

2024 M&A Review

Key deals, market insights and
future trends

September 2024





Overview

Following a period of robust growth post-COVID, M&A activity in Australia has slowed in 2024.

This reduction in deal-flow is particularly evident in the mid-market sector where we operate and can be attributed to rising interest rates, discrepancies in valuations and concerns about profit sustainability.

In our experience, while there has been and continues to be interest and activity in M&A, deals are taking substantially longer to complete and, indeed, falling over at various stages in the process. With funds available in-market, we expect that interest from private equity and other forms of private capital in M&A will be strong.

Over the last 12 months, Holding Redlich's M&A team have been involved in several significant deals across a variety of sectors. We highlight a selection of these transactions in this Review and share our insights on the key trends expected to shape the Australian market in the coming year, including an analysis of recently announced reforms by FIRB and the ACCC.





Key deals in FY 2023/24



FINANCIAL SERVICES & FUNDS MANAGEMENT

- advising Alceon on a private credit mandate with a global capital allocator
- advising Resilium Partners (part of the Invest Group) on the acquisition of Protectit Insurance Services, including by undertaking due diligence and preparing and negotiating the share sale and purchase agreement
- advising E&P Investments on its retirement as responsible entity of the CD Private Equity Funds
- advising Hostplus in its successor fund transfer with Maritime Super (\$6 billion transfer)
- advising Sure Insurance Pty Ltd on the sale of the largest Australian insurance broker in Australasia to Steadfast.



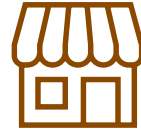
REAL ESTATE

- advising Sunland Group Limited in connection with an agreed off-market takeover bid by an associate of Homecorp Property Group Pty Ltd, including negotiating a bid implementation agreement and preparing the Target's Statement and ancillary documents
- advising Phenna Group on the sale of three building certification businesses in the real estate sector to UK based Phenna Group
- advising Richmond Bridge, Unisuper and ISPT on fund structuring and capital raising to acquire Burra Park, a 280-hectare site located adjacent to Western Sydney Airport
- advising National Storage REIT (ASX: NSR) in relation to a joint venture with Singapore sovereign wealth fund, GIC
- advising the Singapore owner of the Old Clare Hotel on the sale of the hotel, including operating business, to an Indonesian based hotel investor
- advising Spiire Australia Pty Ltd on the acquisition of a property consulting business and assets.



TECHNOLOGY, MEDIA & COMMUNICATIONS

- advising Deloitte Australia in relation to the acquisition of a cyber security business which involved undertaking a comprehensive legal due diligence investigation
- advising BBC Studios on the acquisition of a TV and film production business, Werner Productions,
- advising on a scheme of arrangement by Omnicom Group Inc. in relation to the successful acquisition of further shares in Clemenger
- advising 3P Learning (ASX:3PL) on the acquisition of the US distribution rights from its US distributor.



FOOD & AGRIBUSINESS

- advising an Australian grain supplier on the acquisition of a grain storage facility in central NSW, including the land and business assets
- advising the shareholders of Torino Food Service, a leading food service wholesaler, on a sale of the business to a family office
- advising Roebbling Capital Partners on the tax and structuring aspects of its acquisition of an Australian sporting goods company.



ENERGY, MINING & RESOURCES

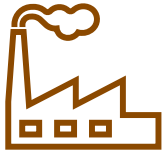
- advising Epic Environmental Pty Ltd on Project Greenford in respect of the acquisition of an environmental business entity
- advising Risen Energy on the acquisition of a renewable energy entity in Victoria
- advising Locality Planning Energy Pty Ltd on the acquisition of all-encompassing administrative and billing service for all utilities on behalf of Body Corporates
- advising Komatsu on the acquisition of iVolve, a software company specialising in fleet management solutions for quarry, mining and construction operations.



