

M&A in Motion

Hamilton
Locke 

A strategic guide to trends and
market intelligence in Australia



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Open Letter

We are pleased to present Hamilton Locke’s M&A in Motion: A strategic guide to trends and market intelligence in Australia, our comprehensive analysis of the Australian mergers and acquisitions landscape over the past year.

This report draws from the extensive range of deals that Hamilton Locke advised on throughout 2025, providing you with data-driven insights grounded in real transaction experience. Our analysis reflects not only market statistics but also the practical realities we encountered whilst negotiating and executing deals across multiple sectors during a year of significant regulatory change.

This year’s report provides actionable intelligence across several dimensions:

Market Data and Trends

We analyse transaction structures, pricing mechanisms, risk allocation approaches, and deal certainty measures based on our 2025 transaction data. We have categorised market sectors by health status, from robust health to under pressure conditions, to help you assess where opportunities and challenges lie.

Predictions

We take a look back at our sector specific predictions from 12 months ago to assess whether the markets performed as we expected. We also share our thoughts on the year ahead, before recent developments in the Middle East. The only thing that is certain since this report was written is that recent geopolitical events will increase uncertainty for dealmakers. Whilst a sustained period of volatility and disruption in global supply chains will significantly impact many deals there will no doubt be opportunities created which could also have unanticipated consequences on predicted market activity.

Sector-Specific Insights

The report examines private equity dynamics, including exit pressure, regulatory uncertainty, and the impact of new ACCC mandatory merger controls and FIRB interventions. We explore public markets activity, including the continued preference for schemes of arrangement, private capital’s influence on infrastructure assets, and the challenges facing

tech IPOs in Australia. Specific focus is given to new energy and emerging industries, particularly battery energy storage systems, data centre demand, and the structural use of deferred consideration tied to regulatory and development milestones.

Regulatory and Policy Landscape

From 1 January 2026, a broad range of notifiable acquisitions now require ACCC clearance before completion, with all filings published on the ACCC’s website within a day of notification. From 1 July 2026, certain acquisitions of a minority interest above 20% in a listed company will also be captured. These changes create deal friction through extended timelines, loss of confidentiality, increased costs, and heightened execution risk requiring more precise material adverse change clauses and stronger bidder obligations around regulatory approvals. In financial services, digital asset and payment service provider licensing regimes are driving consolidation, with earnout structures tied to regulatory milestones becoming increasingly prevalent.

Throughout this report, we share specific data points from our 2025 transactions that can inform your negotiating strategies.

We hope that this report provides valuable context for your strategic planning and transaction decision-making in 2026.



Gaynor Tracey
Partner, National
Co-Head of Corporate



Shaun Hardcastle
Partner, National
Co-Head of Corporate

Hamilton Locke’s 2026 Predictions

Based on market conditions and outlooks prevailing before the recent escalation in the Iran conflict, we predicted rising insolvencies, increasing regulatory complexity and tightening credit markets would drive heightened distressed M&A activity, but new merger control rules will prevent many rescue transactions from completing, forcing viable businesses into liquidation and creating opportunities for cash rich buyers able to navigate regulatory complexities. Together, these themes set the context for the analysis that follows and the implications for participants in the distressed M&A market.

The construction sector is experiencing particularly pronounced distress, with supply chain disruptions, labour shortages and cost escalations driving insolvencies. Agribusiness faces climate-related challenges, policy uncertainty and commodity price volatility that will force consolidation. Healthcare operators are struggling with regulatory compliance costs and margin pressure.

Merger control reforms are expected to increase friction in corporate rescue deals by extending the time required to close restructuring transactions and thereby increasing transaction costs, potentially preventing certain restructuring transactions occurring and leading to some companies being placed directly into liquidation rather than voluntary administration.

Our transaction data reveals how sophisticated buyers are preparing for this environment:

80% of our transactions contained deferred consideration, including fixed deferred tranches (33.9%), earn-out mechanisms (24.2%) and holdback mechanisms (12.9%). These structures allow buyers to manage execution risk and regulatory uncertainty. 52% of our transactions contained material adverse change clauses, an increase on 39% from 2024.

Whilst 2026 will deliver Australia a significant opportunity in distressed asset M&A, those who are best positioned to navigate the increasing regulatory complexity will stand to benefit.

Market Health Check

This report utilises a Market Health Check to summarise the outlook for 2026.

Health Status	Outlook
Robust	Sector is in strong shape with a high deal appetite. Indicators include abundant dry powder, improved financing conditions, stable valuations and supportive regulation.
Stable	Sector is functioning normally but lacking major catalysts – activity in 2026 to be broadly consistent.

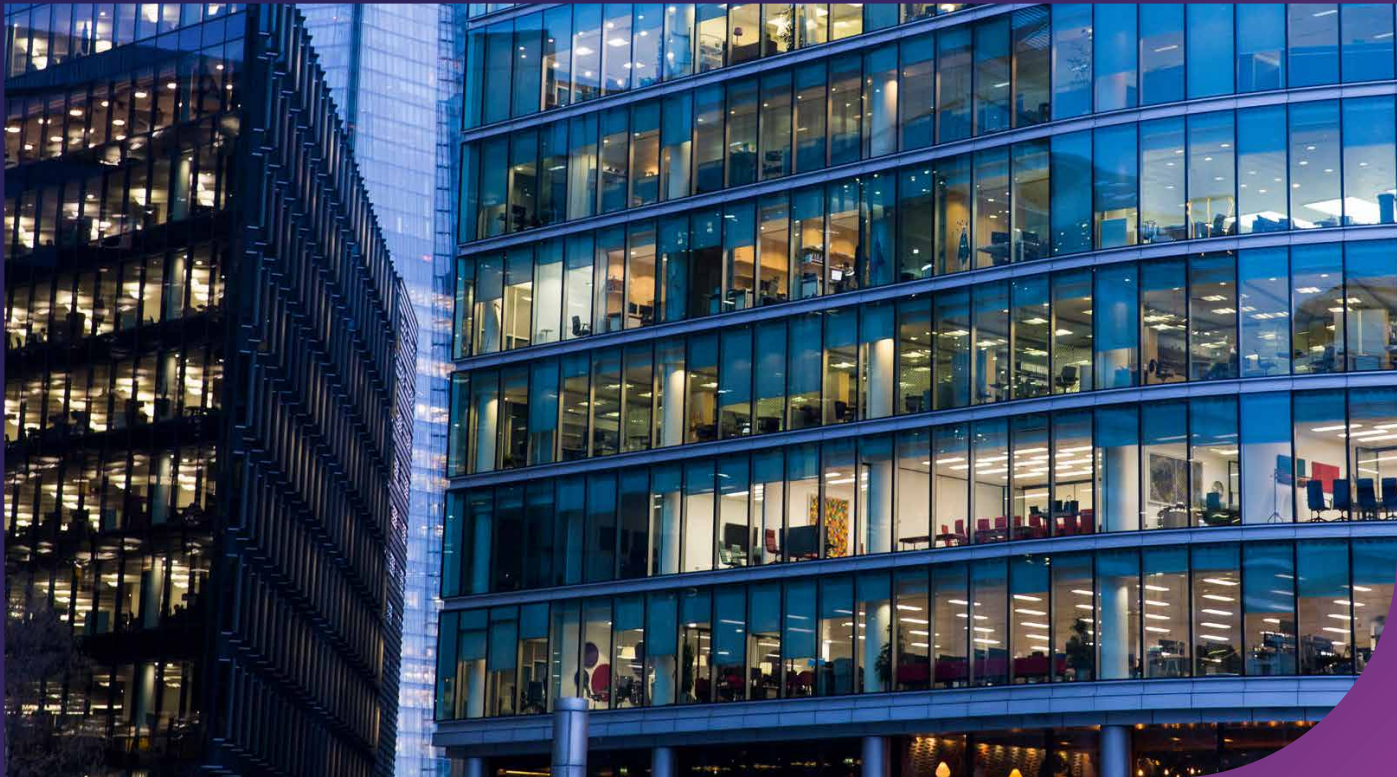
Sources of Capital



Private Equity

Public Markets

Private Credit



Private Equity

Market Health Check:
Robust



“Exit pressure is finally meeting a more cooperative macro backdrop. With stabilising rates, tighter MAC drafting, and earn outs doing the heavy lifting on valuation gaps, sponsors are leaning into secondary processes, continuation vehicles and select IPOs. The winners in 2026 will be those who price regulatory friction early and use creative deferred consideration to keep deals moving.”

Gordon McCann

The Prediction for 2026

Exit pressure and creative deal structures

Limited Partner pressure to release gains and return capital will influence private equity transactions, driving sponsor-to-sponsor sales, continuation vehicles and a busier secondary market as managers work through ageing portfolios. Strong macro factors including stabilising interest rates should lift deal flow.

The exit environment appears to be stabilising, which will see more firms considering the possibility of pursuing an IPO this year given improving market signals, rather than relying on more predictable private market exits. Conditions for IPOs appear stronger in 2026 as bid-ask spreads narrow, global markets show more consistent investor engagement and several recent mid-market floats are performing adequately in secondary trading.

Regulatory uncertainty

Additional regulatory hurdles will present significant uncertainty for private equity transactions in 2026, creating execution risk and potentially stagnating deal flow. The introduction of Australia’s new mandatory merger control regime, ongoing FIRB interventions in sensitive sectors, ASIC’s report into capital markets, and unresolved product disclosure rules mean dealmakers must navigate multiple layers of regulatory complexity that threaten transaction timetables and reduce deal certainty. Hamilton Locke remains closely engaged with industry developments through its representation on the Australian Investment Council committees, providing clients with practical insights as these regulatory changes unfold.

ACCC merger

Since 1 January 2026, a broad range of notifiable acquisitions now require ACCC clearance before completion, with all filings published on the ACCC’s website within a day of notification. This gives anyone (e.g., competitors, customers, employees)

the opportunity to engage with the regulator and potentially disrupt transactions. In the short term, guidance on waivers, thresholds and exemptions continue to be refined in practice, leaving many questions unanswered and adding to deal uncertainty.

FIRB

Whilst most transactions continue to receive FIRB approval, deals in sensitive sectors face heightened political scrutiny. The Mayne Pharma and Cosette dispute, shows that even conditional approvals may not be enough to get transactions over the line in healthcare and critical supply chains. Private equity bidders face the risk that late-stage political considerations will derail their deals.

ASIC

Australia’s regulatory environment is set for greater regulatory scrutiny in 2026, with ASIC’s REP 823 (Advancing Australia’s evolving capital markets: Discussion paper response report) signalling a sharper focus on private market integrity. Key areas relevant to private equity include closer scrutiny of private credit practices, increased expectations around fees, conflicts and disclosure, and a stronger regulatory interest in improving data quality and reporting across private markets, reflecting the rapid growth and uneven maturity of the sector. While any reforms are expected to create a more transparent framework in the long run, the review period will continue to generate regulatory uncertainty until any revised settings are fully defined and operational. Separately, ASIC’s move to bring forward the Regulatory Guide 97 (Disclosing fees and costs in PDSs and periodic statements) review to FY26/27 has been well received after sustained industry advocacy to modernise fee disclosure settings and address distortions affecting capital allocation, particularly for private equity and venture capital. The Australian Investment Council has described the review as overdue and important for ensuring clearer and more balanced disclosure rules that better support investment in growth stage businesses.

Did the Market in 2025 behave in line with our expectations?

As predicted, private equity activity in Australia picked up through 2025 as funds faced pressure from investors to deploy committed capital and show returns on their existing portfolios. After a slow start, funds used more stable macro conditions, easing inflation, expected interest rate cuts, stronger IPO markets and growing offshore interest to complete transactions. Technology emerged as a standout investment, and activity remained steady in mining, healthcare and financial services. Secondary transactions and continuation funds also became more common as funds seek creative exit vehicles to manage liquidity and extend hold periods.

Negotiation Tools from HL 2025 Deal Data

25%

of private equity transactions signed in the first half of 2025

75%

of private equity transactions signed in the second half of 2025.



Public Markets

Market Health Check:
Robust



“Public M&A will be active but more structured: schemes remain the vehicle of choice, while the new merger control regime adds time, cost and public scrutiny to every step. Expect resources names to dominate the headlines, and for targets to demand tighter bidder obligations on ACCC and FIRB approvals, including reverse break fees and ticking fees to mitigate increased regulatory risk.”

Guy Sanderson

Despite regulatory headwinds in the form of new merger controls, the prospect of increasing M&A in the listed resources sector should make 2026 an active year for public M&A deals in Australia.

While 2025 was a relatively steady year for M&A-related equity raisings on the ASX, with growth financings dominating the market, we anticipate a similar trend in 2026. However, the evolving regulatory landscape and jurisdictional risks are expected to introduce additional complexity to deal execution.

The Prediction for 2026

Merger controls to create deal friction

We expect that many public M&A deals will be weighed down due to regulatory changes coming into effect this year, in particular the new merger control regime. These changes will capture many more transactions than in the past, including (from 1 July 2026) certain acquisitions of a minority interest above 20% in a listed company. Even where there is no competition concern in relation to a transaction, the new regime will create friction due to:

- timing for the mandatory notification and/or waiver application, which may delay closing;
- loss of confidentiality for mandatory filings, which may cause parties to file only once the deal is signed and has become public, which will exacerbate the potential timetable delays and regulatory uncertainty; and
- fees for the ACCC process, which will lead to increased transaction costs.

FIRB uncertainty

To a lesser extent FIRB risk will be front of mind for foreign bidders, including because of the political uncertainty created by the Mayne Pharma decision. Bidders for Australian critical minerals assets will also need to contend with increased scrutiny of transactions in this increasingly geopolitically sensitive sector.

Listed resources companies in the M&A spotlight

Copper, silver and gold are at all time highs, and demand continues to increase for rare earths and other critical minerals to support the electrification agenda and data centre construction boom. We expect increased takeover interest in ASX listed

resources companies from both trade buyers looking to acquire new feedstock or diversify their portfolio, and financial bidders such as private equity funds looking to take a position on lucrative commodities.

Did the Market in 2025 behave in line with our expectations?

Overall, our 2025 market outlook was borne out.

Schemes of arrangement to remain the preferred public M&A structure

Looking at public M&A deals in 2025 (counting completed deals and current deals as at 31 December 2025, but excluding unsuccessful and withdrawn deals), schemes accounted for approximately 68% of deals by number. The number would be even higher by value of completed deals, as larger deals almost always require the predictability afforded by the scheme process. That said, takeover bids will still have a role to play in a competitive situation, in particular where they can leverage the tactical advantage of a pre-bid stake. We saw this in the battle for control of New World Resources Limited in 2025, where Hamilton Locke acted for the target in respect of one scheme, two takeover bids, and eight separate bid price increases before a victor emerged.

