

M&A Report: 2024 year in review and future outlook

1 January 2024 – 31 December 2024



Introduction

Recognised in Mergermarket's 2024 Global & Regional M&A Rankings, Hamilton Locke has advised on over 93 M&A deals valued at USD2.51 billion in 2024. This reflects our national team's combined efforts as we continue to build a reputation for delivering exceptional outcomes for our clients and strengthening our market presence.

We have conducted an in-depth analysis of the transactions we advised on throughout the year which provides a contextual framework for dealmaking in 2025. This report highlights our key findings and insights drawn from an extensive review of deal trends and negotiation points in the Australian mid-market M&A sector from January to December 2024.

As the fog of macroeconomic and geopolitical complexities that contributed to a soft market in 2023 clears, a marked increase in dealmaking driven by strong investor confidence and availability of assets was seen in 2024. Consistent with our predictions in our 2023 M&A Report, this uptick has been driven largely by an increase in private equity and renewable energy transactions. Whilst tensions continue to exist around valuation, a combination of deferred consideration, conditionality and risk allocation mechanisms has helped to bridge the valuation gap and assist in the completion of transactions.

This report delves into the key themes and insights gleaned from our analysis, with a particular focus on critical sectors including FIRB, competition law, financial services, new energy, carbon markets, private equity, restructuring, and tax. By examining the negotiation points specific to these sectors, we aim to provide actionable intelligence that will empower businesses to navigate the evolving M&A landscape with confidence and foresight.

As we look ahead to 2025, our report not only reflects on the trends that defined the past year but also anticipates the trajectory of key negotiation points across each sector. The report will also consider the impact of macroeconomic and geopolitical developments on dealmaking in 2024 and 2025. By sharing our understanding of the market and aligning it with commercial trends, we aspire to contribute to the continued development and advancement of the M&A sector in Australia.



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Top 8 Insights

1

BRIDGING THE VALUATION GAP

While tensions still existed around valuation, a combination of deferred consideration structures, broader W&I insurance coverage terms and non-control transactions helped bridge the gap. 41.17% of transactions reviewed had deferred consideration payable in tranches, and nearly 30% had deferred consideration conditional on targets being satisfied.

2

RISE AND RISE OF PRIVATE CAPITAL

Increasingly borrowers are choosing more expensive private debt, over more traditional bank solutions, because of speed, more leverage and tailored terms designed to allow a business to grow faster. With rapid growth, comes increased scrutiny and private credit has faced the spotlight with concerns around transparency and conflicts of interest. ASIC has announced that close monitoring of private credit is a key policy objective for 2025 and beyond.

3

MORE THOROUGH DUE DILIGENCE

With a tighter market, due diligence adopted a more sophisticated approach with greater understanding of the nature and impact of risks, particularly in technical and regulatory due diligence.

4

SPECIFIC INDEMNITIES

Buyers sought specific indemnities in 48.48% of transactions reviewed. 46.88% of those transactions had indemnities for employee liabilities.

5

REGULATORY IMPACTS

2024 was year of regulatory reform and we saw ASIC, AUSTRAC and the ACCC strongly enforce their regulatory mandate whether via proceedings, enforceable undertakings or otherwise. A new mandatory merger clearance regime was ushered in and it remains to be seen what effect it will have on the M&A landscape.

6

PROMINENCE OF SCHEMES OF ARRANGEMENTS

Schemes of arrangement continue to be the preferred acquisition mechanism for transactions involving public target companies, due to the certainty of achieving full control (provided scheme resolutions are passed, and court approval is obtained) and the flexibility for a prospective investor to walk away if they are not satisfied with the findings of diligence.

7

BROADER W&I COVERAGE

Increased competition in the W&I insurance market has resulted in lower premiums and broader W&I insurance coverage including areas previously excluded, like condition of assets and environmental liabilities.

8

COMPLETION ACCOUNTS STILL KING

60.60% of transactions reviewed contained adjustment mechanisms. 2.5% of those transactions contained a locked box mechanism.



Foreign Investment

Of the deals we advised on, 6.06% required FIRB approval. Whilst this is a higher volume than the previous year and therefore indicates growing foreign appetite for investment in Australia, regulatory scrutiny and lack of certainty continue to put international bidders at a disadvantage when competing with domestic buyers.



Key themes for 2024

• Policy reforms:

- In May 2024, the Australian Government announced significant foreign investment policy reforms, emphasising a tiered approach to screening proposals based on risk. This includes a “streamlined approach” for lower-risk investments, particularly those from repeat investors with strong compliance records and passive investors in non-sensitive sectors. We have already observed faster processing times for these types of applications, a trend we expect to continue with the launch of FIRB’s new portal (more on this below).
- Conversely, “strengthened scrutiny” applies to sensitive sectors and “high-risk” investments, such as those involving complex tax considerations. This has resulted in increased ATO involvement and longer processing times. The reforms also emphasise compliance with existing FIRB conditions, a key area of focus we discuss further below. Other notable changes include filing fee refunds for unsuccessful bidders in competitive auctions, reaffirmed support for Build-to-Rent developments (with details pending), and a broader focus on attracting investment in support of Australia’s net-zero transition, increased housing supply, critical minerals, and commercialising critical technologies.

- **Increased compliance focus:** The 2024 policy reforms have ushered in a new era of heightened FIRB compliance scrutiny. Treasury’s reinforced compliance focus, supported by an expanded FIRB team, signals a proactive approach to enforcing foreign investment rules and approval conditions. This includes increased monitoring, site visits, and a rise in formal investigations, as evidenced by FIRB’s latest quarterly report, which cites seven regulatory audits and four investigations currently underway. Looking ahead to 2025, this trend is expected to continue, driven by internal FIRB surveillance and external referrals. Foreign investors should anticipate more frequent inquiries regarding notification requirements and a greater emphasis on tax-related conditions, including ongoing compliance reporting, as a standard component of FIRB approvals.
- **New Foreign Investment Portal:** FIRB is modernising its application process with a new Foreign Investment Portal, designed to streamline applications and enhance transparency. This portal, which will replace the existing portal in its entirety, is intended to offer a more efficient experience for investors and their agents. The portal will be rolled out in phases which will include a compliance launch by the end of February 2025, followed by a submission launch by the end of April 2025.
- **Caretaker mode:** Australia’s federal election, due by May 17, 2025, will trigger a period of “caretaker mode,” impacting FIRB processes. During this time, the government avoids major decisions, including the processing of complex or potentially politically sensitive FIRB applications. While routine, low-value and non-sensitive applications may proceed, investors should anticipate delays and factor them into their timelines. Even after caretaker mode concludes, a backlog of applications and the potential for a new Treasurer following a change in government can further extend processing times. We advise clients to allow an additional one to two months for complex FIRB applications to account for these potential delays.