TRANSPORT & LOGISTICS

- advising on the sale of Queensland based regional airline, Skytrans, to European aviation giant Avia Solutions Group
- advising the shareholders of a traffic logistics business on the sale of their business to Altus Traffic, an investee company of Pacific Equity Partners
- advising UK-based Inchcape Shipping Services on the acquisition of a joint venture partner in Australia
- advising Tarragindi LPO on a series of acquisitions of post office franchises.





MANUFACTURING & ENGINEERING

- advising Questas Group on:
 - the acquisition of hydraulics and valves business, Winnellie Group
 - the sale of coal mining equipment specialist, Waratah Engineering
 - the sale of irrigation and water management specialist, Water Dynamics
 - the acquisition of hydraulic cylinders business, Ezy-Fit Engineering.
- advising ARP Consulting Engineers Pty Ltd on the share sale to PMY Group Pty Ltd
- advising leading commercial paving and quarry business, Sam The Paving Man, on the acquisition of Melocco Stone
- advising Pirtek Australia on the tax and structuring aspects of its sale of its North American arm to US private equity fund, Princeton Equity Group.



HEALTH & AGED CARE

- advising Life Care SA, a leading provider of aged care services in South Australia on:
 - the sale of multiple residential aged care centres to Opal Healthcare
 - the sale of multiple retirement living businesses to Torrens Health
 - the sale of a retirement living business to Walara.
- advising Infinity Pharmacy on a series of acquisitions of pharmacy businesses and entities.



Outlook for 2024/25

The impact of cost of living, rising interest rates, and staff shortages have led to a reduction in M&A activity over the past year.

As we look ahead, we anticipate the following key trends to shape the Australian M&A market.



RECESSION FEARS

Global markets continue to grapple with fears of an economic recession as the cost-of-living crisis affects consumer spending in Australia.

This has led to caution being shown by parties wishing to engage in M&A activity and a subsequent reduction in deal volume.

Despite these headwinds, we anticipate M&A activity will recover into 2025 as economic conditions become more favourable and market confidence returns.

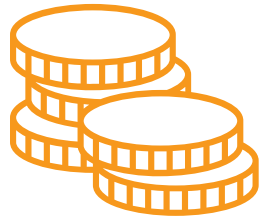


AGED CARE SECTOR CONSOLIDATION

An increase in faith-based operators, particularly the smaller operators, looking to consolidate operations with larger industry operators has emerged as a recent trend. Religious organisations are also seeking to gain capital and diversify to other areas, driven by financial pressures and regulatory changes.

While faith-based operators are divesting their wholly-owned operations to larger players, they are also retaining an interest in how the facilities are run as part of their social justice missions.

With the abolishment of bed licences for aged care from 1 July 2024, duty and income tax structuring on business acquisitions in the sector should be revisited.



UNDERPAYMENTS IN DUE DILIGENCE

Due diligence processes, conducted ahead of a merger or acquisition, are increasingly uncovering instances of underpayments. For both buyers and sellers, this means more vigilance is required in the assessment of payroll compliance and potential liabilities.

With penalties for intentional underpayment of wages becoming a criminal offence from 1 January 2025 in line with the passing of the Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (Cth), this is a vital area for businesses to watch.

State revenue offices are also increasing audits for payroll tax compliance where businesses rely on contractor or labour hire arrangements.

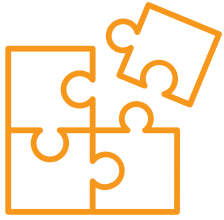


IMPACT OF NON-BANK LENDERS

The role of non-bank lenders, especially as traditional banks tighten lending criteria, is a growing trend with the shift opening more avenues for flexible financing structures in transactions. These non-bank lenders offer less red tape and faster access to finance but are also more costly in terms of interest.

The non-bank lending sector is traditionally short-term, with borrowers refinancing once their projects are off the ground. We have particularly seen growth in the non-banking financing industry on housing, where demand is currently outstripping supply.





MERGER REGIME CHANGES



Beyond 2024, sweeping changes to Australia's merger regime announced by the Federal Government in the report, "Merger Reform: A Faster, Stronger, and Simpler System for a More Competitive Economy", will significantly impact the local market.