Private capital drawn to infrastructure assets

We observed continued private capital interest in infrastructure-related assets, consistent with the broader trend of private capital and superannuation funds seeking stable, long-term returns. The government’s push towards critical minerals investment, including the establishment of a new A\$4 billion critical minerals infrastructure facility, combined with rising commodity prices, will continue to contribute to increased deal activity in these sectors.

Influence of private capital

2025 again saw a slide in the number of companies listed on ASX, with the number of equity issuers falling by a net 70 to end the year at 1,915. Another year of low new listing numbers was a key driver of the net decrease. Private equity owners of potential IPO companies have become more risk averse in their approach to using an ASX listing as an exit, using dual-track processes (IPO or trade sale) to find the best price in a market where private valuations are often higher. ASX and ASIC took steps during 2025 to streamline the IPO process timetable, hoping to strengthen the attractiveness of public markets given the key role they play in the Australian economy.

Tech companies looking to the US instead of ASX

In 2025 tech IPOs on the ASX faced significant headwinds, with listings such as Saluda Medical, Epiminder and Carma trading below their IPO offer prices. These late-year disappointments highlighted the persistent challenges facing tech listings in Australia, particularly the valuation gap between what investors are willing to pay and the perceived potential of early-stage technology ventures. Australian tech companies with global ambitions continue to look towards US exchanges, where deeper capital pools and greater investor appetite for growth technology companies offer more attractive listing conditions.

Takeovers Panel looking at unlisted companies

There were a small number of Takeovers Panel applications made in 2025 in relation to unlisted companies which at some point had more than 50 shareholders. Interestingly, the matters concerned shareholder disputes where other legal avenues were either unavailable, or were more expensive to access (given the Panel’s relatively low application fee). We expect to see more disputes brought before the Panel as the availability of private capital enables companies to delay listing for longer.

Negotiation Tools from HL 2025 Deal Data

Implementation agreements for schemes and recommended takeover bids are more highly regulated than private M&A sale agreements, and largely follow a familiar path. Two key negotiation points that we see becoming more important in the year ahead are:

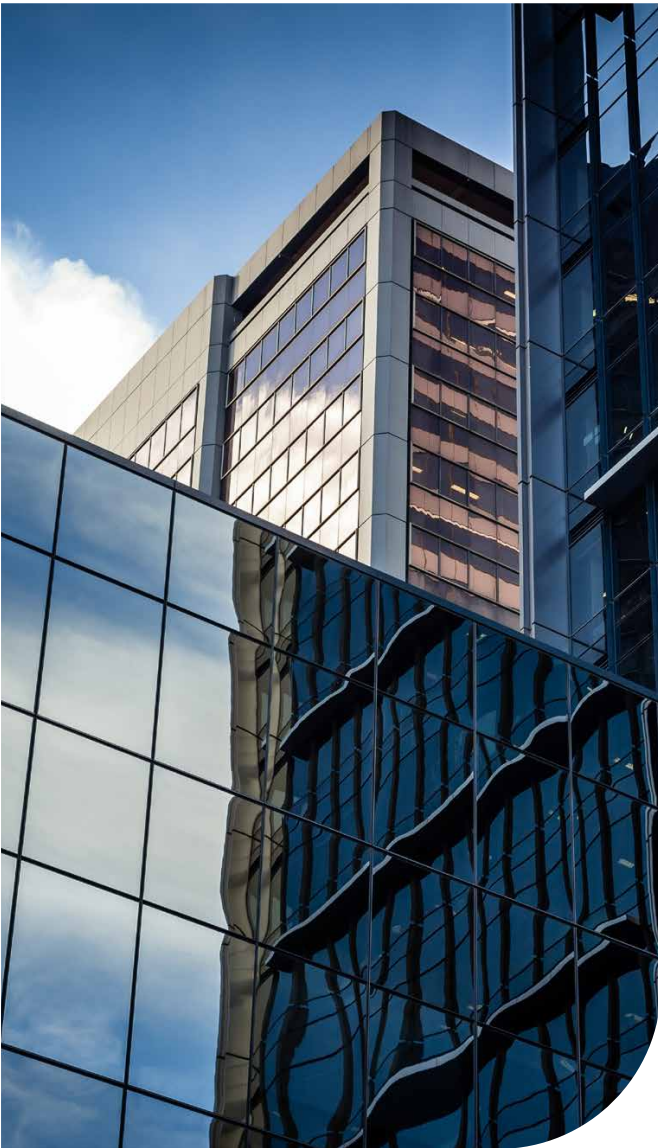
Material adverse change conditions

The Mayne Pharma decision has fundamentally changed how parties will approach material adverse change clauses. They need to be a lot more precise, formulaic and objectively measurable, moving away from more general concepts involving causation or a likelihood of future effects which can be hard to prove to the high standard demanded by the court. Arguably this is merely a continuation of a theme ASIC flagged back in September 2022 in a Corporate Finance Update, where ASIC said they expect material adverse change conditions to contain objective and quantifiable standards by which the parties to a transaction, and their securityholders, can clearly determine whether a material adverse change has occurred.

Bidder’s regulatory approval conditions

We anticipate the increased legal and policy risks regarding ACCC and FIRB approval conditions will flow through to the pre-deal negotiation phase. Parties will spend more time analysing potential regulatory triggers, and assessing the timetable impacts. More attention will also be turned to the bidder’s role in obtaining the regulatory approvals it will require, and this could be a combination of:

- more detailed obligations on the bidder to apply for and obtain its approvals, and more restrictions on taking action that could put those approvals in jeopardy (as Cosette, the US bidder for Mayne Pharma, is claimed to have done when it publicly changed its intentions in relation to keeping manufacturing facilities open in South Australia); and
- targets seeking reverse break fees from bidders where regulatory approvals are not obtained, whether or not the bidder was in breach of its implementation agreement obligations. There is scope for targets to seek reverse break fees higher than 1% of the bid value as the Takeovers Panel policy on break fees does not regulate a reverse break fee to the same extent.



Private Credit

Market Health Check:
Robust



“Private credit maintains strong momentum into 2026, with continued growth driven by sustained investor demand for higher yields, borrowers’ need for flexible financing, and emerging distressed debt opportunities.”

Monty Loughlin

The private credit sector is expected to maintain strong momentum in 2026, supported by continued capital inflows, improving market fundamentals, and banks remaining constrained by regulatory capital requirements.

The Prediction for 2026

We anticipate that private credit will continue its robust growth, expanding at a similar pace to previous years. Capital inflows are expected to remain strong as investors seek stable income amid global uncertainty. Elevated interest rates should continue to support investor returns and moderate borrower demand.

We predict that mezzanine and private credit led distressed debt transactions will be a key feature of 2026 in pursuit of higher yields, with the energy and resource sectors a particular focus for investment as regulatory uncertainty and project feasibility challenges create opportunities.

Did the Market in 2025 behave in line with our expectations?

The market largely aligned with expectations. Private credit continued its growth trajectory and regulatory scrutiny materialised, with ASIC releasing its November 2025 surveillance report identifying areas requiring improvement across governance, fee transparency, valuations and conflict management.

Borrowers chose private credit for speed and flexibility despite higher costs. The distressed lending segment emerged as predicted, with managers playing more active roles in restructuring.

Global uncertainty was higher than anticipated but this benefited Australian private credit as a safe-haven investment. The expansion of retail investor access exceeded expectations, raising new regulatory considerations, while emerging distress positioned private credit providers for an increasingly active restructuring role.



Sectors



New Energy

Carbon Credits

Mining and Resources

Technology

Financial Services and Digital Assets

Agribusiness

Healthcare

New Energy

Market Health Check:
Stable



“Energy storage played a critical role in unlocking value in underperforming or constrained assets, with retrofitting and co-location strategies increasingly featuring in transaction rationales. From a due diligence perspective, buyers placed heightened focus on grid connection certainty and costs and planning approval risks.”

Jo Ruitenber

The Prediction for 2026

Foreign utilities and infrastructure funds, particularly from Asia and Europe, will drive M&A activity as they seek established platforms in Australia’s renewable energy sector. Mid-tier developers facing development financing constraints will pursue strategic exits to well-capitalised foreign and domestic infrastructure funds.

With 74 committed storage projects in the pipeline (13.3 GW capacity and 35.0 GWh energy output)¹, investment in standalone and hybrid Battery Energy Storage System (BESS) projects will remain robust, particularly co-located with data centres and industrial users to mitigate curtailment risk.

Amazon’s A\$20 billion expansion of data centres in Sydney and Melbourne highlights growing corporate demand for renewable energy supply. By 2030, data centres are forecast to consume between 8% and 20% of Australia’s electricity, up from 5% in 2024, unlocking significant opportunity for off-take agreements and hybrid energy solutions.

Investment in clean technologies such as energy efficiency solutions, carbon capture, green hydrogen applications and innovative storage or smart grid software is expected to accelerate, driven by corporate sustainability commitments, government incentives and the increasing cost-competitiveness of low-carbon solutions.

Increased M&A activity is expected in sub-5 MW solar and BESS projects, driven by faster development timelines, lower grid-connection risk and strong demand from commercial, industrial and community-scale offtakers. These assets are increasingly attractive to private capital and aggregators seeking scalable portfolios and contracted revenues.

Did the Market in 2025 behave in line with our expectations?

M&A activity in Australia’s renewable energy sector in 2025 saw capital recycling, platform consolidation and storage-led repositioning. While new investment in large-scale renewable generation slowed materially, transaction activity remained resilient as sponsors rebalanced portfolios, infrastructure capital sought scaled platforms, and storage emerged as the primary investment value driver.

BESS continued to attract outsized investor interest, reflecting their growing role in managing volatility, firming intermittent generation and underpinning bankable revenue structures. In contrast, renewable generation assets, particularly wind, faced headwinds from transmission delays, planning uncertainty and constrained development finance. These conditions reshaped both what assets traded in 2025 and how deals were structured.

While the re-election of the Albanese government provided renewed policy certainty, particularly through the expansion of the CIS, structural barriers continued to shape transaction dynamics. Transmission bottlenecks, protracted permitting processes and development financing challenges remained key friction points.

However, rather than suppressing M&A activity altogether, in practice, we saw increased use of:

- deferred consideration and milestone payments tied to connection, planning or CIS outcomes
- staged sell-downs and minority growth capital investments; and
- transaction structures designed to allocate grid and development risk more precisely between the buyer and seller.

These trends were consistent with the broader increase in milestone-based deferred consideration observed across M&A transactions in recent years, particularly in capital-intensive and infrastructure-adjacent sectors.

Carbon Credits

Market Health Check:
Robust



“After another challenging year marked by sentiment headwinds and limited transaction activity, improved policy certainty coupled with sustained offshore and private equity interest should catalyse consolidation and deal flow in 2026, particularly as Integrated Farm and Land Management and other methodologies gain traction whilst decarbonisation technologies receive further industry validation.”

James Delesclefs

The Prediction for 2026

With the Integrated Farm and Land Management method (IFLM) now in draft form for consultation, increased regulatory certainty may catalyse consolidation and heightened M&A and fundraising activity amongst project developers. Offshore interest, most notably from Japan, remains strong, whilst private equity and other funds continue raising dedicated capital for environmental opportunities, infrastructure core-plus and related strategies with mandates encompassing this sector. Accordingly, capital should be abundant to match transaction opportunities once the regulatory framework stabilises.

In parallel, investments through roll-up strategies and new platform investments in the broader carbon consulting ecosystem are anticipated to remain robust. On the technology front, federal funding (including the National Reconstruction Fund Corporation), environmental approvals and industry endorsements such as Jet Zero’s SAF and Calix Limited’s ZESTY technologies should serve as precursors to broader market validation of emerging decarbonisation technologies.

Whilst the staggered application of Mandatory Climate Reporting to smaller entities is expected to generate increased interest in carbon projects and decarbonisation technologies, the market does not anticipate a material demand uplift in the short to medium term given the current macropolitical environment.

Did the Market in 2025 behave in line with our expectations?

Continuing geopolitical headwinds and regulatory uncertainty surrounding carbon credits and related financing, both globally and domestically, resulted in another subdued 12 months for investment and M&A activity in the carbon sequestration sector.

On the world stage, COP 30 focused predominantly on adaptation finance, with participants failing to reach consensus on carbon emission mitigation measures that could have provided much-needed impetus to

the global carbon market. Domestically, high land prices, volatile crop yields and continued uncertainty around the future of the human-induced regeneration method resulted in suppressed valuations for carbon developers and a corresponding lack of fundraising and M&A activity. Notably, however, investors and project developers, did in the meantime, expand the scope of methodologies adopted, with (albeit higher cost) environmental plantings and forestry investments (such as Adamantem Capital’s investment in PF Olsen and Forest 360).

Mandatory Climate Reporting legislation came into force for the largest emitters in 2025 but has yet to drive any publicly stated shift in board attitudes amongst less well-resourced entities regarding investment in carbon offset projects of scale or decarbonisation technology projects.

As for decarbonisation technologies, financial institutions remained reticent to lead funding rounds without clear industry endorsement, with capital predominantly allocated to service providers in the broader decarbonisation ecosystem, such as Pemba Capital’s investment in consulting firm Ektimo.



¹ Clean Energy Council, Quarterly investment report: Large-scale renewable generation and storage, Q3 2025.

Mining and Resources

Market Health Check:
Stable



“Whilst macro events may drive short term price spikes in various commodities, market volatility and increased regulatory intervention will mean that opportunistic M&A will continue to face challenges in 2026. The deals that will thrive in 2026 will be made by bidders looking to strategically consolidate tonnes or grade into projects with existing infrastructure or very near-term development potential.”

Shaun Hardcastle

The Prediction for 2026

M&A activity in Australia’s energy and resources sector is expected to remain steady through 2026, underpinned by continued strength in gold, silver and copper prices and renewed strategic interest in battery metals, critical minerals and energy transition assets. The hunt for projects with scale and grade is also driving interest in Australian targets with projects in Africa and Latin America.

While overall deal volumes are unlikely to accelerate, transaction quality is expected to remain high, with buyers prioritising advanced-stage assets with near-term production opportunities.

Capital availability will remain selective. Junior and mid-tier resource companies may continue to face challenges raising pure project finance, particularly for greenfield or capital-intensive projects, as lenders remain disciplined amid commodity price volatility and regulatory friction. This dynamic is expected to drive a continued consolidation of gold assets by bidders with existing access to capital and infrastructure.

Critical minerals remain a structural growth theme, in line with a broader thematic where the changing geopolitical landscape is continuing to be a driving

force in M&A activity. Government policy support, including funding initiatives and offtake backing, continues to support deal activity across lithium, rare earths, copper and battery materials. However, heightened geopolitical instability, FIRB scrutiny and foreign investment considerations will increasingly influence deal structuring, diligence focus and execution timelines.