Foreign Investment



Outlook for 2025

The 2025 foreign investment landscape will be shaped by evolving global geopolitics, particularly in major economies like the US and China. These shifts, including potential trade tensions, could impact foreign investor appetite in Australia. However, we anticipate continued strong interest in the sectors prioritised by the Treasurer in its policy reforms:

- **Energy:** Investments supporting the net-zero transition will be highly sought after. Government incentives for green metals, low-carbon liquid fuels, and hydrogen production will further enhance Australia's attractiveness to energy investors.
- **Housing:** Government support for investments in new housing stock aimed at increasing supply is expected.
- **Critical minerals:** Investments aligned with Australia's critical minerals strategy will be encouraged, driving sector growth, job creation, downstream industries, supply chain diversification, and Australia's ambition to become a renewable energy superpower.
- **Critical technologies:** Foreign investment will be sought to unlock the potential of critical technologies, fostering competition, diversifying industries, accelerating innovation, and helping Australian businesses commercialise new ideas.

“Despite ongoing public discourse around national security, we expect the government to actively promote Australia as a stable and secure investment destination amid global economic and political uncertainty, emphasising its geographical advantages and political stability.”

Madeleine Kulakauskas
Hamilton Locke Corporate Partner and Foreign
Investment specialist

Private Equity

“While ASIC's recent discussion paper on the dynamics between public and private markets is expected to increase the focus on private equity, it is crucial that this scrutiny does not ignore existing regulations or stifle the growth and innovation of the industry. Effective regulation should balance oversight with the flexibility needed for private equity to thrive, ensuring it continues to be a vital source of capital for Australian businesses.”

Gordon McCann
Hamilton Locke Corporate Partner

Key themes for 2024

- **Deal volume and value:** In 2024, Australian private equity experienced a 13% growth in deal volume with deal value also increasing (as expected given Blackstone's AUD24 billion acquisition of AirTrunk). This is a trend we expect to see continue throughout 2025 with the main driver being the well documented pressures faced by private equity funds to deploy the record amount of capital at their disposal and to provide a return to LPs on previously invested funds.
- **Valuation gaps:** While tensions still existed around valuation, a combination of deferred consideration structures, broader W&I insurance coverage terms and non-control transactions helped bridge the valuation gap and assist in the completion of more deals – albeit often outside of initial contemplated timeframes. The most popular sectors for investment by private equity were technology, healthcare and energy.
- **Debt markets:** With high level of liquidity in debt markets, in 2024 we saw the increasing availability for private equity funds of acquisition finance solutions from private credit funds and other non-bank financiers. This trend is expected to continue.
- **GP staking:** We saw an increase in the popularity of GP staking in Australia in 2024 – a form of investment that involves a GP staking private equity fund (typically an evergreen fund) taking a minority investment in institutional capital managers (e.g., general partners) to provide investors with access to management fee income, carried interest and balance sheet returns. Hamilton Locke has been at the forefront of this in Australia in 2024, advising Scarcity Partners on its first three GP stake investments.
- **ESG mandates:** ESG principled investment strategies was an area of continued focus for many private equity funds, much of this led by the mandates of its investors. Professional service firms are moving quickly to build their ESG consulting offerings to take advantage of this opportunity. Hamilton Locke's holding company, HPX Group, continues to build its competitive advantage in the professional services space by recently launching a new specialist ESG consulting business, Materra.
- **Management:** This year we have seen a greater involvement in local private equity transactions of specialised corporate management advisory firms supporting management in their negotiations with incoming private equity buyers.

Outlook for 2025

- **Investor pressure:** We anticipate an increase in M&A activity in the Australian private equity sector in 2025. While some of this is brought about by more positive macro factors such as the easing of inflationary pressures, anticipated interest rate cuts, better IPO conditions and stronger interest from overseas investors, the main reason will be the continued pressure from LPs on private equity funds to put committed capital to use and to provide a return on previously invested funds. As such, we expect to see an increase in secondary transactions and potentially the establishment of new continuation funds.
- **Political uncertainty:** While there are some additional regulatory hurdles to navigate this year, such as changes to FIRB and ACCC (see pages [5](#) and [18](#) of this report) and the recently introduced mandatory requirement for annual sustainability reports on mandatory climate-related financial disclosures, our view is that the main risk to M&A deal flow is stagnation caused by this year's Federal election in Australia and the geo-political turbulence of unpredictable US domestic and foreign policy.

Public Market



Key themes for 2024

- **Prominence of schemes of arrangement as takeover structure:**
 - Schemes of arrangement continue to be the preferred acquisition mechanism for transactions involving listed target companies. The reasons include certainty of achieving 100% control (provided scheme resolutions are passed, and court approval is obtained), and the 75% primary voting threshold which will often be easier to achieve than the 90% acceptance threshold to get to compulsory acquisition in a takeover bid.
 - Schemes may also give flexibility for a prospective bidder to walk away or renegotiate the offer price before signing an implementation agreement if they are not satisfied with the findings of their diligence. A takeover bidder does not have this flexibility once a bid price is publicly announced.
 - However, schemes of arrangement can be unwieldy in a competitive situation where rival bids can be put forward only days out from a scheme meeting. In this situation, or where a rival bidder is able to acquire a stake (such as a holding of 19.9% of target shares) that puts the scheme vote at risk, the scheme proponent may have to switch to a takeover bid with a 50.1% acceptance condition in order to remain competitive.
- **Superannuation funds outgrowing public markets:**
 - The funds under management in the superannuation sector is sizeable, and on some measures has now exceeded the value of companies listed on ASX. Further, super funds own around one third of total ASX listed equity, a figure which will only grow from here. As super funds approach the limits of how much cash can be deployed into listed equities, they are increasingly looking to private markets, and in some cases are participating in public M&A bids to privatise listed companies rather than holding listed minority stakes. Recent examples include the large public M&A bids for Sydney Airport and AusNet.
- **Private equity remaining cautious in public to private transactions:**
 - Private equity firms are exercising caution by focusing on smaller premiums and presenting more conservative first bids, being careful to avoid overpaying.
 - Private equity firms have been seeking enhanced deal protection to support their bids, such as hard exclusivity periods (relying on recent changes in Takeovers Panel policy) and call options with founders. They are often reluctant to buy a pre-bid stake though, as this risks having to sell at a loss if the deal falls through.
 - Trade buyers can be more willing to commit to a strategic deal, and are more likely to purchase a pre-bid stake outright in a competitive situation.
- **Increased regulatory fees:**
 - The Federal Treasury's new fees for schemes and takeovers last year introduced an additional cost to public market transactions. The fees range in size from AUD10,000 for transactions between AUD10 million and AUD35 million, up to AUD195,000 for transactions with a value of over AUD500 million. These fees are not expected to deter public M&A activity, but will be an additional transaction cost to factor in.