Australia's existing voluntary "informal" notification regime is poised to be replaced by new reforms requiring merger parties to notify the Australian Competition and Consumer Commission of the merger if the target business or asset(s) has a material connection to Australia and any one of the monetary or market concentration thresholds is met. The levels of these thresholds are currently out for consultation, however, it is anticipated that these thresholds (along with high risk acquisitions) will mean that the regime would capture the large majority of mergers that have previously been notified by the ACCC.

Set to be introduced from 1 January 2026, the new mandatory notification and suspensory regime will mean all merger parties will need to consider whether the regime applies to their proposed transaction and should notification be required make the notification to the ACCC. The ACCC will serve as the primary decision-maker of the merger notified to them and the transaction cannot proceed without the ACCC's approval.





Foreign Investment Review Board reforms



On 1 May 2024, the Australian Treasurer announced reforms to the FIRB framework to make it “stronger, more streamlined, and more transparent”. On the same day, the government released an updated Foreign Investment Policy document outlining these reforms and FIRB new risk-based approach in more detail.

The reforms are primarily being implemented through changes to the Australian Government's FIRB policies, processes, and resources, rather than through immediate legislative amendments (with the exception of the interfunding exemption that will be the subject of new regulations) and include:

- **Fee refund:** Incentivises early applications and greater participation of foreign capital by providing a fee refund for foreign investment applications that were unsuccessful in a competitive bid process.
- **Merger reforms:** Remove regulatory duplication in the assessment of competition issues through merger reforms (refer Merger Regime Changes on page 9).
- **Faster approvals:** The reform does not propose a fast-track application process but rather streamlines FIRB assessment processes for lower-risk foreign investment proposals. Treasury intends to adopt a new performance target of processing 50% of investment proposals within the 30-day statutory decision period, effective from 1 January 2025.
- **Sensitive sectors:** The investment proposals subject to greater scrutiny include critical infrastructure, critical minerals, critical technology, investments in proximity to sensitive Australian Government facilities, and investments involving the holding or access to sensitive data sets.
- **Lower-risk sectors:** These sectors are identified as manufacturing, professional services, commercial real estate, new housing, and the mining of non-critical minerals.





Recent Tax Changes

Greater CGT exposure for foreign investors: From 1 July 2025, foreign investors that previously did not have an Australian capital gains tax (CGT) exposure may soon be subject to Australia's CGT regime following stricter rules which would capture more assets that are Australian real property interests and Australian mining, quarrying, or prospecting rights.

Notifying the ATO of prospective disposals: Foreign investors will be required to notify the Australian Taxation Office beforehand of disposals of interests in companies and trusts where the value of those interests exceeds A\$20 million.

Increased scrutiny on underpaid royalties: New penalties will apply to significant global entities that enter into arrangements for the underpayment of royalties and royalty withholding tax. This will affect how sale consideration is structured as the ATO will scrutinise arrangements that do not allocate sufficient value for the use and licensing of property.

New thin capitalisation rules: Australia's new thin capitalisation rules apply from 1 July 2023 moving away from an assets based test to an earnings based test to determine the maximum debt that may be carried by an Australian group with international associations. This will likely result in Australian businesses being less geared on inbound acquisitions.





ASIC's Corporate Plan – 2024-2025

- On 22 August 2024, ASIC released its 2024-25 Corporate Plan, which contains important news for participants in private and public markets.
- ASIC is now specifically focusing on outcomes in public and private markets, and existing and emerging financial products and services, including new market participants.
- ASIC notes that while relatively small compared to public markets, the opacity of private markets presents an outsized risk to market integrity, particularly as more investors become exposed.
- We expect that ASIC will increase surveillance of the private credit sector, particularly in relation to the valuation of private credit assets, and the disclosure of risks associated with private credit investments.
- At the date of this document, the Australian financial press has reported that ASIC is preparing to scrutinise the proposed sale of data centre developer AirTrunk, and the manner in which bidders and sellers are using confidential information obtained through the sale process, how they use information that is disclosed in the sale process and whether they act consistently with any public statements made through the sale process. ASIC's concern appears to include risks of insider trading.
- We suggest that private market participants review their processes for managing any conflicts of interest and confidential information that may be gained and used in the course of a private market transaction. Where participants of the same business are involved in both related public and private market transactions, we suggest that robust information barriers and controls are in place to protect against the inappropriate use of confidential information.