Whilst often overlooked, regulatory, native title and permitting risk are becoming an increasing concern for mining operators. Buyers who skimp on this diligence may find themselves paying a premium for assets that are less exploitable than budgeted for. Aside from diligence, the use of deferred consideration, milestone payments and conditionality tied to permitting, development and regulatory outcomes could be employed to mitigate exposure to these risks.

Whilst our market prediction for 2026 is “Stable”, the increased volatility in global markets driven by extraordinary macro events cannot be ignored. Market volatility significantly increases deal risk, and while deals using creative blends of scrip and cash can seek to hedge against these market gyrations, it is likely that any sustained periods of market volatility could significantly hamper deal volumes during 2026.

Did the market in 2025 behave in line with our expectations?

Broadly, yes. Deal activity in 2025 aligned with expectations, particularly in relation to consolidation and capital raising activity across gold and critical minerals projects.

Gold sector strength translated into transaction momentum. Elevated gold prices supported increased equity raisings, strategic investments and asset-level transactions, enabling companies to progress development pipelines and execute portfolio optimisation strategies. We observed strong appetite for advanced gold projects with defined resources, established infrastructure or near-term production potential.

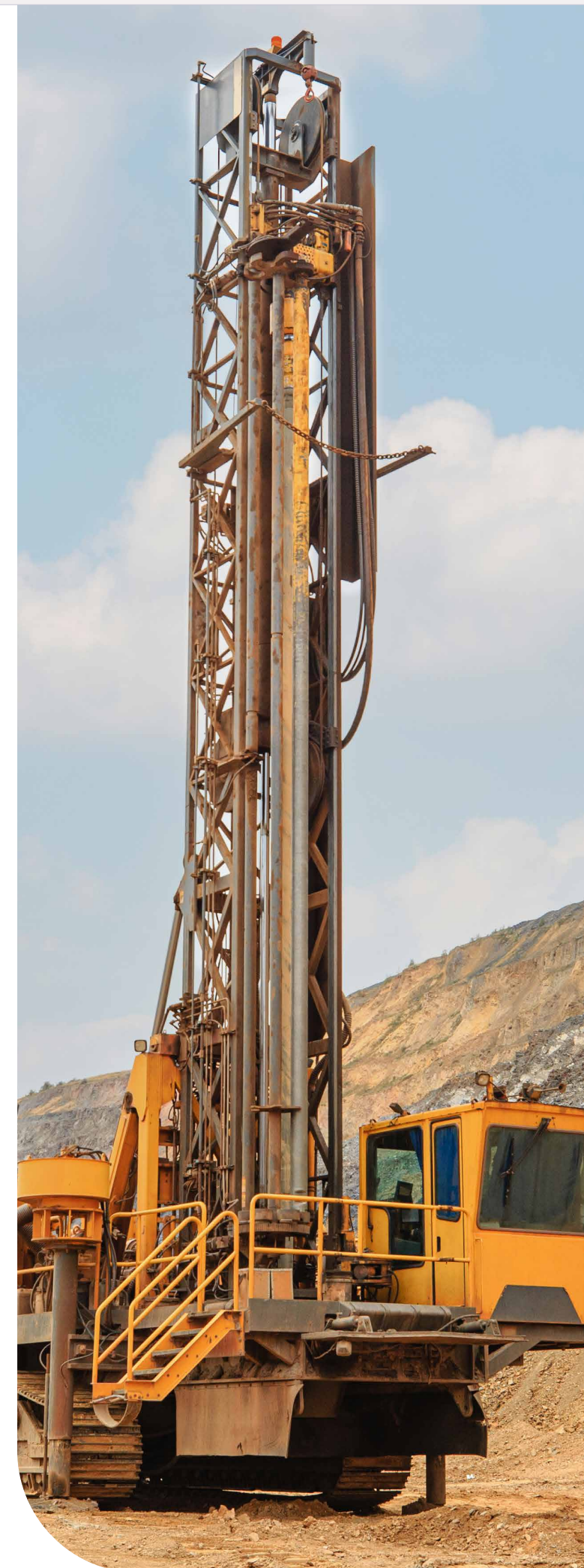
Capital discipline shaped deal structures. While investor appetite remained strong for quality assets, funding was increasingly structured to manage risk. Transactions commonly featured staged investments, deferred consideration or milestone-linked payments, reflecting ongoing uncertainty around development timelines, permitting and commodity price sustainability.

Foreign and strategic interest remained resilient. Despite heightened FIRB sensitivity in certain sub-sectors, offshore investors continued to target Australian resources assets, attracted by stable legal frameworks, high-quality geology and long-term demand fundamentals tied to electrification, decarbonisation and energy security.

Execution risk became more pronounced. Extended regulatory processes, competition law reforms and increased scrutiny of foreign investment approvals contributed to longer transaction timelines and greater emphasis on contractual protections, including more prescriptive conditions precedent and walk-away rights.

Negotiation Tools from HL Deal Data

- Mix and match consideration, allowing shareholders to choose their own balance of cash and scrip consideration
- Two in one structures, where demergers are undertaken concurrently with a takeover to maximise the value of assets that would otherwise be overlooked in the asset mix



Technology

Market Health Check:
Robust



“Tech continues to outpace the broader market, with AI and AI infrastructure deal appetites driving deal flow and filling the SaaS gap. Across all sectors, investors are as focused on the analysis of AI capabilities and vulnerabilities as the quality of a Company’s earnings.”

Gaynor Tracey

The Prediction for 2026

Technology will continue to be a key sector for dealmakers. Strong deal activity will continue with tech-focused mid-market transactions with the main focus unsurprisingly on AI. The big change from 2025 is the sharp decline in public stocks and corresponding valuations of private enterprise software companies, as the market reacts to the capabilities of generative AI. However, the jury is out on whether the ‘SaaSocalypse’ will actually come to pass or whether the need for trusted and tested software and infrastructure remains. Whatever the result, the current market perception will undoubtedly create M&A opportunities as sellers seek to exit or merge.

On the AI front, as companies seek to remain relevant, investment in AI, workflow efficiency, and content will be king. AI will continue to redefine software, hardware and also media. The increasing prevalence of generative AI will continue the trend of information decentralisation and consumption away from established media sources. This, in turn, will see advertisers explore new platforms and drive acquisitions and consolidation activity as investors seek to capture new market share. While the Australian market is unlikely to see a surge in pure AI plays, with capital continuing to centre on

overseas technology hubs we still expect AI to have an indirect influence on the majority of transactions across all sectors, with vendors increasingly needing to demonstrate how targets plan to utilise AI to drive productivity and competition.

Finally, global investment in defence and military technology will continue to trend high and therefore, technologies that can demonstrate military applications will continue to enjoy heightened demand.

Did the Market in 2025 behave in line with our expectations?

Overall, the Australian tech M&A market has largely performed in line with our expectations.

Company valuations as a multiple remain elevated in comparison to other sectors and deal volumes have been high, particularly at the mid-market. The success of SaaS and AI driven businesses have helped the broader sector outperform other industries.

Interestingly, however, data centre deal activity across the region has not yet mirrored the rapid acceleration seen internationally across global markets to service AI and is yet to replicate the heights of Blackstone’s acquisition of Airtrunk in 2024.

Financial Services and Digital Assets

Market Health Check:
Stable



“Rising compliance costs and the importance of scale are expected to drive consolidation, while due diligence is increasingly focused on the robustness of compliance monitoring and regulatory readiness as key valuation drivers.”

Jo Ruitenberg

The Prediction for 2026

Consolidation to accelerate

As digital asset and payment service provider licensing regimes move closer to implementation, regulatory clarity will likely accelerate selective M&A activity, particularly amongst the many unregulated digital asset and payment service providers unwilling or unable to meet the upcoming licensing obligations. More specifically, the fintech sector is primed for an active year, with a robust pipeline of mature, revenue-generating businesses positioned for transaction activity. Strategic consolidation is becoming the dominant theme, with fintechs increasingly acquiring other fintechs to capture market share and broaden product offerings. As regulatory reform beds down, rising compliance costs and the importance of scale are expected to drive both acquisition-led growth by well-capitalised fintechs and incumbents, and exit activity among sub-scale operators across payments, Buy Now Pay Later and digital assets.

Phased acquisitions manage regulatory implementation risk

We expect that earnout and phased acquisition structures will become increasingly prevalent in transactions where regulatory outcomes materially affect valuation, as buyers and sellers navigate regulatory implementation uncertainty. Earnouts tied to regulatory milestones (such as licence approvals and compliance certifications), customer retention post-regulatory change, and revenue performance post-compliance cost absorption will bridge valuation gaps. Phased acquisitions where buyers purchase an initial majority stake with staged acquisition of the remainder at the buyer’s option allow buyers to defer full valuation exposure until regulatory settings and compliance costs are clearer, while providing management retention through staged exit opportunities.

Did the Market in 2025 behave in line with our expectations?

As expected, payments and digital asset reform drove transaction opportunities as increased regulatory burden and compliance costs materialised in 2025. While compliance costs did drive consolidation as anticipated, an additional dynamic emerged: Australia’s clearer licensing trajectory increased inbound interest from offshore buyers by reducing regulatory uncertainty. This trend is further illustrated by London Stock Exchange-listed IG Group Holdings plc acquiring Independent Reserve, one of Australia’s leading cryptocurrency exchanges, with Hamilton Locke advising on the deal.

Our expectation of increased W&I insurance for larger financial services transactions to mitigate regulatory enforcement risks proved accurate. In our experience, we saw the structure evolve beyond traditional seller-warranted policies to buyer-procured insurance policies with warranties given by the target company rather than sellers. This structure proves particularly suited to financial services deals where passive financial investors (private equity, institutional sellers) lack detailed operational knowledge to provide comprehensive regulatory warranty packages, while buyers prefer recourse against the operating entity for regulatory risks.

Negotiation Tools from HL 2025 Deal Data

Financial services M&A deals in 2025 showed increased focus on regulatory compliance issues, which shaped how key deal terms were negotiated. In our experience, pre-completion regulatory uplift requirements were a key feature of negotiations, with transactions requiring steps be taken to support future AFS licensing, significantly uplift sector-specific compliance obligations, remediate existing banking and payment arrangements and develop post-completion custody control and governance uplift frameworks. We also saw material adverse change definitions increasingly address sector-specific regulatory risks.

Negotiation Tools from HL 2025 Deal Data

12%

of transactions we advised on were technology-based transactions

56%

of technology-based transactions we advised on had earn out provisions

11%

of technology-based transactions we advised on contained AI-specific clauses

Each of the technology-based transactions we advised on contained key-employee arrangements.

Agribusiness

Market Health Check:
Stable



“Agribusiness is navigating mixed fundamentals: geopolitical issues affecting export markets and input costs, softening prices in some commodities and climate variability impacting specific sectors and areas. Regulatory risk around water access and land use also continues to evolve. Consolidation will favour platforms that can manage input volatility and trade policy risk while investing in efficiency and sustainability to defend margins.”

Peter Williams

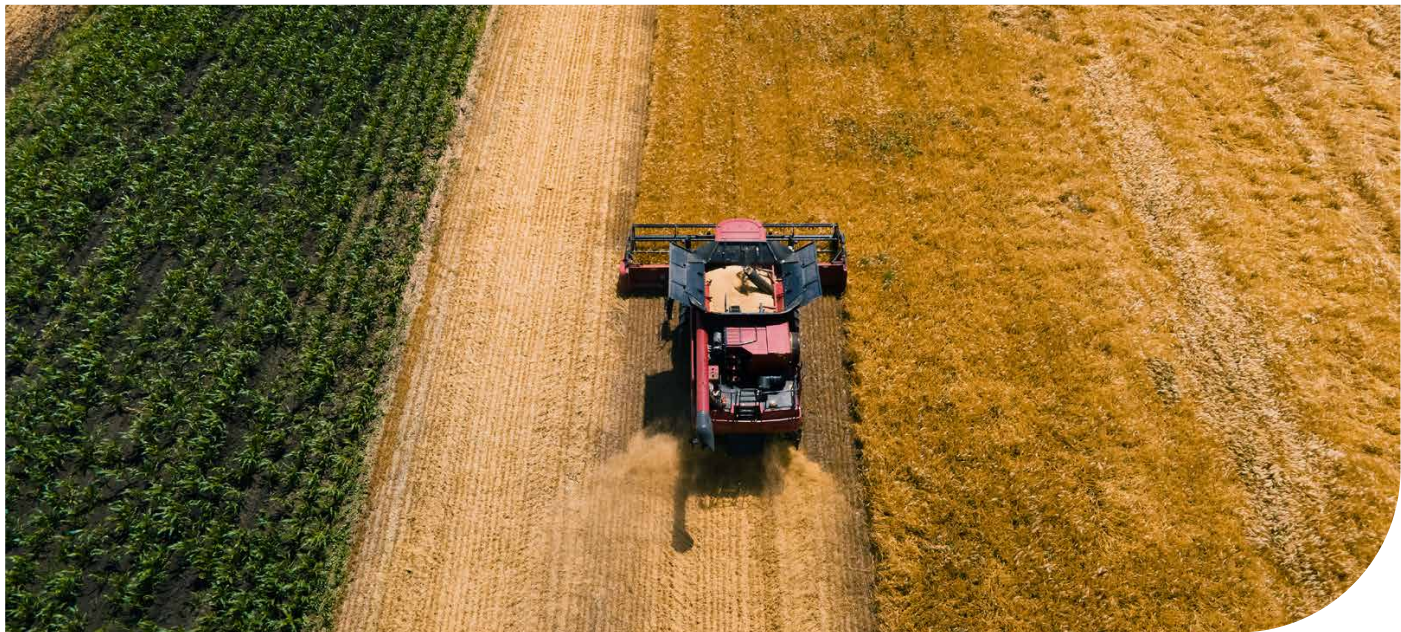
The Prediction for 2026

The outlook for Australian agriculture in 2026 is mixed, with a projected fall in the gross value of production to A\$72 billion due to lower crop and livestock volumes, although it will still be the third highest on record. Key factors include potential for better seasonal conditions in some regions, which could improve profits, alongside risks from uncertain global trade policies and elevated input cost.

Slowing global growth is expected to affect demand for discretionary items like dairy and meat more so than demand for staples, which are less sensitive to lower global incomes. Indeed, price falls are forecast for beef, wool, butter, cheese and skim milk powder in 2026. Global demand for sugar is steady, but world prices are forecast to fall 9% as low oil prices reduce conversion of sugar to ethanol fuel. On the upside, export prices for grains are forecast to rise 1.8% and remain above historical averages, while rising fruit and nut prices are supported by strong demand in China and Southeast Asia where shifting preferences for quality favour Australian produce.

Did the Market in 2025 behave in line with our expectations?