Public Market



Outlook for 2025

- **Schemes to remain the preferred structure:**
 - The advantages of schemes of arrangement should continue to make them the preferred structure for control transactions.
 - Over time, as more shares in larger companies are held by superannuation funds, index funds, ETFs, and other passive investors, it will become more difficult to reach the 90% acceptance level in a takeover bid because it will require an active decision by the shareholders. The scheme vote, on the other hand, can be passed no matter how many shareholders actually participate in the vote.
 - Schemes also have flexibility to allow some shareholders to retain their holding in the unlisted company alongside the bidder, by having those shareholders vote in a separate class. This feature is likely to be attractive to certain institutional investors in larger companies that are being taken private, as the number of alternative ASX listed investments is decreasing.
- **Private capital drawn to infrastructure:**
 - In an environment of interest rates that are decreasing (albeit slowly), private capital is expected to be drawn to infrastructure assets due to their lower risk and stability of returns (sometimes with locked in annual increases). This is likely to include not only traditional infrastructure assets such as roads, power and energy transmission, airports and ports, but also future economy assets such as data centres and renewable energy generation and storage. Where these assets are already listed on public markets they could make tempting targets for M&A.
- **Longer term outlook for public M&A in a world of more private capital:**
 - The future of public M&A for ASX listed companies is uncertain, as the number of ASX listed companies has been in a decline over the last few years, with new listings being significantly outweighed by delistings (including quite a few by reason of large takeovers). This will at some point result in the pool of potential public M&A targets declining.
 - The composition of ASX listed companies has also undergone a change in recent years. The ASX is currently dominated by large resources companies, banks, and other financial sector companies. Several large technology companies, on the other hand, have left ASX (Afterpay and Altium were taken private by large trade buyers) and are not being replaced, as successful high growth Australian technology companies are now more likely to stay private for longer, and then look to the US markets rather than ASX for a listing.
 - One effect of there being more unlisted companies with a retail investor base is that takeover regulators may increasingly be called on to grapple with corporate control issues away from the traditional listed company sphere. We acted on a Takeovers Panel matter in 2024 for a major shareholder in an unlisted company with a large number of crowd-sourced funding shareholders, a first for the Panel. We expect to see more of these kinds of companies being brought to the Panel in the future, where the policies applicable to listed targets may not always be appropriate for those that are unlisted.
 - Some founder-led technology companies have cited ASX's opposition to dual voting class shares as a reason to list on other exchanges (many of which do permit such voting structures). We do not expect ASX to change its policy in the short term, although if it did then that would open a new and (for lawyers anyway) exciting set of challenges in public M&A.

Private Credit



The rapid growth of private credit continued in 2024 with flexible debt solutions playing a key role across a number of transactions.

Key themes for 2024

- **Capital raising:** With tight capital markets, an increasing number of public companies have looked to private debt as a way of raising working capital. In particular, a number of listed lending businesses have taken on “Holdco” facilities to fund growth in their loan books and expand their products.
- **Consolidation:** As the private capital market matures, a number of players have taken steps to consolidate with rivals as a way to gain market share or to quickly gain exposure to new sectors – for example, the purchase by Regal of the Merricks private credit funds. With a number of new players entering the market and competition increasing, this consolidation is likely to continue.
- **Flexibility:** As competition for good opportunities increases, structuring and flexibility in terms is becoming more important. Increasingly borrowers are choosing more expensive private debt, over more traditional bank solutions, because of speed, more leverage and tailored terms designed to allow a business to grow faster.
- **Distress:** As the portfolios of Australian credit funds mature, private credit managers are increasingly dealing with distressed debt. While 2024 saw a number of formal enforcements, a number of informal restructuring transactions have been driven by private credit – including Metrics taking the keys to Hunter St. Hospitality from Quadrant.
- **Regulation:** With rapid growth, comes increased scrutiny and private credit has faced the spotlight with concerns around transparency and conflicts of interest. ASIC has announced that close monitoring of private credit is a key policy objective for 2025 and beyond.

Outlook for 2025

“Despite the increased talk of regulation, private credit is going to continue to grow well beyond 2025. We are hearing that most funds have a strong pipeline and high confidence for the year ahead.”

Zina Edwards
Hamilton Locke Partner and Head of Finance

Syndicated Loans



In 2024, we saw an increased focus on liability management in syndicated loans compared to previous years. This emphasis is projected to continue into 2025, with lenders increasingly seeking ways to mitigate risks in financing arrangements.

Key themes for 2024

- **Flexible debt terms:** The well-known examples of US borrowers using the flexibility in their finance documents to navigate financial distress and restructure existing liabilities or increase liquidity has brought to light potential gaps in financing agreements that lenders must consider and mitigate.
- **Increased competition:** Throughout 2024, the predicted wave of private equity sales and related financings did not materialise which resulted in increased competition among lenders eager to finance deals, thereby strengthening the negotiating position of borrowers.
- **Increased scrutiny:** The increased focus on liability management, which is heavily dependent on the terms of finance documents, has led to greater scrutiny when negotiating finance documents to ensure that the terms adequately address the potential risks.

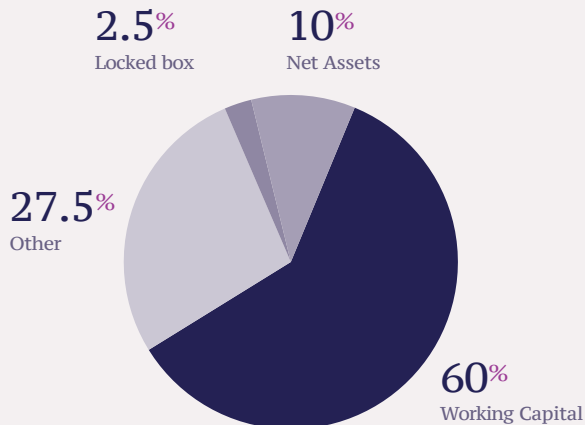
Outlook for 2025

“In 2025, we can still expect to see an increased focus on liability management in syndicated loans. As such, we can expect this focus to be at the forefront of lenders’ minds.”

