australia’s productivity growth agenda. Regulators play a critical role in ensuring that compliance requirements are proportionate and do not divert resources away from

investment and expansion. A well-designed waiver process will actively support the Government's productivity objectives by reducing unnecessary regulatory drag on business growth.

We welcome continued consultation on these reforms and would be pleased to discuss these matters further.

Thank you again for the opportunity to provide a comment on the exposure draft of the merger notification waiver form. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.