2025 was a strong year in Australian agriculture with growth in production and exports from 2024 levels. High livestock prices were a major driver of the sector's strong performance. Strong rainfall also boosted the outlook for winter crops. Some of these positive factors were offset by inflation impacting input costs and macroeconomic issues. Geopolitical risks and broader economic uncertainties influenced market volatility, particularly tariff impositions. As a result, deal timelines were longer than usual as parties navigated a more cautious market environment.



Healthcare

Market Health Check:
Robust



“Strong demographics and recurring revenue keep healthcare firmly on the buy list, but execution now turns on regulatory readiness. With ACCC scrutiny rising and FIRB risk front of mind, bidders are tightening risk allocation and diligence, while PE continues to drive buy and build across imaging, home care and allied health.”

Gordon McCann

The Prediction for 2026

M&A activity in the healthcare sector reflects increased regulatory scrutiny, active private capital participation, and strong demographic drivers. The sector remains resilient but faces rising compliance obligations and valuation pressure.

Private equity (PE) will continue to drive consolidation:

PE firms already account for about a quarter of healthcare acquirers and remain focused on diagnostic imaging, aged care and allied health. High valuations such as the reported 17.0 x EBITDA achieved in the Lumus Imaging deal and the scale of the proposed I-MED exit indicate that sponsors will keep pushing larger platforms to market while using buy and build strategies for mid-market operators. The sectors continued appeal is underpinned by strong macro drivers including a growing and ageing population, greater focus on health and efficiencies increasingly being driven by technology, including AI. Major PE-backed consolidators are actively pursuing smaller independent healthcare and radiology practices to expand their geographic footprint and service capabilities.

Regulatory intervention is slowing deal velocity.

The new ACCC mandatory notification regime that commenced this year has extended approval timelines, with aged care designated as a high-risk sector subject to heightened scrutiny that is particularly constraining PE bolt-on acquisition strategies.

Elevated competition for quality assets will influence deal dynamics.

Diagnostic imaging, home care and allied health attract significant attention due to recurring revenue and demographic demand. Buyers and sellers will navigate rising costs, labour shortages and tighter regulatory compliance, which will increase diligence requirements and reduce reliance on qualitative material adverse change clauses that have proved unreliable exit tools.

Did the Market in 2025 behave in line with our expectations?

In 2025 the mid-market remained active, with multiple transactions in the A\$10 million to A\$250 million range such as Regis Healthcare's expansion and Estia Health's acquisitions. Diagnostic imaging and home care will record strong activity as consolidators complete regional bolt-ons and position for scale ahead of regulatory reforms.

In 2025 international interest remained strong. Transactions such as Affinity's acquisition of Lumus Imaging and Fuso Pharmaceutical's licensing deal with Dimerix demonstrate that foreign investors will continue to value stable regulatory settings and predictable revenue in Australia's healthcare system.

Negotiation Tools from HL 2025 Deal Data

We saw the following specific indemnities included in healthcare transactions we advised on:

- 1. Schedule 4 Medicines handling violations;
- 2. Australian Health Practitioner Regulation Agency logo usage issues;
- 3. regulatory advertising violations; and
- 4. health fund overpayments and recorded incidents.

Restructuring and Insolvency



Restructuring and Insolvency



Restructuring and Insolvency



“2026 will see ongoing distress across the economy especially in construction, ageing new energy projects and manufacturing. Similar to previous years, we anticipate that there will be equally as much informal work outs or restructures as there are formal insolvency appointments. This is often dictated by access to capital, a sponsor’s commitment to the business and cash runway. There remain deep pockets of liquidity amongst credit funds, and the ability to refinance businesses who still have a path back to profitability remains strong. In particular, we anticipate that Victoria will continue to be a hot spot for insolvency and distress as government levies as well as ongoing issues associated with the construction industry create a difficult environment for businesses of all scale.”

Nick Edwards

The Prediction for 2026

The Australian restructuring and insolvency market continues to reflect heightened financial stress across a range of sectors, with elevated levels of formal insolvencies and sustained pressure on underperforming balance sheets. This environment has driven increased restructuring activity, including distressed M&A, recapitalisations and change of control transactions implemented both within and outside of formal insolvency processes. A key theme of the current environment is the growing role of non-bank lenders in enforcement activity, as they increasingly pursue court-based recoveries against distressed SMEs as well as formal enforcement action against underperforming assets while major banks retreat. This shift reflects tighter traditional credit conditions, greater reliance on higher-cost alternative funding, and insolvency levels that now exceed pre-pandemic norms.

Continuing surge in insolvency activity

In particular, across the construction and hospitality industries. ASIC’s 2025 insolvency statistics confirm the persistence of increased levels of external administrations and restructuring appointments, new superannuation laws being introduced in 2026 to incentivise employers to make superannuation contributions contemporaneously with employee payroll payments are also anticipated to increase cash flow pressure on businesses and potentially lead to further insolvency increases.

Distressed M&A execution risk

While appetite for distressed acquisitions remains strong, execution risk has increased. Valuation tension and conditional funding are extending transaction timelines, often narrowing the window for consensual outcomes.

Competition / regulatory law impact on restructuring

Merger control regime reforms effective from 1 January 2026 are expected to increase friction in corporate rescue deals by extending the time required to close restructuring transactions and thereby increasing transaction costs. This may prevent certain restructuring transactions occurring and lead to some companies being placed directly into liquidation rather than voluntary administration.

Informal restructuring

There remains an appetite for informal restructuring (or without the need for formal insolvency appointment) on larger, private equity sponsor-backed matters. This is especially the case where you have sophisticated private capital players and secured creditors who are prepared to take a longer-term view and provide continued support, and the consensus view is an insolvency could destroy enterprise value. Where appointments do occur in these scenarios they are often controlled ‘topco’ or holding company appointments to avoid disruption at the operating level whilst providing the secured lender with control.

Selective capital deployment

Lenders and investors remain cautious, with increased scrutiny on cash flow resilience, working capital management, and asset backing. Capital is being deployed more selectively, favouring businesses with demonstrable pathways to stability over speculative growth narratives. The ability to obtain a refinance or new capital is often the single biggest factor to a company entering into formal insolvency or not, given many businesses lack the ability to obtain an equity injection or indeed sell off non-essential assets for value.

Board risk management and safe harbour

Directors are increasingly engaging early with restructuring advisers to manage personal risk exposure. The safe harbour regime remains a critical tool, enabling boards to pursue turnaround strategies, restructurings, or controlled sale processes as alternatives to voluntary administration or liquidation. In 2026, the superannuation contributions reforms are anticipated to potentially limit access to safe harbour for companies experiencing constrained cashflow and consequently falling overdue for making employee superannuation payments.

Non-bank lender enforcement

Non-bank lenders are increasingly driving court-based enforcement actions against struggling SMEs as well as formal appointments over underperforming assets as major banks scale back their recovery activity. New data from the Alares Credit Risk Insights report shows non-banks have steadily increased court actions since 2019, reaching record or near-record levels through 2023 – 25, while big four bank actions have eased. This shift reflects a structural change in lending behaviour as traditional credit tightens and more SMEs turn to alternative funding, often at higher cost and with stricter enforcement triggers. The Australian Taxation Office continues to be the dominant source of court action, and overall insolvency numbers are rising above pre-pandemic levels. There is less tolerance generally in the market for borrowers with prolonged soft defaults. If lenders do not see a credible path to repayment and reliable information and engagement, patience dissipates quickly.



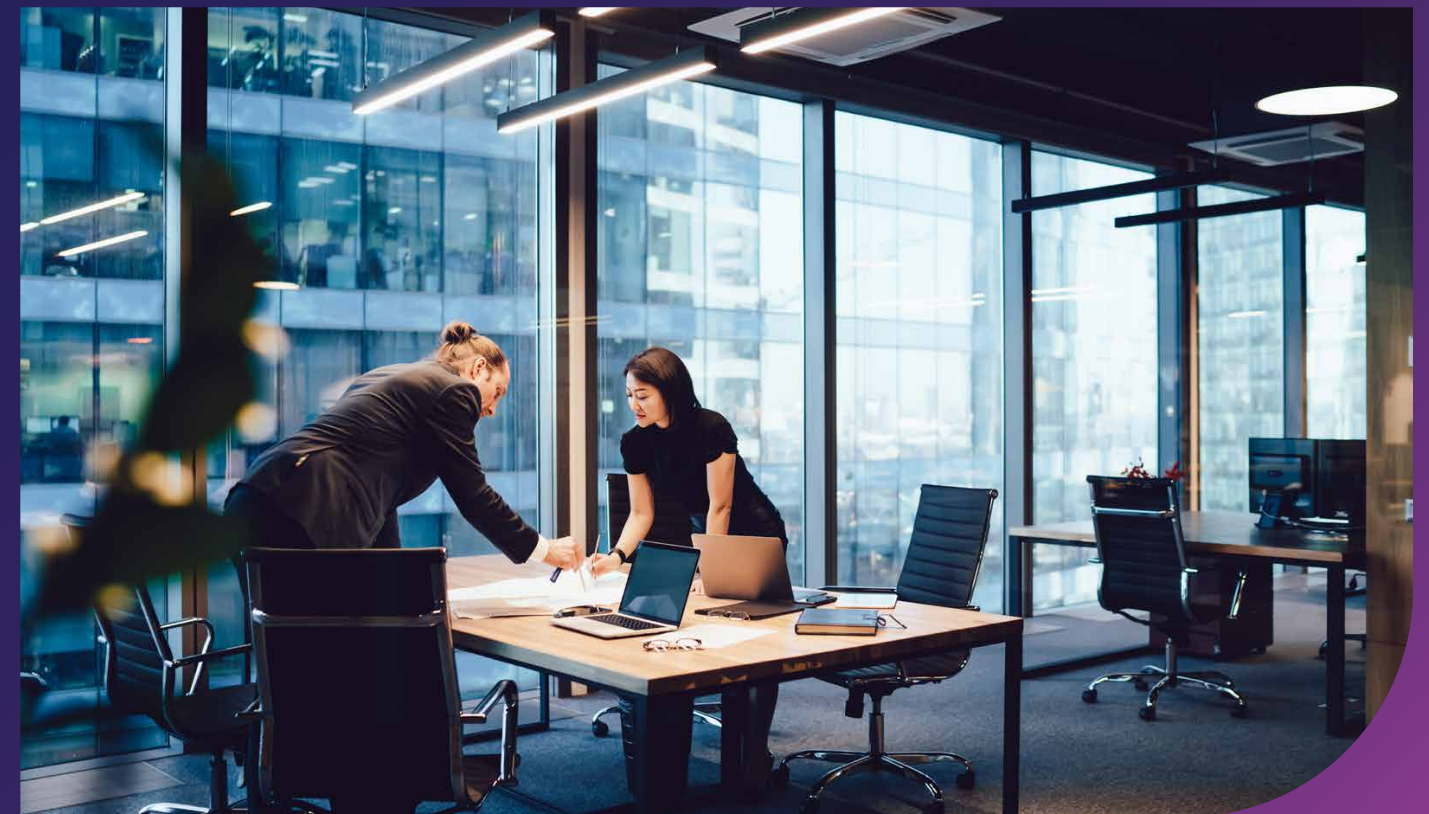
Regulatory and Policy



FIRB

Competition

Tax



FIRB



“The Mayne Pharma decision has changed how sellers think about FIRB risk. We’re already seeing sellers push for more visibility over FIRB engagement and stronger obligations on acquirers. At the same time, Treasury is consulting on some genuinely interesting reforms (particularly the idea of automatic approval for low-risk investors) which, if adopted, would be a real shift in how foreign investment is screened in Australia.”

Clementyne Rawlyk & Madeleine Kulakauskas

Outlook for 2026

FIRB Reform Proposals

In October 2025, Foreign Investment Review Board (FIRB) released a discussion paper proposing the most significant shake-up of the foreign investment framework in years. The centrepiece is a proposed automatic approval regime for low-risk investments by trusted investors – the first time FIRB has publicly canvassed moving away from its traditional prior approval model. Under the proposal, certain transactions would require notification to, but not approval from, FIRB, with the Treasurer retaining a call-in power to intervene where national interest concerns arise. The approach is similar to Canada’s regime, and would mark a fundamental shift in how Australia screens foreign investment.

Other proposals include stricter rules for sensitive and emerging sectors, amendments to the tracing rules and an expanded ‘associates’ concept – measures that could significantly broaden FIRB’s reach.

Hamilton Locke made several submissions in response to the discussion paper, drawing on client feedback and our frontline experience navigating the regime. We’ll share further insights as the reforms take shape during 2026.

Enhanced FIRB Portal

Treasury’s ongoing commitment to FIRB’s Portal enhancement is expected to deliver improved functionality and more intuitive user interfaces throughout 2026, building on the consistent upgrades observed since launch. These enhancements should further reduce review timeframes for low-risk and straightforward applications, whilst the risk-based approach becomes more pronounced in practice, potentially widening the gap between expedited low-risk approvals and extended timelines for complex or sensitive deals.

Reshaping Deal Protections

Lessons from Mayne Pharma: The Treasurer’s rejection of the Mayne Pharma takeover has introduced a new layer of regulatory uncertainty, signalling a shift in how Australian M&A may be structured. To mitigate the FIRB risks, we expect sellers to demand:

- **a seat at the table:** traditionally excluded from FIRB engagement, sellers will now insist on enhanced participation rights including strengthened contractual obligations on bidders to share all FIRB correspondence, obtain seller approval for key submissions and messages to FIRB, and allow sellers to participate directly in meetings with Treasury;
- **tougher bidder obligations:** expect sellers to impose more onerous contractual requirements on bidders regarding the types of FIRB conditions they must accept, shifting regulatory risk back onto the acquirer; and
- **higher reverse break fees:** to compensate for heightened regulatory volatility, sellers will demand increased “reverse break fees” or risk premiums.



Observations on 2025

FIRB under the spotlight

Mayne Pharma/Cosette Pharmaceuticals: After a failed attempt to terminate via a material adverse change clause, US bidder Cosette Pharmaceuticals changed tack, telling FIRB that it intended to close Mayne’s profitable South Australian manufacturing plant despite earlier statements in the scheme booklet that it had no plans to substantially change operations. In November 2025, Treasurer Jim Chalmers declined to approve the transaction (conditionally or otherwise), citing the need to ‘protect Australia’s national interest, the security of our critical medical supply chains, local jobs and the local community’. The decision handed Cosette the exit it sought, prompting accusations it had ‘weaponised’ FIRB to back out of the deal. The Treasurer’s claim that no conditions could have adequately addressed national interest concerns also drew scepticism, with critics questioning whether FIRB had been outmanoeuvred.