Lauren Cloete
Hamilton Locke Banking and Finance Partner

Deal Analysis

Adjustment mechanism: 2024 saw an increase in the popularity of purchase price adjustment mechanisms being used in M&A transactions. 60.60% of all M&A transactions contained a purchase price adjustment mechanism, which is an 8.9% increase on 2023. Completion accounts, specifically net debt/working capital adjustments continue to be the favoured price adjustment mechanism. Of these adjustments:



Deferred consideration: Earnout provisions were present in 29.5% of the SPAs we advised on in 2024. This was a significant increase from what we saw in 2023.

27.27% of M&A transactions contained deferred consideration. Of these:

29.41%

29.41% of transactions containing deferred consideration contained a development milestone payment structure where the obligation to pay the consideration is crystallised upon targets in project development being achieved.

41.17%

41.17% of transactions had deferred consideration paid by the buyer in tranches; and

29.42%

29.42% of transactions had deferred consideration conditioned and payable upon targets being satisfied.

Earnouts: Earnout provisions were present in 13.63% of the SPAs we advised on in 2024. This is a significant decrease from what we saw in 2023.

New Energy

M&A activity in the renewable energy sector surged in 2024, reflecting strong investor confidence and increasing international interest in Australia's renewable energy sector. Major transactions included Ingka Group's investment in the Golden Plains Wind Farm – set to be the largest in the southern hemisphere – and Brookfield's AUD10 billion acquisition of a majority stake in Neoen.

According to the Clean Energy Council, AUD3.3 billion was recorded in large-scale renewable generation projects during Q3 2024 alone, surpassing total investment for all of 2023. Beyond traditional renewables, sustainable aviation fuel (SAF) gained traction with Qantas, Airbus, Idemitsu Kosan and others investing over AUD30 million into Jet Zero Australia to develop SAF from agricultural by-products.

“Investment in Australia's renewable energy sector surged in 2024, with Q3 alone surpassing total investment for all of 2023 – demonstrating strong investor confidence and growing interest from international players. We continue to see a heightened focus on technical due diligence and firming capacity, as investors seek to mitigate risks and enhance the long-term viability of projects.”

Jo Ruitenbergh
Hamilton Locke Corporate Partner

Key themes for 2024

- **Energy storage:** Battery Energy Storage Systems (BESS) and hybrid BESS-solar remained central to M&A, with assets enhancing grid stability in high demand. Firming capacity – balancing supply and demand – became critical, setting the stage for further investment in 2025.
- **Infrastructure and supply chain:**
 - The expansion of the electric vehicle (EV) market has driven increased investment in both EV technologies and supporting infrastructure, particularly fast-charging networks. Securing ethical and stable supply chains for critical minerals, such as lithium, is becoming a key strategic focus for investors as demand for EVs grows.
 - Volkswagen Group's AUD69 million strategic investment in Patriot Battery Metals – a transaction in which Hamilton Locke advised Volkswagen – reflects the growing emphasis on securing sustainable and ethical supply chains to support the EV industry.
- **Technical due diligence:** We have seen buyers focus more heavily on technical due diligence to identify risks that can affect project viability, bankability, performance and returns. These include grid curtailment risks, long-term offtake arrangements, grid connection feasibility and battery sizing.

Outlook for 2025

- **Energy storage:** AEMO's regulatory changes have made hybrid BESS-solar projects more viable, spurring investment. Retrofitting underperforming solar farms with battery storage presents a growing opportunity.
- **Hydrogen:** The Australian Government's AUD8 billion funding signals strong support for renewable hydrogen. While still early-stage, M&A will likely focus on strategic partnerships to build supply chains and commercial models. There is growing interest from institutional investors and infrastructure funds particularly in pilot projects and early-stage hydrogen hubs. Energy majors and diversified conglomerates are also exploring opportunities for strategic positioning in this emerging market.
- **Corporate PPAs:** We anticipate a rise in corporate investment in the renewable energy sector through long-term Power Purchase Agreements (PPAs) as companies seek to meet sustainability targets and hedge against rising energy costs. Global tech giants such as Google and Amazon have already led the way in Australia in recent years. In Europe, the number of corporate PPAs soared in 2024 (despite a decline in contracted volumes), and we expect to see increased corporate demand in Australia follow a similar trend.
- **Political uncertainty:** The re-election of Donald Trump has shifted U.S. energy policy toward fossil fuels, creating market volatility. Queensland's new regulatory hurdles have increased wind farm risks, potentially redirecting investment to other states. The 2025 federal election will be pivotal in shaping investor confidence in the sector.

Carbon Markets

The Australian Carbon Markets continued 2024 in a state of cautious inertia. Regulatory uncertainty, a recurring theme from 2023, persisted, while shifting geopolitical sentiment has accelerated a broader retreat from ESG commitments. Accordingly, the voluntary Carbon Credit market remained largely on pause, reflecting investor wariness amid wavering policy direction.

Decarbonisation technologies, which inherently require capital-intensive, long-term investment horizons, continued to struggle with fundraising. This trend aligned with a broader cooling of investor appetite for technology ventures (including as a result of interest-rate driven increased costs of capital) exacerbated by the high upfront costs and extended payback periods associated with emissions reduction initiatives.

Outlook for 2025: compliance as a growth driver

“Despite the global retrenchment from ESG-driven mandates, compliance obligations and the realisation of early adopter financial benefits to organisations will likely sustain long-term demand for both Carbon credits and Decarbonisation technologies. The regulatory uncertainty surrounding many aspects from the US Inflation Reduction Act, through European Union directives and Australian domestic legislation should prompt a reallocation of capital towards markets with clearer policy direction. Australia stands to benefit—provided the incoming Federal Government delivers a decisive stance in the upcoming Federal election.”

