

Article Information

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ACCC enforcement priorities 2026: What businesses need to know now

The ACCC's enforcement priorities for 2026 combine a number of important new developments with a strong continuation of long-standing enforcement focus areas. While the introduction of the mandatory merger clearance regime and proposed reforms targeting unfair trading practices and "dark patterns" represent significant changes for many businesses, the ACCC has also made clear that it will continue to prioritise core issues such as misleading pricing, cartel conduct, misuse of market power, environmental claims and conduct that disproportionately harms vulnerable consumers. Taken together, the message for businesses is not that the rules have been rewritten wholesale, but that existing competition laws are being enforced more rigorously in an increasingly complex commercial environment.

Following our recent ACCC Priorities webinar, this article summarises the key developments, answers some of the audience's most common questions raised, and outlines what businesses should be doing now to manage risk.

Disclaimer: This publication is for general information only and is not legal advice. You should seek specific legal advice for your own circumstances.

A New Era of Merger Control: Mandatory, Suspensory and Broad

From 1 January 2026, Australia has moved to a mandatory and suspensory merger control regime. Transactions that meet the notification thresholds must now be notified to the ACCC and cannot complete until clearance is granted.

The substantive test remains whether a transaction is likely to substantially lessen competition in any market, but the scope of transactions caught by the regime is significantly broader than under the previous informal merger clearance system. The regime applies to:

- share acquisitions;
- asset acquisitions (with "assets" defined broadly to include property, rights and goodwill); and
- certain transactions that do not result in control (from 1 April 2026, under the staged voting-power thresholds).

Creeping and Serial Acquisitions - a Key Risk Area

One of the most significant changes is the explicit capture of creeping or serial acquisitions. Where an acquirer (and its connected entities) has made similar acquisitions in the same market over the previous three years, and the cumulative Australian revenue of those acquisitions reaches \$50 million, notification may be required — even if each transaction is

modest in isolation.

Importantly, the ACCC has confirmed that this aggregation applies retrospectively, including acquisitions completed before 2026.

What Sellers Need to Know: Due Diligence Has Changed

A recurring question from the webinar was how sellers can manage merger risk when the responsibility for drafting the notification form sits primarily with the acquirer.

The practical reality is that sellers cannot treat ACCC risk as “the buyer’s problem”. Where a transaction is caught by the notification thresholds then it cannot be completed unless the ACCC has determined that it may be put into effect.

As a result, sellers should now:

- undertake targeted due diligence on the acquirer, particularly prior acquisitions in the last three years;
- seek representations and warranties about whether notification thresholds are triggered;
- require clarity on whether the acquirer intends to notify or seek a waiver; and
- manage risk contractually through conditions precedent, long-stop dates and termination rights tied to ACCC outcomes.

This represents a material shift in deal dynamics and timetable planning.

Transitional Deals: Signing Before 2026 Is Not Enough

Another key area of uncertainty has been the treatment of transactions signed before 1 January 2026 but completing after that date.

The critical point is that the regime is triggered by completion, not signing. Transactions that were signed last year but which complete this year can be caught if they meet the thresholds for notification unless they benefit from transitional relief — most commonly where informal merger clearance was obtained last year and the transaction completes within 12 months of that clearance.

Beyond M&A: Pricing, Promotions and the Cost-of-Living Lens

Outside merger control, the ACCC has signalled a strong enforcement focus on pricing conduct, particularly in the supermarket and retail sectors.

Recent proceedings against Coles and Woolworths highlight the ACCC’s willingness to challenge:

- “was/now” pricing practices;
- representations that discounts are genuine when prices have been temporarily inflated; and
- promotional conduct that may mislead consumers during a period of heightened cost-of-living pressure.

The ACCC has been clear that context matters — including how consumers perceive pricing claims — and that businesses should not assume long-standing promotional mechanics are low risk.

Unfair Trading Practices and Dark Patterns: A New Compliance Frontier

Proposed reforms introducing a new s 28B of the Australian Consumer Law are designed to address conduct that may not be misleading or unconscionable under existing provisions, but which unreasonably manipulates consumer decision-making.

This includes:

- subscription traps;
- friction-heavy cancellation processes;
- default settings that exploit consumer inertia; and
- digital interfaces that distort choice.

The ACCC’s proceedings against Microsoft in relation to Microsoft 365 subscriptions illustrate why new tools are being pursued: some conduct may fall outside s 18 or s 21, yet still undermine consumer autonomy.

For digital, subscription-based and platform businesses, this is an area that warrants immediate attention. Prohibitions on

dark patterns will target sharp digital practices including count down clocks at order stage of platforms that create a false sense of urgency (e.g., “only 2 left!”) and undisclosed, unavoidable add on prices that distort the initial headline price.

Environmental and Sustainability Claims Remain Under the Microscope

Environmental and sustainability claims continue to be a major enforcement priority. Recent ACCC actions involving Clorox and Edgewell, alongside ASIC’s greenwashing cases against Mercer and Vanguard, demonstrate a consistent regulatory message: claims must be precise, accurate and capable of substantiation. For guidance see the ACCC Guide to making environmental claims found here: <https://www.accc.gov.au/system/files/greenwashing-guidelines.pdf> and see also ASIC Information Sheet 271, found here: <https://www.asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>.

Broad or aspirational language, without a clear evidentiary basis, carries increased risk.

What Businesses Should Be Doing Now

Across all of these areas, a common theme emerges: early assessment and proactive compliance are essential.

Businesses should be:

- reviewing upcoming M&A transactions against the new merger thresholds well in advance;
- updating M&A playbooks, due diligence scopes and transaction documents;
- reviewing online market channels and subscription processes from a consumer perspective;
- auditing environmental and sustainability claims; and
- ensuring internal teams understand the ACCC’s sharpened enforcement posture.

If you would like to discuss how these changes may affect your business or upcoming transactions, please contact [Tom Griffith](#) or [Andrew Rankin](#).