Santos: The A\$36 billion ADNOC-backed bid collapsed in September 2025 during due diligence - before it ever reached FIRB. However, the transaction had piqued considerable interest amongst commentators, with speculation emerging early about how FIRB would assess sensitivities around domestic gas security, geopolitical and climate considerations. One can’t help but wonder whether this regulatory shadow (cast well before formal application) shaped the deal’s outcome. Its early demise left open the question: how would the Treasurer have ruled on Australia’s largest ever foreign investment proposal?

Breaking new ground

In February 2026, the Federal Court of Australia slapped Indian Ocean International Shipping and Service Company Ltd (Indian Ocean) and its sole director and shareholder with A\$14 million in penalties for breaching Australia’s foreign investment laws – the first case brought by a Treasurer under the foreign investment regime since its introduction in 1975.

The case arose from the Treasurer’s June 2024 divestment order requiring Indian Ocean and four other foreign investors to sell their shares in Australian heavy rare earths-focused company Northern Minerals Limited to unrelated parties, due to national security concerns. When Indian Ocean transferred its shares to its director and sole shareholder, the Treasurer initiated unprecedented Federal Court proceedings. The Court subsequently declared the transfer breached the disposal order.

This outcome marks a significant escalation in FIRB enforcement, signalling the government’s willingness to pursue litigation and substantial penalties to ensure compliance with national security orders and conditions.

Heightened focus on tax integrity

Tax compliance has long been a key consideration in national interest screening, but 2025 saw significantly increased scrutiny, with FIRB directing particular attention to:

- internal restructuring, particularly transactions involving the migration of intellectual property or income-generating assets to low-tax jurisdictions; and
- private equity structures and pre-acquisition tax planning, particularly structures involving debt funding, management fee arrangements, and offshore holding entities.

FIRB also shifted away from standardised tax conditions towards transaction-specific requirements tailored to individual risk profiles, requiring more detailed tax submissions and extending negotiation periods.

The digital transition

The FIRB Portal became fully operational in April 2025, fundamentally changing application processes. Straightforward, low-risk applications have benefited from improved processing efficiency and clearer procedural pathways, whereas complex or multi-layered transactions have encountered Portal constraints, with rigid data field requirements proving ill-suited to nuanced deal structures.

From September 2025, the Portal began requiring disclosure of competition risks, transaction party revenue data (in anticipation of the new merger control reforms) and ACCC notification status, including for transactions which are clearly not notifiable to the ACCC or fall outside of Australia’s merger control regime entirely.

Decision Timelines

The Treasurer’s 2025 performance target of 30-day decisions for 50% of low-risk cases has not been consistently met. Whilst some straightforward applications have been determined within the 30-day window, many low-risk transactions continue to extend to 6 – 8 weeks. High-risk or sensitive transactions have maintained consistent decision timeframes of 4 – 6 months.

Competition



“Mandatory, public and suspensory: Australia’s new merger clearance regime changes the choreography of almost every deal and competitive process. Build ACCC analysis into day one, clarify your regulatory timelines, and plan for third party participation in the assessment process.”

Alistair Newton

Section 50 of the Competition and Consumer Act 2010 (Cth) (CCA) has long prohibited any acquisition of shares or assets that would have the effect or likely effect of substantially lessening competition in a market in Australia.

From 1 January 2026, the CCA also imposes a mandatory and suspensory notification regime for acquisitions that meet certain party revenue and/or transaction value thresholds. Where those thresholds are met, an acquisition must be notified to the Australian Competition and Consumer Commission (ACCC) and must not complete unless and until ACCC clearance has been obtained. The ACCC is required to clear an acquisition unless it reasonably believes that the merger would have the effect, or likely effect, of substantially lessening competition in a market.

Following a formal notification, uncontentious acquisitions (e.g., no or very little competitive overlap) may obtain “fast-track” clearance in as little as 15 working days. The ACCC will otherwise have 30 working days to conduct a “phase 1” review. The ACCC has indicated that it expects to approve approximately 80% of mergers within 20 business days. If the ACCC is satisfied after its phase 1 review that the merger could substantially lessen competition, then the ACCC will progress to an in-depth “phase 2” review for a further 90 working days.

There is also a “waiver” process under which an acquirer can avoid a formal notification for very straightforward matters that plainly do not raise any competition concerns. However, early experience with the new regime indicates that the ACCC will grant a notification waiver only in the most straightforward matters in which the ACCC is not required to consider any substantive issue at any length.

Notifications and waiver applications carry the following (significant) filing fees:

1. Notification waiver application: A\$8,300;
2. Phase 1 assessment: A\$56,800; and
3. Phase 2 assessment (variable based on transaction value):
 - A\$50 million or less – A\$475,000;
 - greater than A\$50 million and up to A\$1 billion – A\$855,000; and
 - greater than A\$1 billion – A\$1,595,000.

Observations on 2025 and predictions for 2026

Late 2025 saw significant uncertainty for dealmaking as the government tinkered with aspects of the new regime, including the critical thresholds for mandatory ACCC notification, as late as 18 December 2025. This period also saw a significant number of deals deliberately completed early and in advance of the introduction of the new regime, primarily to avoid a lengthy ACCC approval process and associated filing fees.

As 2026 unfolds, we anticipate the new regime impacting transactions in at least the following ways:

Early ACCC analysis

Given the significant (and often unavoidable) time and cost implications of an ACCC process, a filing analysis will often need to form part of the earliest phase of legal work on a deal. This will be of particular interest to vendors in competitive processes, in which potential purchasers may not all have the requisite revenue to trigger a mandatory ACCC notification.

Conditions precedent and termination rights

Conditions precedent and termination rights will increasingly distinguish between different phases in the ACCC process. In particular, we expect that some transactions will be negotiated on the basis that a phase 1 approval (or even a waiver) will be required, with any phase 2 process avoided. Alternatively, we expect that parties will increasingly negotiate forms of cost-sharing so that filing fees and other costs are shared, particularly if the ACCC process goes to phase 2. Conditions precedent will also often need an explicit mechanism for deciding whether any ACCC-proposed conditions are acceptable, who controls that decision, and what happens if acceptance would materially alter deal economics. Long-stop dates will also need to be set further into the future to account for lengthier ACCC review periods.

Transparency and confidentiality

An acquisitions register has been established for all notifications, which publicly discloses who the parties to the acquisition are, as well as a high-level description of the transaction. Confidential and commercially sensitive information, such as transaction value, is not disclosed. In practice, this means that:

- all mandatorily notifiable transactions will become public ahead of ACCC clearance, which may not be received until after a protracted period; and
- it will no longer be possible for various potential acquirers (e.g., multiple bidders in a competitive process) to address merger control risks by engaging with, and obtaining a view from, the ACCC on a confidential basis and ahead of signing, which under the previous informal clearance process was common.

Further, the public nature of the ACCC’s review will provide significant additional scope for third parties (e.g., customers, suppliers and competitors) to involve themselves in the process and, potentially, reduce the likelihood of ACCC clearance (or at least increase the likelihood of a lengthy (and expensive) phase 2 review).

Document "hygiene"

An ACCC notification will often require the parties to provide information memoranda and internal board documents relating to transaction rationale, valuation, post-acquisition plans, competitive conditions, market shares and business plans, for up to two years prior to the date of notification. This creates additional risks in an ACCC process. Parties should be careful to ensure that all potentially relevant documents accurately reflect the competitive context in which the parties operate and the transaction will occur, and do not contain unsubstantiated speculation that may not be fully supported by evidence (but which may nevertheless be unhelpful in an ACCC process).



Tax

Market Health Check:
Stable

Debt structuring conservatism

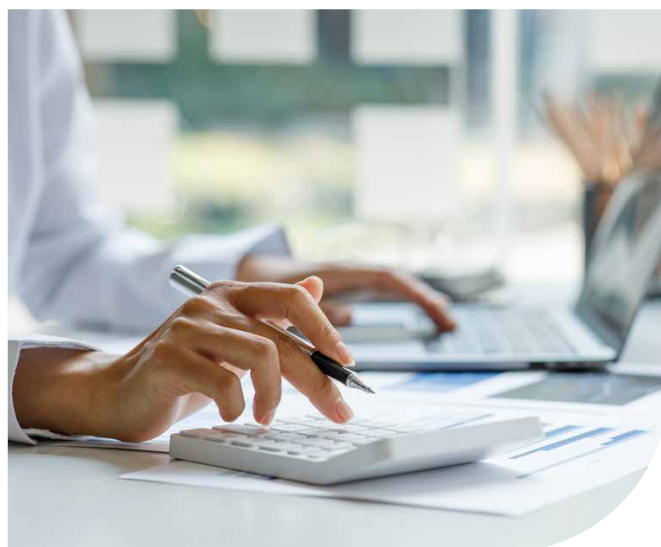
We expect the new thin capitalisation and debt deduction creation rules (DDCR) will drive a permanent shift away from related-party debt financing and buyers will increasingly favour third-party debt or equity injections to avoid permanent denial of deductions. Deals involving a debt push-down into Australian targets will require early-stage tax modelling, with simpler capital structures replacing historical leverage approaches.

Valuation adjustments for denied deductions

Post-completion tax structuring constraints, particularly denied interest deductions, are likely to become central inputs in purchase price negotiations. We expect that buyers will discount valuations for targets with limited debt capacity, and earnout mechanisms may be adjusted to reflect post-completion tax efficiency.

Transfer pricing documentation demands

Following the release of the Tax Commissioner's Practical Compliance Guideline PCG 2025/2 (restructures and the thin capitalisation rules and DDCR) and Draft Practical Compliance Guideline PCG 2025/D2 (factors to consider when determining the amount of inbound, cross-border debt), arm's-length debt quantum analysis will likely become standard due diligence where related party debt exists in the target's structure. Buyers and W&I insurers will require contemporaneous board policies, financial modelling and benchmarking studies before closing. Where targets do not have appropriate and contemporaneous transfer pricing documentation in place, sellers risk facing price adjustments or deal delays.



Did the Market in 2025 behave in line with our expectations?

Partially—though the timeline differed from our predictions.

Our 2025 outlook anticipated that the proposed expansion of the foreign resident capital gains tax (CGT) base would influence structuring decisions for renewable energy acquisitions. Whilst policy intent remained clear throughout 2025, no bill was introduced to Parliament during the year to effect the government's announcement.

Despite the legislative delay, deal behaviour aligned with our expectations. Foreign buyers continued to factor potential latent CGT liabilities into valuations and due diligence. The absence of a bill did not eliminate structuring caution; rather, parties appeared to treat implementation as a matter of 'when' rather than 'if', and pricing negotiations reflected this uncertainty.

The government's subsequent deferral of the commencement date of the expanded foreign resident CGT rules to the first quarter after Royal Assent (being 1 January, 1 April, 1 July or 1 October) confirmed that the measures remain policy priorities, validating the market's prudent approach throughout 2025.

What happened in the tax M&A landscape during 2025?

One point that dominated 2025 was the acknowledgement and maturation of the new thin capitalisation and DDCR regime. The ATO's publication of the final PCG 2025/2 in August 2025 and draft PCG 2025/D2 in May 2025 crystallised the Tax Commissioner's compliance expectations around debt quantum, transfer pricing documentation and risk zones. Clients have needed to restructure their related party arrangements to avoid permanent denial of deductions, fundamentally altering acquisition financing strategies.

The removal of deductions for general interest charges and shortfall interest charges from 1 July 2025 compounded the compliance burden, whilst the introduction of substantial ACCC merger control fees from the transitional voluntary regime in July 2025 added material cost pressures to deal economics.

What does our data tell us?



Domestic v Foreign

% of deals with a domestic v foreign buyer



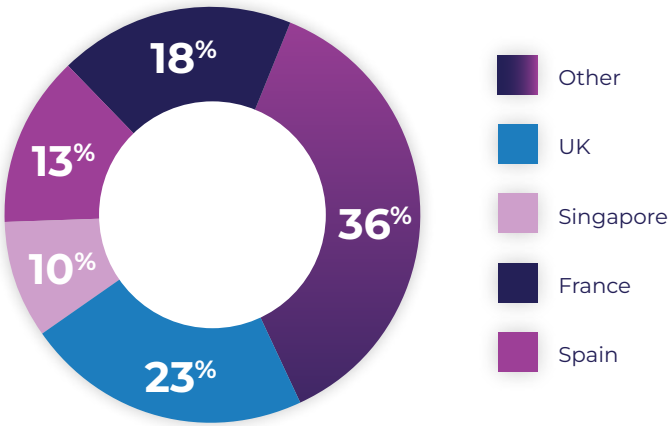
87%

of transactions we advised on had a domestic buyer

13%

of transactions we advised on had a foreign buyer

% blend of foreign buyer domiciliation



This classification is based on the identity of the contracting party in the transaction documents and does not account for any foreign ownership at an upstream level that is not apparent on the face of those documents.