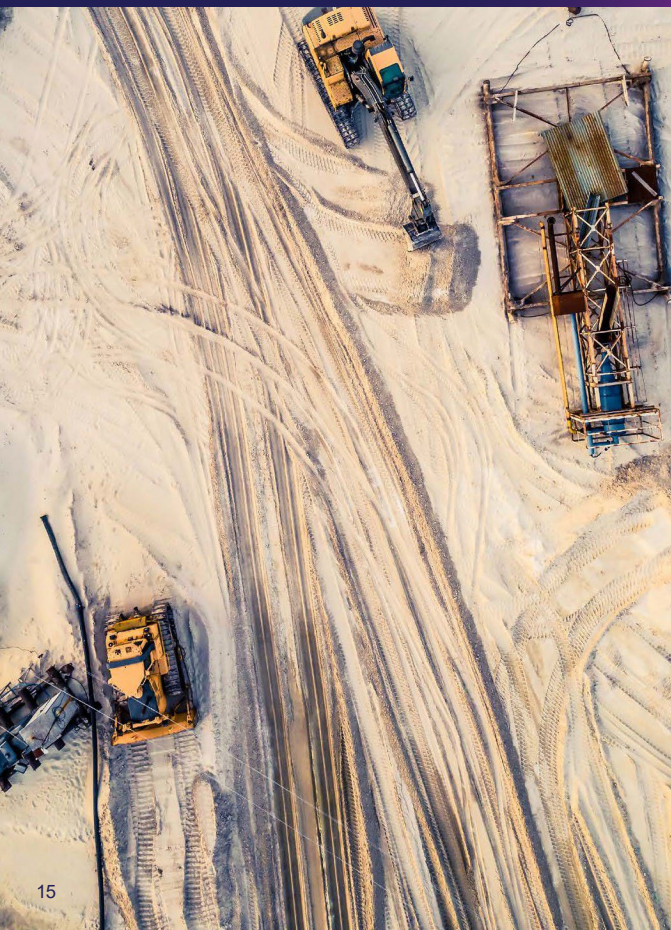
James Delesclefs

Hamilton Locke Carbon Capital M&A Partner

Key themes for 2024

- **M&A activity and capital flow observations:**
 - Acquisition strategies in the land-based Carbon sector shifted notably in 2024. Where once corporate emitters and institutional investors played a dominant role, existing Project Developers have taken the lead. The recent partnership between Australian Soil Management and Climate Friendly exemplifies this shift, indicating a drive for diversifying Project methodologies.
 - Large emitters, without regulatory compulsion, appear less inclined to integrate Carbon investments into their core operations, leading to an observed funding gap. Government-led initiatives, while still a potential catalyst, have underwhelmed overall in execution, albeit in the context of the uniquely ambitious, far reaching and deeply funded Federal Labour Powering Australia policy.
 - **International capital remains engaged:** Bloomberg's acquisition of Viridios' carbon trading platform and Jet Zero's SAF project development underscore the continued relevance of Australia's carbon sector on the global stage. Relevantly, a broader realignment of capital flows appears in places to be underway, with investors pivoting from decarbonisation to adaptation, whilst also looking ahead at Natural Capital opportunities - a telling shift in priorities as regulatory clarity remains elusive.
 - To meet the demand for Decarbonisation consulting services, private capital has nonetheless continued to invest in the relevant expertise, as highlighted by Pemba Capital Partner's stake in Rennie Partners and Mizuho Bank's investment in Pollination.
- **Regulatory uncertainty and policy shifts:**
 - Foreign investment in Australian Carbon sequestration projects remains subject to detailed scrutiny given the agricultural land component, with the Foreign Investment Review Board (FIRB) continuing to play a central role, alongside the ongoing complexity of securing carbon access rights through local land registration processes. Policy clarity on these and other related processes would be welcome.
 - A potentially significant inflection point came in January 2025 with the introduction of Mandatory Climate Reporting legislation. While large corporations have long been engaged in Carbon strategy compliance, the expansion of reporting requirements to smaller entities could refocus capital towards decarbonisation efforts. We have expanded on this topic in [this article](#).
 - Globally, the evolution of Article 6 of the Paris Agreement should drive further international Carbon credit transactions, bolstering Australia's position as a supplier, whilst domestically the long-awaited implementation of the Integrated Farm and Land Management Method (IFLM) may provide long-overdue clarity and investment momentum in land-based Carbon projects.

Mining and Resources



Key themes for 2024

- **Gold, gold, gold!:** Against the backdrop of an increasingly volatile geopolitical climate, the price of gold continues to surge as investors seek to capitalise on the precious metal as a hedge against instabilities plaguing the market, a trend that looks likely to continue into the near future at least. The ever-strengthening gold price continues to drive activity in the sector, although it is the mining companies in production, or near-term production, that are deriving most of the benefit, and junior gold explorers still face headwinds.
- **Critical minerals ascendance:** The sector has experienced unprecedented growth in recent times, driven by the desire of governments globally to ensure security of supply for critical minerals, including the Federal Government's Critical Minerals Strategy 2023-2030 which has, amongst other things, opened up funding opportunities for the development of critical minerals' projects. President Trump's election in late 2024 is expected to fuel further support for the sector.
- **Legislative impacts on sector:** Native title issues and permitting were an increasing cause of concern in 2024 as State Governments locked horns with the Federal Government on proposals to give effect to certain legislative amendments, headlined by the WA Government's lobbying to have the Native Title Act altered in order to ensure the security of mining leases. There was also increased scrutiny in relation to mining project approvals, with Regis Resources the subject of a controversial decision by Federal Environmental Minister, Tanya Plibersek, who blocked the McPhillamys gold project on native title and heritage grounds.

Outlook for 2025

- **Consolidation and increased M&A activity:** Tight capital markets, increased capex costs, and lower commodity prices are creating ideal conditions for a wave of consolidation activity in the mining sector. With explorers facing difficulties in raising capital to advance their exploration projects, and uncertainty around commodity prices, we expect to see the flurry of M&A activity in the mining sector that occurred in 2024, continue in 2025. We also expect to see companies seeking other ways to protect their assets and conserve cash, with a focus on enticing a major to participate in a project by farming-in or entering mineral sharing arrangements.
- **More positivity for the gold sector:** With the gold price at all-time highs, particularly in Australian dollar terms, there continues to be a positive outlook on gold projects with investors returning to their safe-haven commodity. This is partly due to macro conditions, with US debt and global conflicts and uncertainty playing a key role. This has only been bolstered by the return of President Trump, which has culminated in a further surge in the value of the precious metal. We expect the increased gold focused M&A we saw in 2024 to continue into 2025, illustrated by Northern Star's AUD5 billion all scrip takeover bid for De Grey Mining in December.
- **Increased commodity pricing challenges:** The downward pressure on many commodity prices, particularly lithium, has posed significant challenges for explorers and miners alike, and we expect that to continue to cause uncertainty in 2025. Despite the current market conditions, there remains some optimism regarding the medium to long-term outlook for the commodity prices of most critical minerals, especially for companies with efficient cost structures, given the essential role they will play in global decarbonisation efforts towards achieving net zero emissions by 2050. However, the longer commodity prices stay depressed, pressure will increasingly bear on higher cost mining companies and this is likely to contribute to increased M&A activity in the sector.

Deal Analysis

Asset/share sale split:

25.76%

of our M&A transactions were asset sales, whereas

74.24%

were share sales.

This percentage split is consistent with the previous year.

Scrip consideration: 21.21% of transactions we advised on contained a scrip component, consistent with the previous year's percentage of just below 20%.

Deposits: Signing deposits continued to be a rare mechanic as they appeared in only 16.66% of all transactions we advised on. However, signing deposits in negotiated M&A transactions in 2024 were more likely to be used in asset sales. 63.64% of all transactions that used a signing deposit were asset sales.



Debt: One third of transactions we advised on utilised debt funding for the transaction. Of these:

54.55%

utilised borrowing from a bank lender; and

45.45%

utilised borrowing from a non-bank lender



AgriBusiness

While 2024 presented challenges, it was certainly still a positive year for Australian agribusiness. Valuations for quality assets have remained resilient despite economic pressures. Although transaction volumes have decreased, strong domestic sector performance has sustained demand, a trend expected to continue into 2025.

Foreign investment remains robust, with North American pension funds continuing to invest heavily in the Australian agriculture sector. This ongoing interest highlights the sector's appeal and strong outlook, despite broader market uncertainties.

“Foreign pension funds, particularly from North America, are increasingly attracted to the Australian agribusiness sector due to its strong, long-term risk adjusted returns.”

Peter Williams
Hamilton Locke Corporate Partner

Key themes for 2024

- **Deal activity:** The sector experienced a decline in both deal volume and transaction value, primarily due to a reduced pool of active buyers and diminished competitive tension. This meant that transaction timelines lengthened, with extended due diligence processes and increased buyer caution shaping the pace of deals.
- **Valuation gaps:** While there remains a gap in price expectations between buyers and sellers, this has started to narrow following the stabilisation of interest rates. Earn-outs have become a standard component of deal structuring to bridge valuation gaps on operating assets, especially in mid-market transactions.
- **Succession:** Succession continues to be a key theme with the corporatisation of large family owned assets providing a platform for third-party investment and joint venture structures.
- **Distressed deals:** Distressed assets continued to emerge on the market, with certain sectors, such as packaged food, seeing increased financial strain due to rising input costs. Companies and their directors have increasingly relied on the safe harbour provisions of the *Corporations Act 2001* (Cth) to protect themselves whilst navigating financial distress and pursuing potential solutions.

“Succession challenges within the agribusiness sector are increasingly driving transactions, as many family-owned operations struggle to transition assets within the family. This trend is expected to lead to more divestitures, with owners either seeking to exit the market or corporatise and bring in third party management.”

Peter Williams
Hamilton Locke Corporate Partner

Outlook for 2025

Looking ahead to 2025, the stabilisation of interest rates is expected to narrow valuation gaps, providing more clarity and confidence in deal-making. Despite this, we expect that the market will continue to favour buyers and we won't see a return of the competitive tension that drove the COVID-19 deal boom.

Geopolitical risks and broader economic uncertainties are expected to continue to influence market volatility, particularly if tariff impositions reach the agribusiness sector. As a result, we expect deal timelines to continue to extend as parties navigate a more cautious market environment.

Competition

A look back at merger clearances during FY24¹

The Australian Competition and Consumer Commission (ACCC) assessed 307 transactions during FY24, with 93% of those matters being finalised by preassessment and the remaining 7% undergoing public reviews. The ACCC has confirmed that the majority of assessments were completed within four weeks, and 90% of Phase 1 reviews were completed within 12 weeks, which exceeded its target of 80%.

In addition, the ACCC finalised merger authorisation determinations for two high-profile acquisitions and commenced investigations into eight transactions that completed without informal clearance.

Key themes for 2024:

A year of reform

- In November 2024, the Government introduced the Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024 (**Bill**) to establish a mandatory merger control regime. The new regime will commence on 1 January 2026 and will also allow for merger parties to start using the new system on a voluntary basis from 1 July 2025.
- It is anticipated that notification to the ACCC will be required if:
 - the combined Australian turnover of the parties is over AUD200 million, and either the target has Australian turnover of over AUD50 million or the global value of the transaction is over AUD250 million; or
 - (for large acquirers) the acquirer has Australian turnover of over AUD500 million and the target has Australian turnover of over AUD10 million.
- For serial acquisitions, a notification will be required if the Australian turnover from acquisitions by the purchaser in the preceding three-year period, that involved the same or substitutable goods or services, is over AUD50 million (or AUD10 million for large acquirers).
- An additional notification threshold is proposed for acquisitions of interests above 20% in any unlisted or private company if either merger party has Australian turnover of more than AUD200 million. We expect this threshold to capture a large volume of transactions.
- Finally, notification under the new regime will not be necessary for transactions that are cleared by the ACCC under the existing informal clearance regime before 1 January 2026, provided they are then completed within 12 months of the ACCC's decision. However, if the merger parties have sought informal clearance for a transaction but have not yet obtained clearance by 1 January 2026, then the ACCC will need to be notified again under the new regime. As such, merger parties may choose to make a voluntary notification under the new regime and avoid the risk of being "stranded" in this way, from 1 July 2025.

Outlook for 2025

The regime will have a material impact on the conduct of M&A transactions in 2025 and beyond. We anticipate that ACCC engagement and strategic planning will become priorities, particularly as merger parties consider whether to make a voluntary notification under the new regime ahead of 1 January 2026.

Further details regarding the new regime will become available in the first half of 2025, including confirmation of the notification thresholds and ACCC guidance on process and timing issues.

For detailed advice tailored to your specific needs, contact Partner Alistair Newton.

¹Statistics based on data from the Australian Competition & Consumer Commission's 2023-24 Annual Report released in October 2024.

Restructuring and Insolvency

2024 saw a steady increase in formal insolvencies and wider market distress, and in turn, we saw a similar uptick in distressed M&A and control transactions through insolvency.

Key themes for 2024

- **Risk aversion:** Credit funds and opportunistic buyers have been more thorough in due diligence processes. Businesses with higher cash flow and solid hard asset positions are sought over the elusive 'growth story' that saw investment over the last five years (especially during the COVID pandemic).
- **Consumer pressures:** Businesses with exposure to consumer spending or discretionary spending will continue to have increased pressure. The broader economic factors will impact the ability to refinance and may force sales.
- **Valuation gap:** Misalignment between the valuation expectation of sellers and buyers is putting increased pressure on distressed businesses, and ongoing delay in agreeing on the right number is often crystallising insolvency.
- **Foreign investment:** Australia is still seen as a stable regulatory environment to deploy capital – be it debt or purchasing businesses. Despite FIRB and other regulatory requirements, offshore parties remain very interested in Australian restructuring opportunities.
- **Safe harbour:** Boards have actively tried to manage their risk profile by taking advice on the safe harbour provisions. This statutory process allows boards to manage through periods of distress to find a better alternative to liquidation (including a sale).