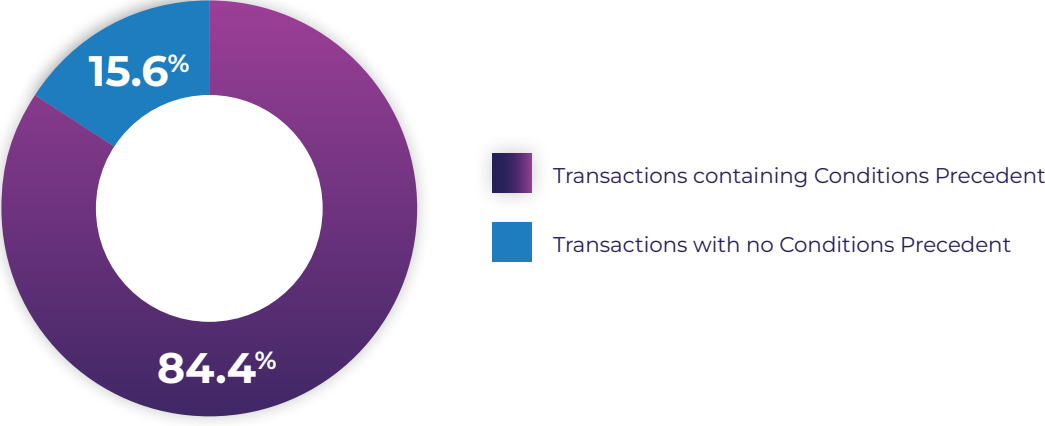
Structure

Types of acquisitions:

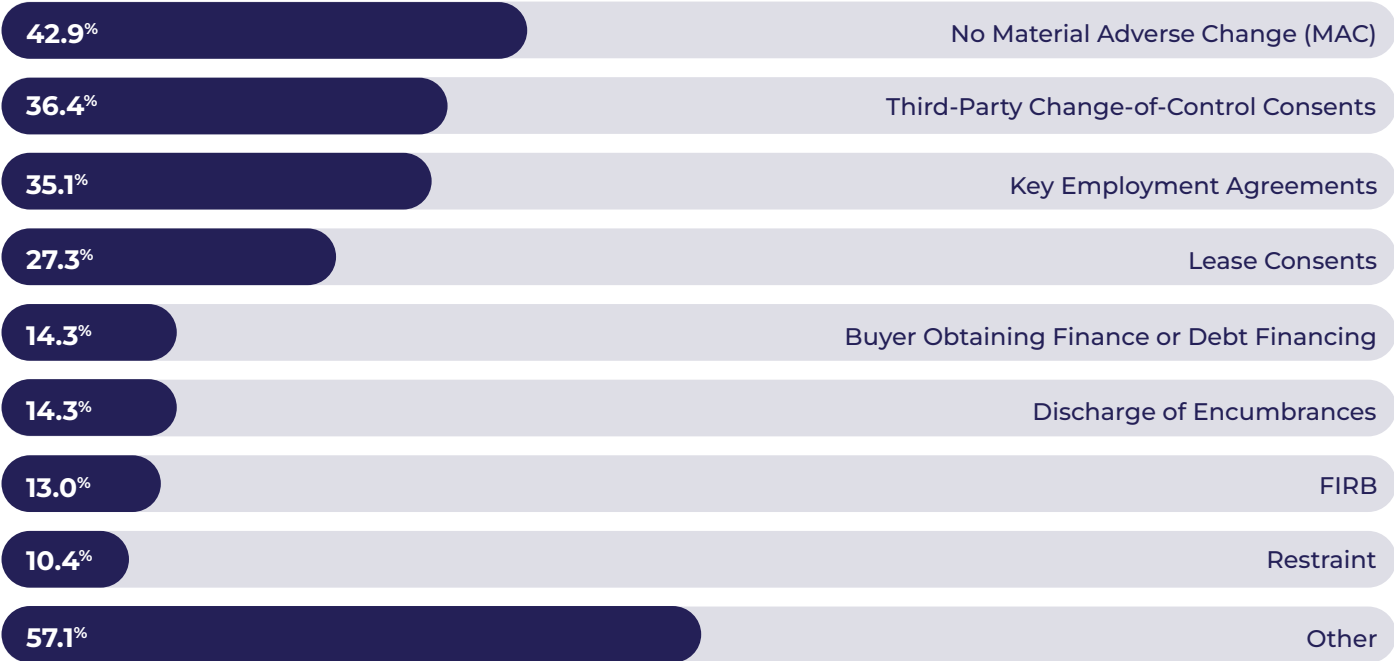


Conditions Precedent

Transactions with Conditions Precedent:



Categories of CP:



Other (57.1%) included the following categories:

- Regulatory Approvals
- Employee Transfer Threshold
- Contract Novation
- Buyer Shareholder Approval
- Buyer Due Diligence Satisfaction
- Related Transaction Completion
- Environmental Assessment
- Mortgagee Consents
- W&I Insurance in Place

Deal Certainty

Material Adverse Change

% of deals containing material adverse change clauses

52%

of transactions we advised on contained a MAC clause.

% blend of quantifiable thresholds for a MAC to occur

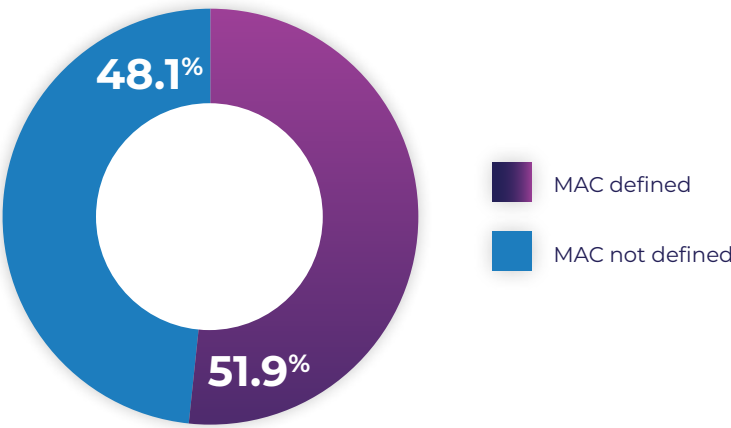


The prevalence of material adverse change provisions is a reflection of a market favouring buyers. The data indicates concerns over execution risk.

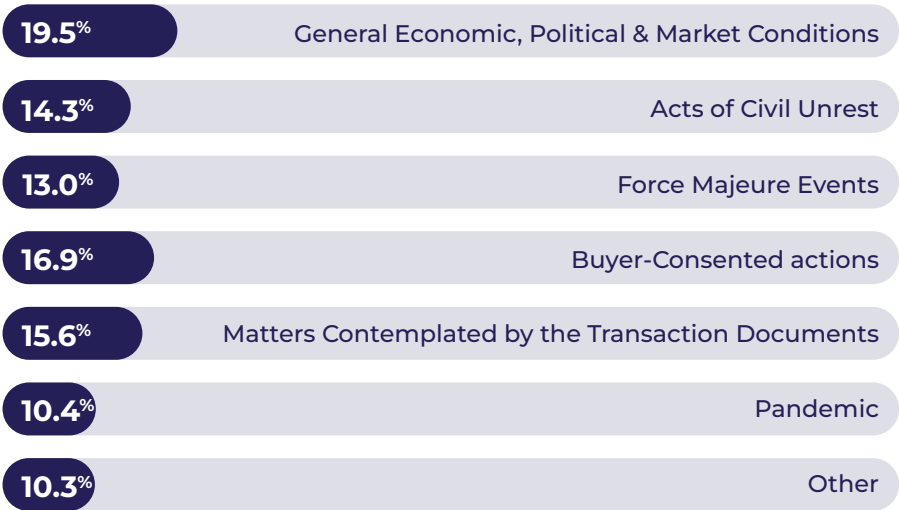
The market shows a strong preference for quantified MAC triggers, with a particular preference for objective, measurable metrics over subjective determinations. This is particularly important for drafting an appropriate MAC following the outcome of the Mayne Pharma case.²

Other (60%) includes bespoke matters, for example regulatory or licensing matters.

MAC



Carve out categories

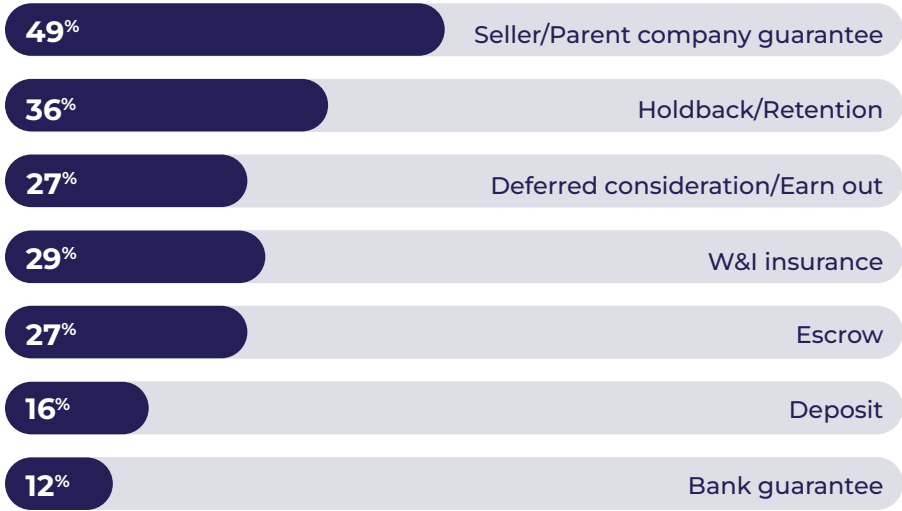


Other (10.3%) included the following categories:

- Disclosed Matters
- Changes in Law, Regulation or Accounting Standards
- Failure to Meet Forecast

² Please read the Public Markets at page 27 for more detail on this case.

Financial support arrangements

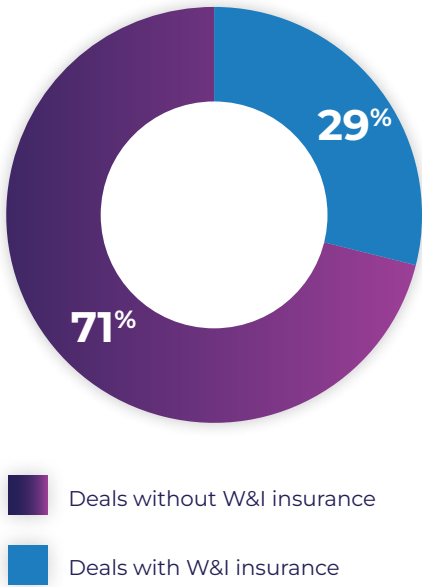


80%
of deposits were refundable

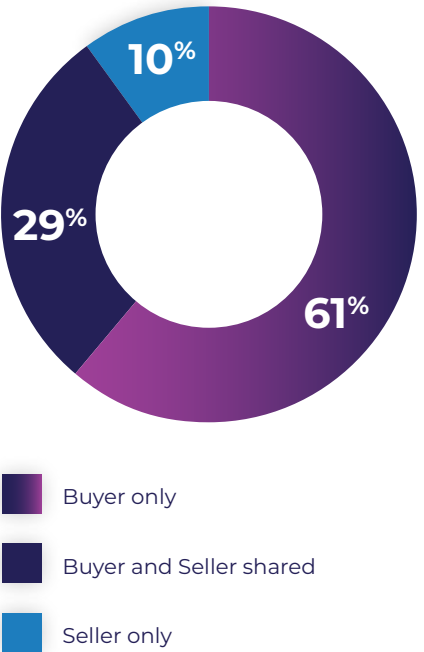
Breach of Seller Warranties



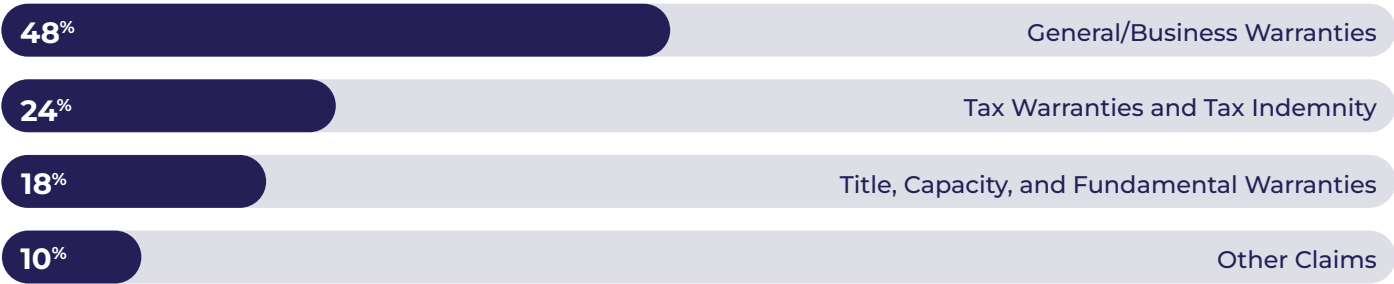
Warranty & Indemnity insurance



Cost allocation:



Coverage categories:



Exception to sole recourse

60%
preserved seller liability for title and capacity warranty claims that exceeded the policy limit

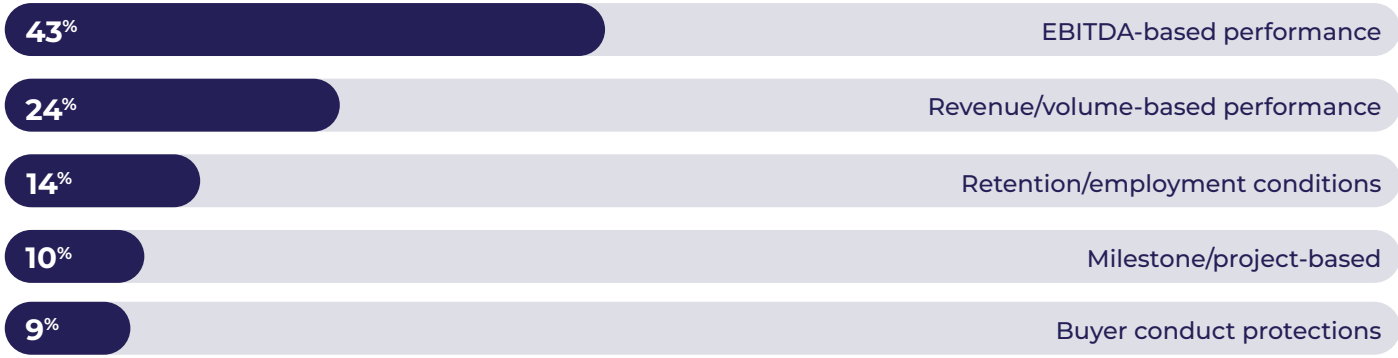
86%
included specific indemnities where the sellers retained direct liability