“2024 saw a well-publicised increase in formal insolvencies, with much of this at the smaller end of market and with many terminal liquidations. There remained however significant appetite for parties looking to acquire businesses out of distress or indeed formal insolvency, or for current stakeholders to restructure businesses laden with unstable debt positions. Often this was to add bolt-ons to existing businesses or to expand into different sectors with similar thematic. We expect to see more distressed opportunities in 2025, and more pain across the broader economy.”

Nicholas Edwards
Hamilton Locke Restructuring and Insolvency Partner

Financial Services

In 2024, the financial services sector continued to navigate regulatory reform and active regulatory enforcement. Building on the learnings from 2023, we saw a heightened focus and more nuanced understanding of regulatory risk in transactions, with the deployment of innovative de-risking solutions, such as bespoke conditions precedent and conditions subsequent being negotiated into transaction documents. With inflationary pressures, high borrowing costs and lower equity valuations, industry consolidation is gaining momentum, especially for businesses that are volume-based plays such as payments, credit and digital assets.

Key themes for 2024

- **Heightened regulatory compliance:** Businesses were faced with a heightened focus on risk management compliance, particularly in light of regulator enforcement actions. We have seen ASIC, AUSTRAC and the ACCC strongly enforce their regulatory mandate whether via proceedings, enforceable undertakings or otherwise. This environment has impacted deal structures and resulted in more heavily negotiated warranties and indemnities in transaction documents.
- **Due diligence focus:** Due diligence adopted a more sophisticated approach with a greater understanding of the nature and impact of regulatory risks including licensing, unfair contract terms, design and distribution obligations as well as privacy and technology risks.
- **Sector consolidation and investor scrutiny:** We are starting to see more acquisitive / divestment opportunities in the market that have a focus on service offering expansions or volume / synergy benefits. This is a key indicator of industry consolidation. Businesses with a strong balance sheet are exploring the best ways to deploy capital and this may mean buying and integrating similar or related businesses. Whereas businesses with weaker balance sheets and limited cash runway are exploring exit opportunities to maximise value given the cost of borrowing and lower equity valuations.
- **Reform pathway evaluation:** With major payments, digital asset and BNPL reform on the horizon, investors are paying close attention to current compliance and how businesses are readying themselves for regulatory reform as part of transaction due diligence.

Outlook for 2025

- **Payments and digital asset reforms:** With major reforms on the cards for payments, digital assets and BNPL (all at varying stages), businesses are exploring transaction opportunities given the increased regulatory burden and compliance costs. Like other regulated industries, we are likely to see industry consolidation with fewer bigger players dominating the market. Industry consolidation is not a question of if, but when and how much. Businesses are positioning for upcoming changes which may significantly influence deal activity.
- **Tech integration:** Artificial Intelligence is the new buzzword, and we are seeing an increasing focus on the benefits and risks of AI in transactions. Investors want to see meaningful integration of AI into business processes and the management of privacy, data sovereignty and risk.
- **ESG:** With the spate of greenwashing regulatory actions, investors want to better understand ESG approaches and risks. We anticipate that transactions will place a greater emphasis on public statements versus everyday practice as part of due diligence.
- **Warranty and indemnity insurance:** We expect to see an uptake in W&I insurance for larger transactions to mitigate regulatory enforcement risks in a maturing sector.
- **Secondary trading and VC exits:** With VC funds looking to realise investments and the lack of IPO activity, we expect to see increased secondary trading of securities in scale ups that are “unicorns” or “darlings”.

Deal Analysis

Conditions

80.30%

of M&A transactions we advised on contained conditions precedent to completion of the transaction. Due diligence and material adverse change conditions precedent continue to be key negotiation points for buyers and sellers:

11.32% contained a condition precedent that the buyer first must be satisfied with its due diligence.

32.08% contained a condition precedent that there has been no material adverse change between signing and completion.



39.40%

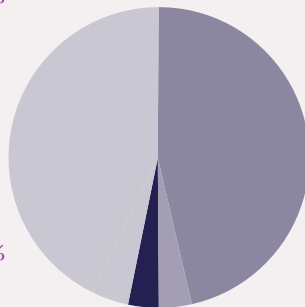
of all M&A transactions contained either a material adverse change condition precedent or termination right. Of these:

38.46%
EBITDA

11.54%
Net Assets

11.54%
Profit

38.46%
Other



Specific indemnities were negotiated in

48.48%

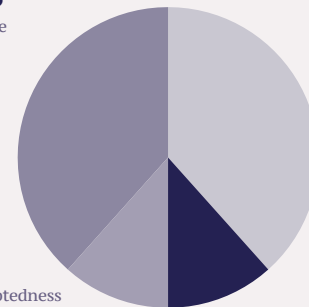
of transactions we advised on:

46.88%
for Employee
liabilities

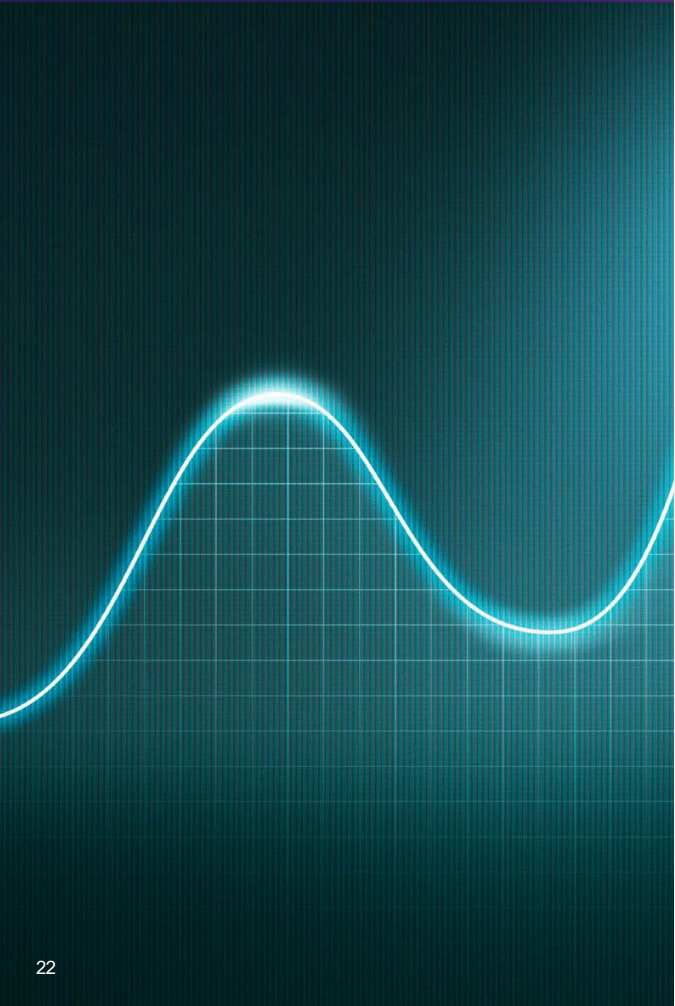
46.72%
Other

3.2%
Target indebtedness

3.2%
Product liability



Tax



Key themes for 2024

- **Due diligence:** Employee tax issues continued to be a consistently problematic aspect of due diligence, particularly with payroll tax and superannuation guarantee in circumstances where the target has hired contractors. Given the hardline approach taken by the Australian Taxation Office and state revenue offices, alongside the prohibitive penalties imposed, employee taxes are becoming an issue that buyers, and W&I insurers are no longer willing to overlook or trivialise.
- **Structuring:** Australia introduced new thin capitalisation and debt deduction creation rules in 2024. As a result, we are seeing more care being taken in pre-transaction economic modelling to ensure that interest deductions on the acquisition debt are maximised. This is especially evident in infrastructure and renewable energy acquisitions that use multiple layers of trusts that are generally not consolidated from an income tax perspective.
- **Transfer pricing:** Another problem identified often through due diligence is the lack of transfer pricing documentation and appropriate benchmarking, especially amongst groups where the Australian operations are a small part of a global group. Our conversations with others in the market revealed that this issue is present in virtually all deals in the small/mid-size target range.

Outlook for 2025

Capital gains tax:

- It is likely that the proposed measures to expand the asset base for foreign resident capital gains tax may influence buyer decisions around transaction structures. Although the proposed measures are yet to be introduced, they will likely impact foreign purchasers who may be considering whether to invest in, for example, Australian renewable energy assets. These investments may have historically been structured so as not to give rise to a tax liability on an exit, but under the proposed rules, will likely give rise to a tax liability for foreign residents that needs to be factored into their return.
- The expanded capital gains tax base may have impacts on pricing negotiations and deal valuations for assets such as wind turbines, solar panels, water entitlements and battery energy storage systems. Consequently, we may see a rise in buyers seeking to factor in latent capital gains tax liabilities.

W&I

The W&I insurance market experienced a significant shift in 2024, driven by the influx of new entrants. This increased competition has resulted in lower premiums, broader coverage offerings, and streamlined processes, including the move away from routine underwriting calls. Despite macroeconomic challenges impacting M&A activity, the value of W&I insurance remains strong, with approximately 50% of Australian M&A deals utilising this coverage. We also observed a growing interest in complementary risk mitigation tools, such as contingent legal risk insurance, to address specific known risks. This dynamic and evolving market is expected to continue throughout 2025.

Key themes for 2024

Increased competition and market dynamics:

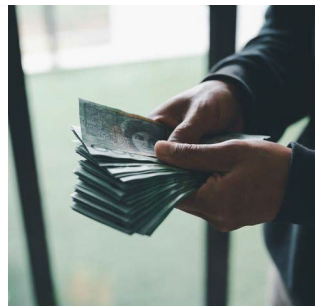
The number of primary W&I insurers in Australia has more than quadrupled in recent years, creating a highly competitive landscape. Key effects include:

- **Lower premiums:** Premiums have decreased steadily from their 2021 peak of 2%, averaging between 0.7% and 1.5% in 2024. This average is expected to hold steady in 2025.
- **Broader coverage:** While individual underwriter positions vary, the market has generally seen more comprehensive coverage, including areas previously excluded, like condition of assets and environmental liabilities. While core exclusions and areas of focus are expected to remain consistent in 2025, a well-advised insured can often negotiate broader coverage within those areas.
- **Expanding market reach:** In 2024, insurers demonstrated a greater appetite for smaller transactions, with increasing adoption of W&I insurance for deals under AUD10 million. The introduction of specialised products tailored for these smaller deals has also garnered interest from the venture capital market. This segment is expected to remain a key target for W&I insurers in 2025, with these specialised products growing in popularity.
- **Shifting underwriting practices:** The presumption of no underwriting call became standard practice in 2024, with calls reserved only for situations where responses to underwriting questions necessitate further discussion. While this can improve efficiency, we recommend clients exercise caution. Direct interaction with the insurer can be invaluable for building rapport and conveying a nuanced understanding of valuation, risk assessment, and due diligence, aspects that written responses, often prepared by advisors, may not fully capture. While we do not anticipate a return to mandatory underwriting calls in 2025, insureds should evaluate the need for a call on a case-by-case basis.
- **Claims trends:** Claim notifications increased in 2024, with approximately 5% to 10% of insured deals resulting in a claim, a 50% rise from 2023. The timing of notifications (within three years of policy inception) remained consistent, a trend expected to continue in 2025. We observed faster claim settlements, with insurers working to expedite the process. The areas of claims remained consistent with previous years and are expected to remain so in 2025, primarily concentrated in:
 - Tax and Financial (32%)
 - Contracts (23%)
 - Employment (15%)
 - Compliance (15%)
 - Other (15%)

2025 Predictions



Foreign investment in Australian renewable energy projects to increase following the outcome of the U.S. election: The re-election of Donald Trump in the U.S. in late 2024 has shifted U.S. energy policy back toward fossil fuels which in turn could direct capitals flows from U.S. renewable projects to Australia. We expect activity in renewable energy transactions to be a key driver in a buoyant M&A market in 2025.

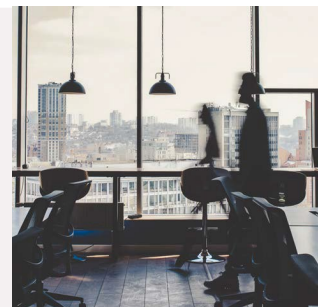


Access to cheaper debt to compliment high levels of dry powder: High levels of liquidity in debt markets and lower interest rates should facilitate dealmaking for cautious private equity sponsors. The stabilisation of interest rates will help to narrow valuation gaps which will have a positive effect on dealmaking.

Antitrust focus: ACCC engagement and strategic planning will become priorities for transaction structuring and process following the implementation of the new regime. It adds another layer of complexity to the transaction for parties to consider.



W&I market growth: More lower value transactions will have access to W&I insurance on the back of reduced premiums and the development of innovative insurance products. This affords sellers a clean break from the liabilities of the company or asset and should encourage otherwise hesitant sellers to engage in a sale process.



H1 rush: We expect a rush of deal activity in the first half of 2025 as buyers look to deploy their capital before the mid-year Federal election is held and the new merger control regime comes into force.



ESG and climate reporting: Compliance with the new mandatory climate-related financial disclosures will be a key consideration for due diligence on potential targets. We expect potential buyers to look for customary warranty coverage in respect of this requirement.

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