5%
had carve outs for specific warranties

Earn outs and deferred consideration

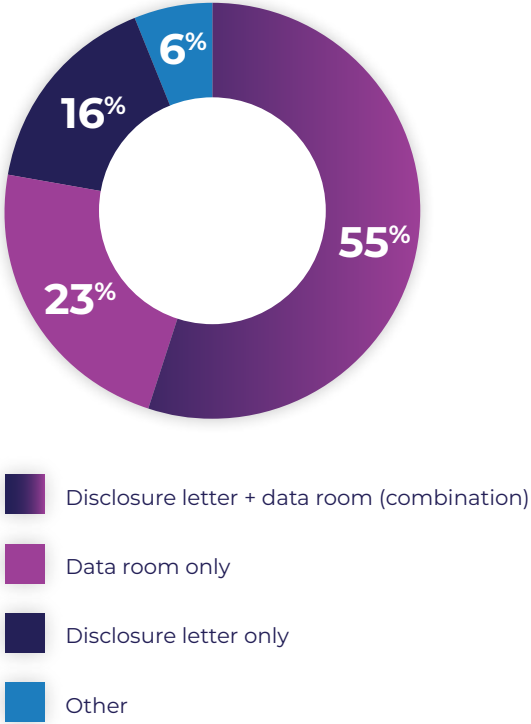


Main metrics for earn out achievements

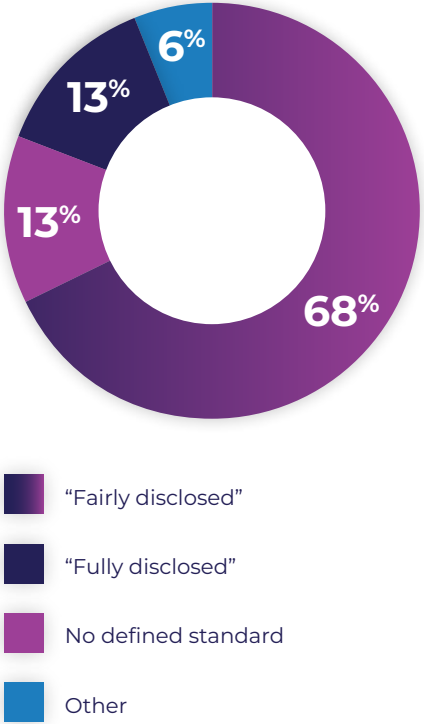


Sellers disclosures

Scope of Disclosure

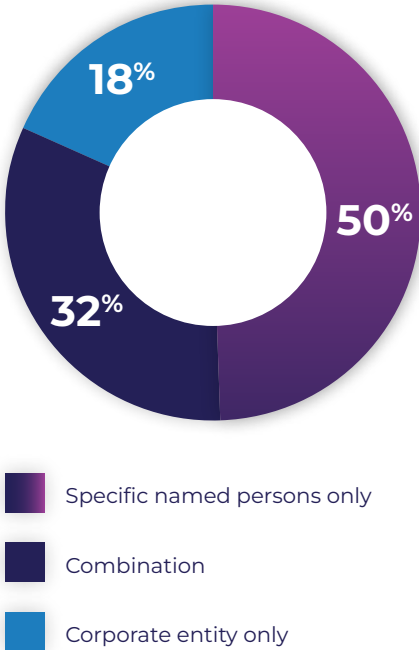


Standard of Disclosure

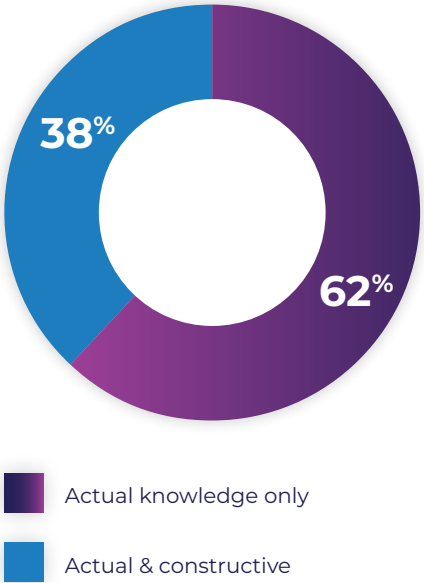


Sellers knowledge

Entity vs Persons vs Combination

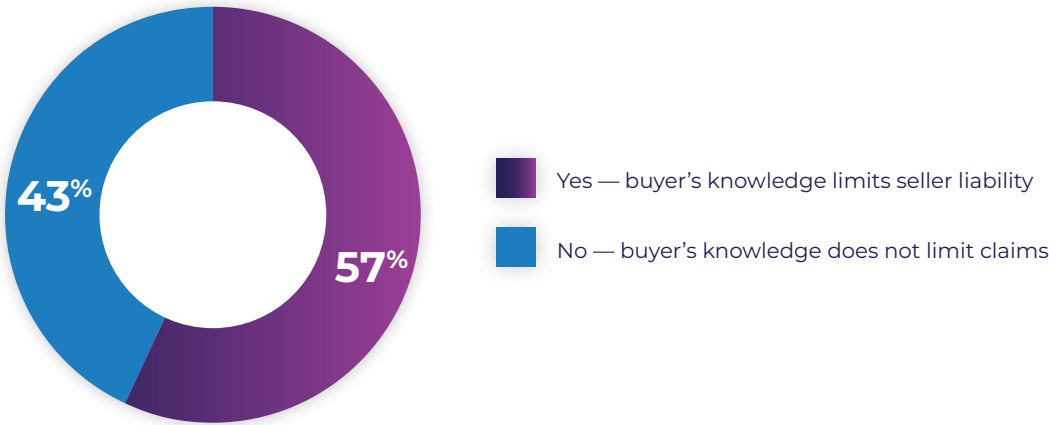


Seller's Knowledge Type

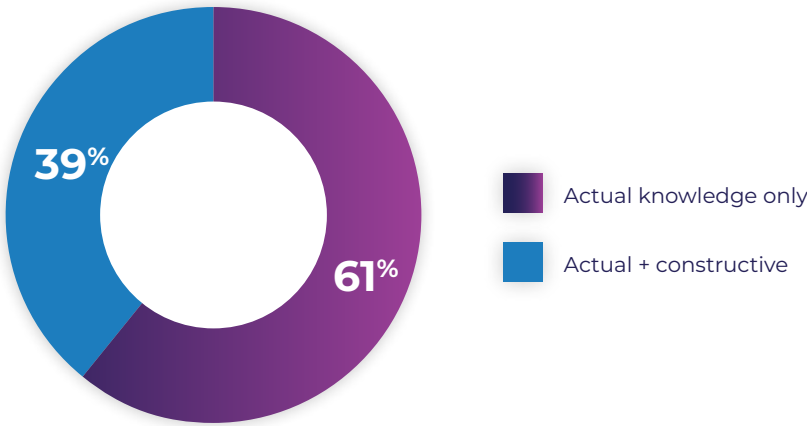


Buyers knowledge

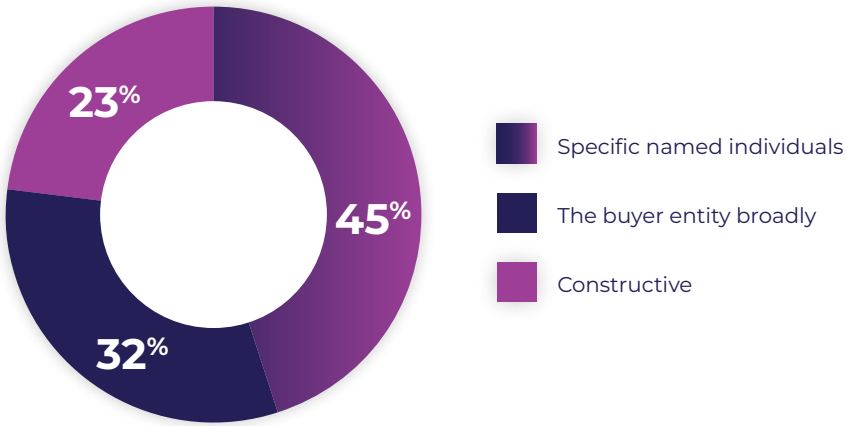
Buyer's Knowledge Limiting Claims



Buyer's Knowledge Type (of the deals where it limits claims)



Who Does Buyer's Knowledge Relate To?

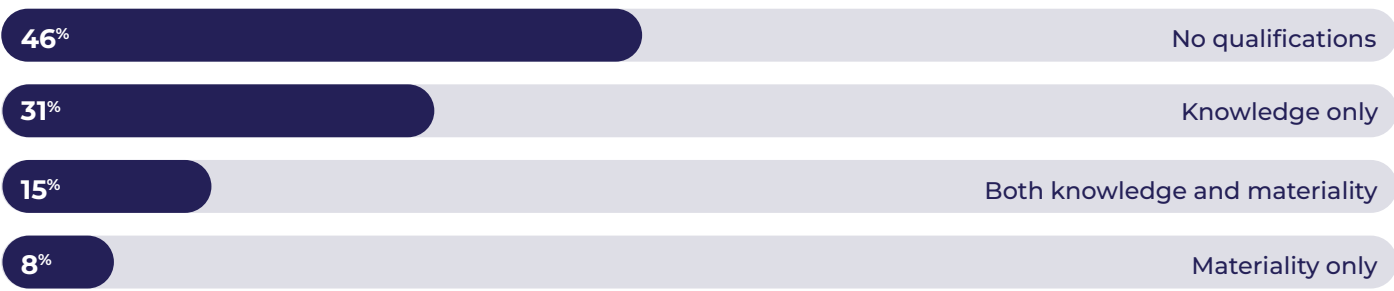


Disclosure accuracy

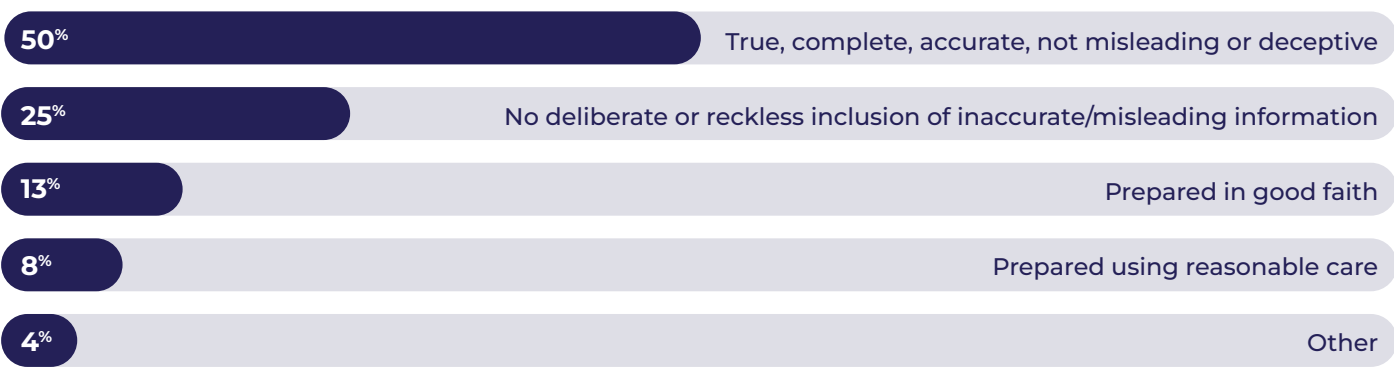
Warranty as to Accuracy of Disclosure Material



Qualification of that warranty:



Standard of that warranty:



Disclosure of all information

Warranty That All Material Information Has Been Disclosed



Qualification:



Standard



Time limits

Time Limits to Bring Warranty Claims

Greater than 24 months



24 months



18 months

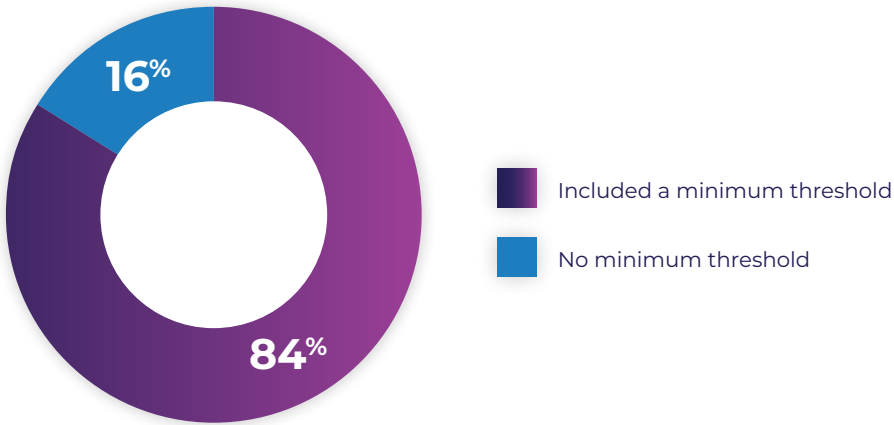


12 months or less



Minimum amount

Minimum/De Minimis Threshold for Individual Warranty Claims



Of the deals with a minimum threshold, expressed as a % of purchase price:



Carve-Outs from De Minimis

Of the deals with a de minimis threshold, the following carve-outs were present:

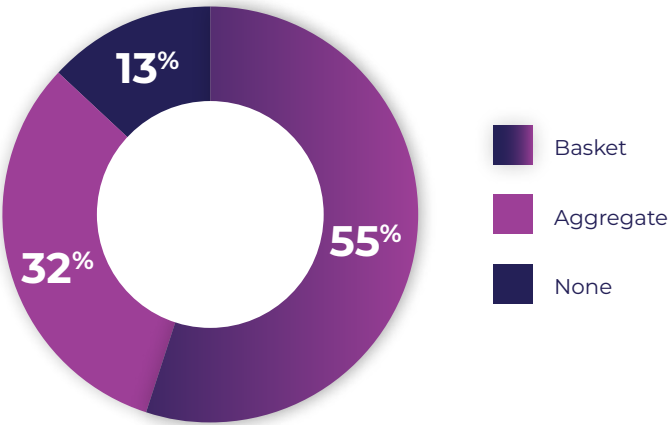


Other (43%) included:

- fraud,
- wilful misconduct or wilful concealment;
- specific indemnities;
- leakage claims;
- employee underpayment indemnities;
- W&I insurance excess/ deductible amounts;
- and certain named regulatory or compliance indemnities.

Basket / threshold

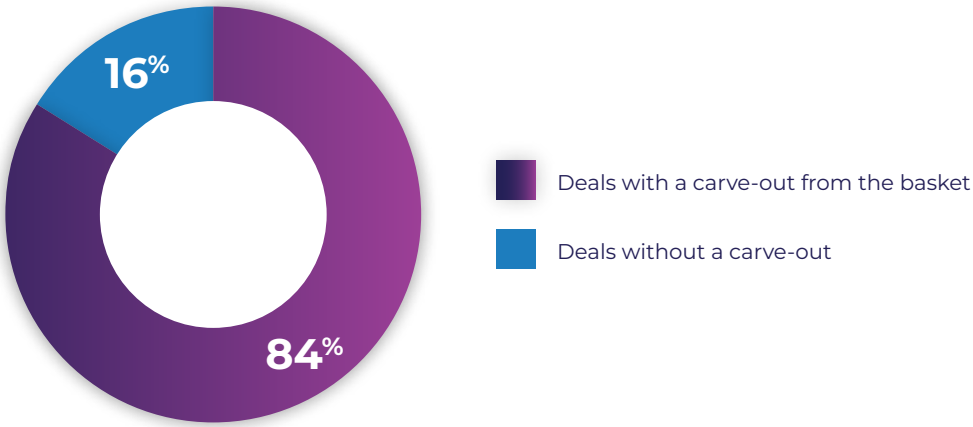
Basket vs Aggregate Threshold



Of the deals with a basket threshold, expressed as a % of purchase price:



Carve-Outs from baskets



Carve-out categories from the basket / aggregate threshold:

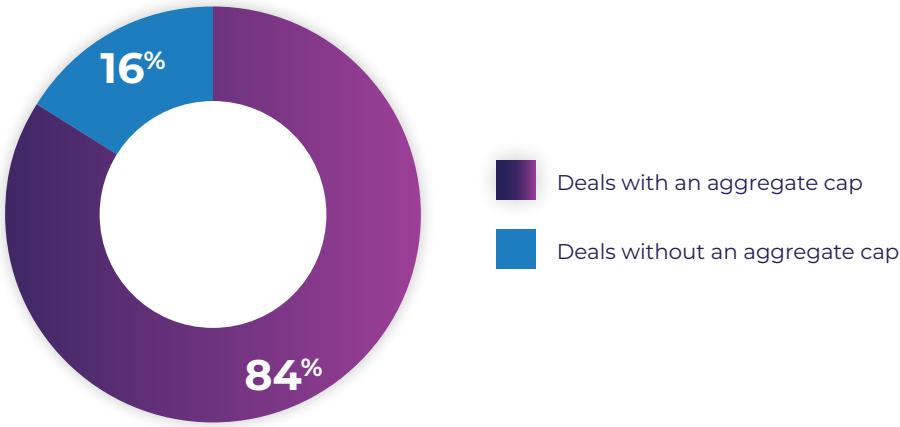


Other (29%) included:

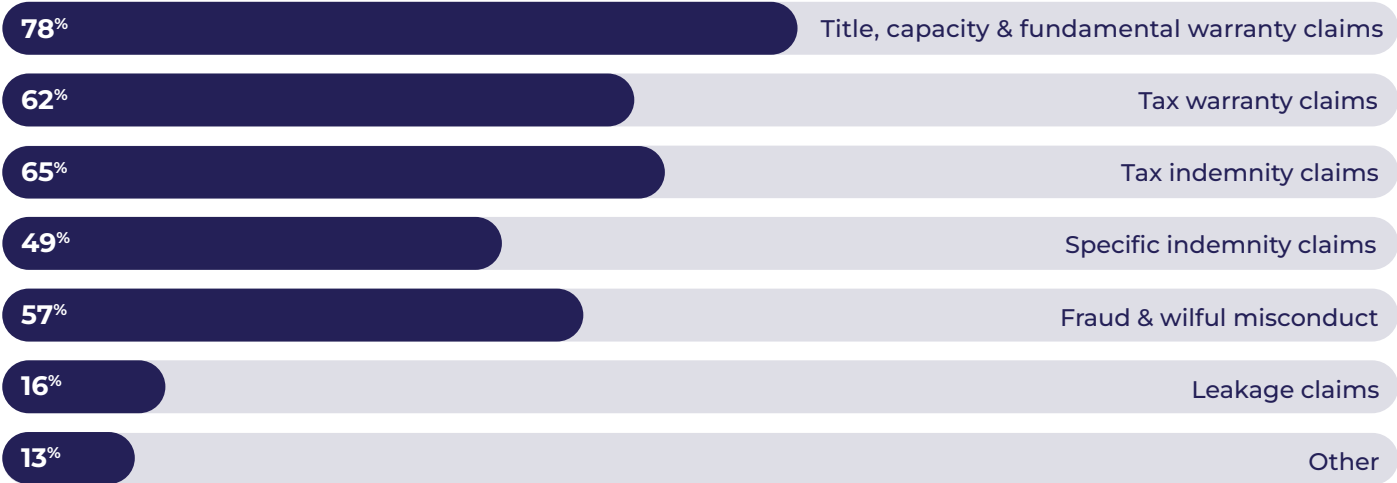
- Fraud, wilful misconduct, wilful default, or wilful concealment
- Specific Indemnity Claims
- Guarantor Indemnity Claims
- Leakage Claims
- Claims under Land Sale Contracts
- Seller indemnity claims relating to Title and Capacity Warranty breaches

Aggregate cap

Basket vs Aggregate Threshold



Carve-out categories from the aggregate cap:



Other (13%) includes:

- W&I excess,
- purchase price adjustment claims,
- restructure liability

Risk Allocation

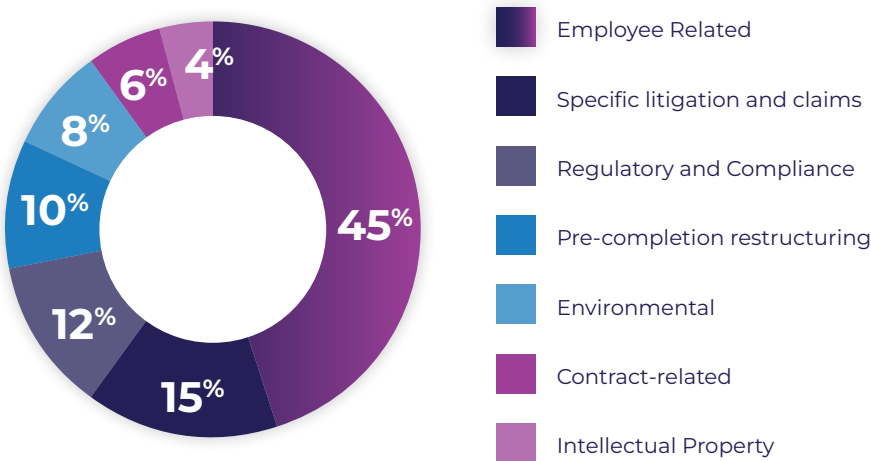
Indemnities

% of deals containing specific indemnities

70%

of transactions we advised on contained specific indemnities.

Of those transactions, specific indemnities were negotiated for the following matters:



% of indemnities uncapped or capped

78%

of those indemnities were subject to a cap

16.5%

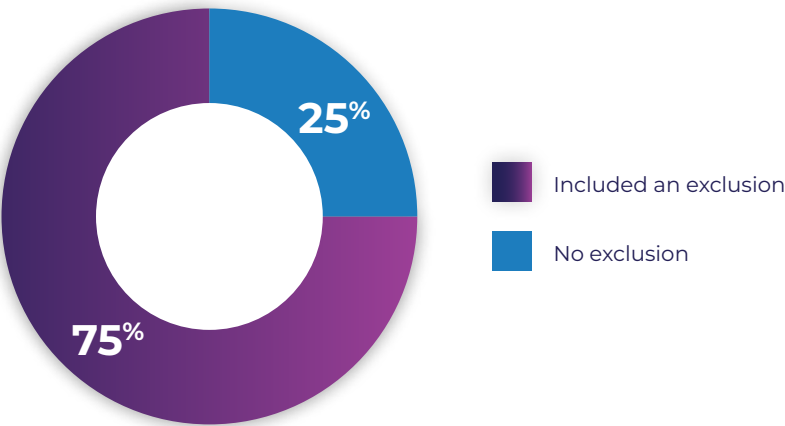
were uncapped

5.5%

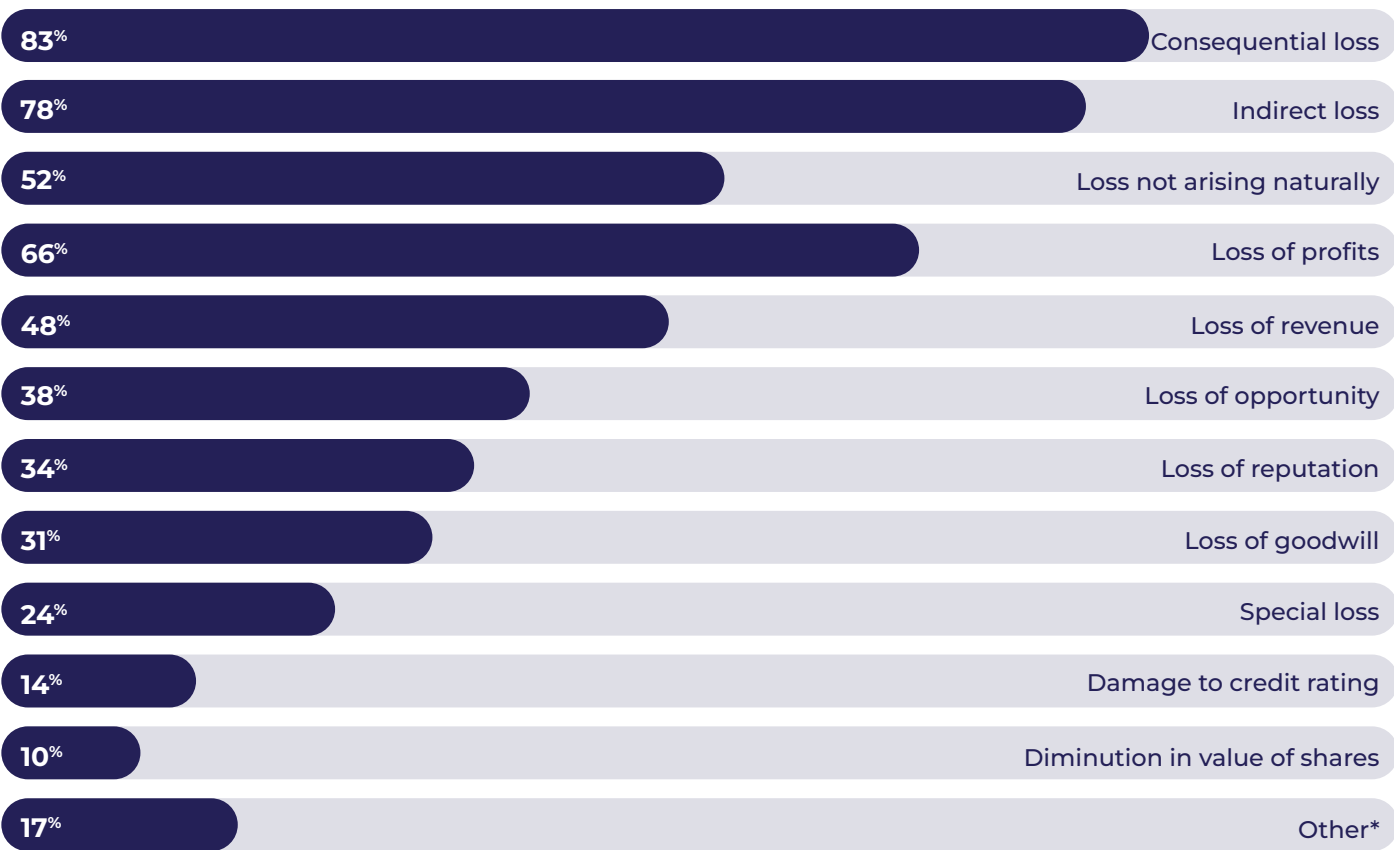
had mixed structures

Exclusions for consequential loss

Exclusion for consequential or indirect loss:



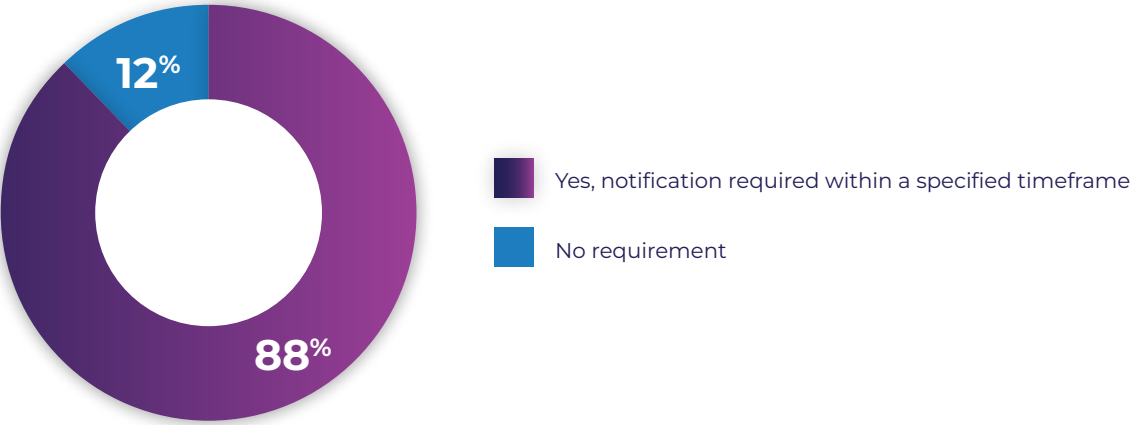
Of the deals with an exclusion, the following loss categories were excluded:



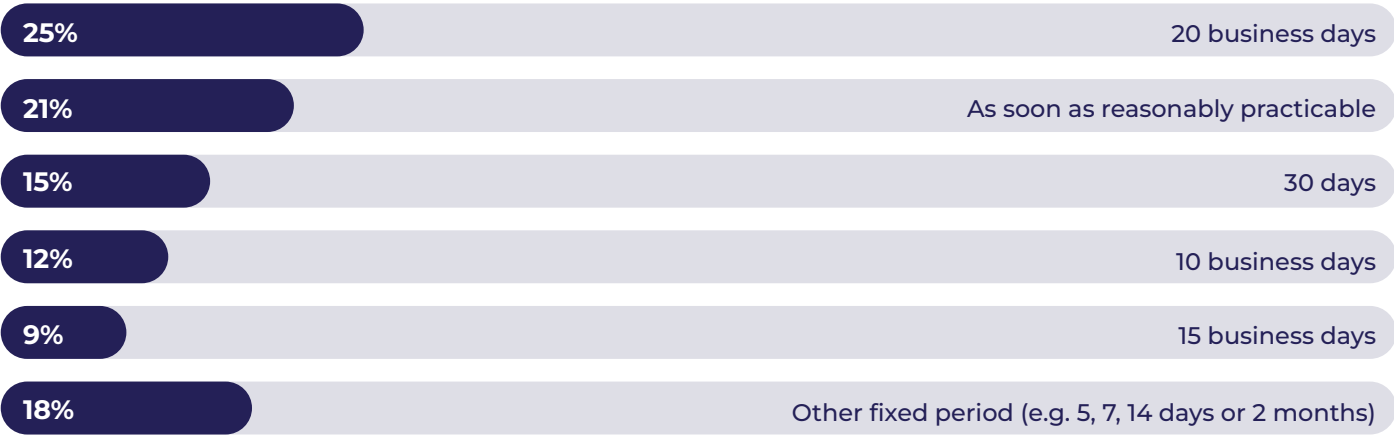
(*business interruption, loss of data, anticipated savings, exemplary/punitive loss)

Failure to notify claim

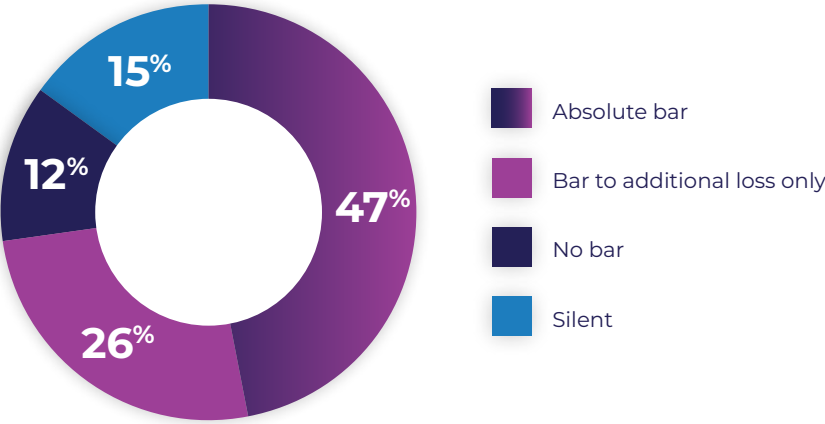
Notification requirement:



Notification periods:
Of the deals with a notification requirement:



Consequences of failure to notify:



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