About Holding Redlich

With presence in Sydney, Melbourne, Canberra, Brisbane and Cairns, Holding Redlich's national corporate and commercial team handles the full spectrum of M&A transactions – both in public markets and by private treaty.

We advise across a range of industries, including agribusiness; brands; retail, wholesale and franchising; healthcare; industrials; media and telecommunications; professional and financial services; technology and transport.

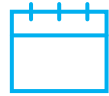
At Holding Redlich, great law is our starting point.



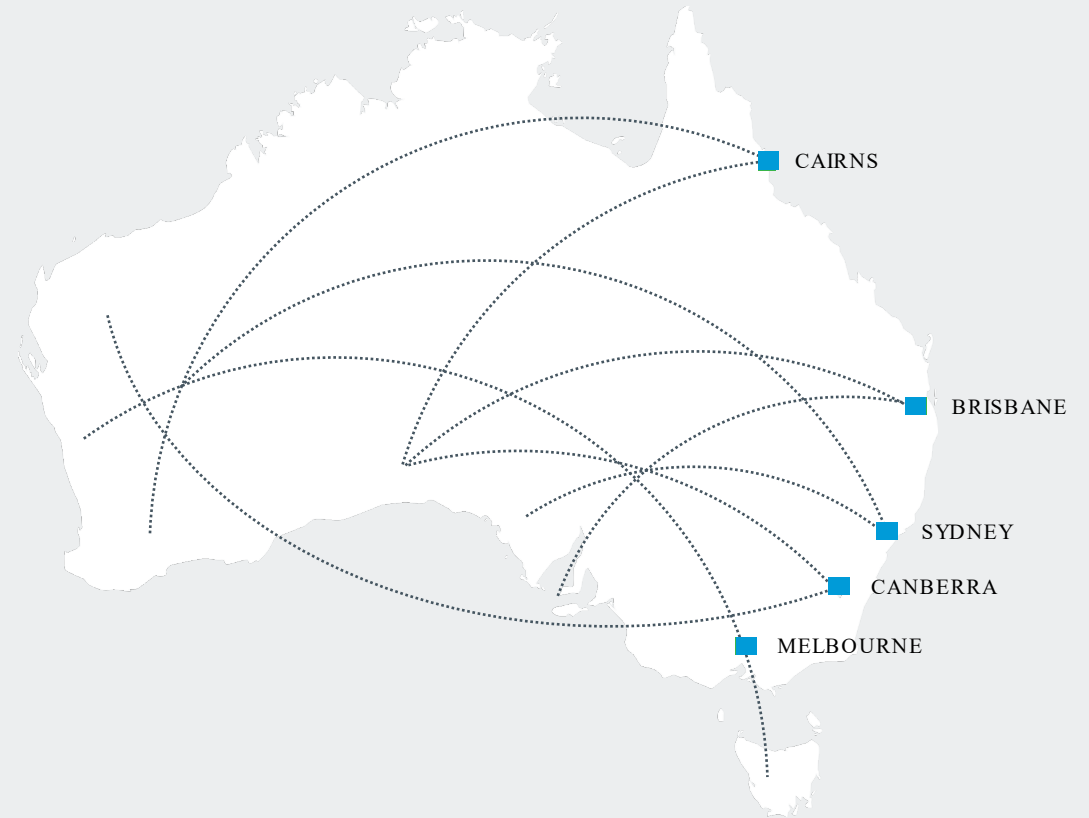
450+
PEOPLE



**AUSTRALIAN-OWNED
AND INDEPENDENT**



60+
YEARS



Our expertise

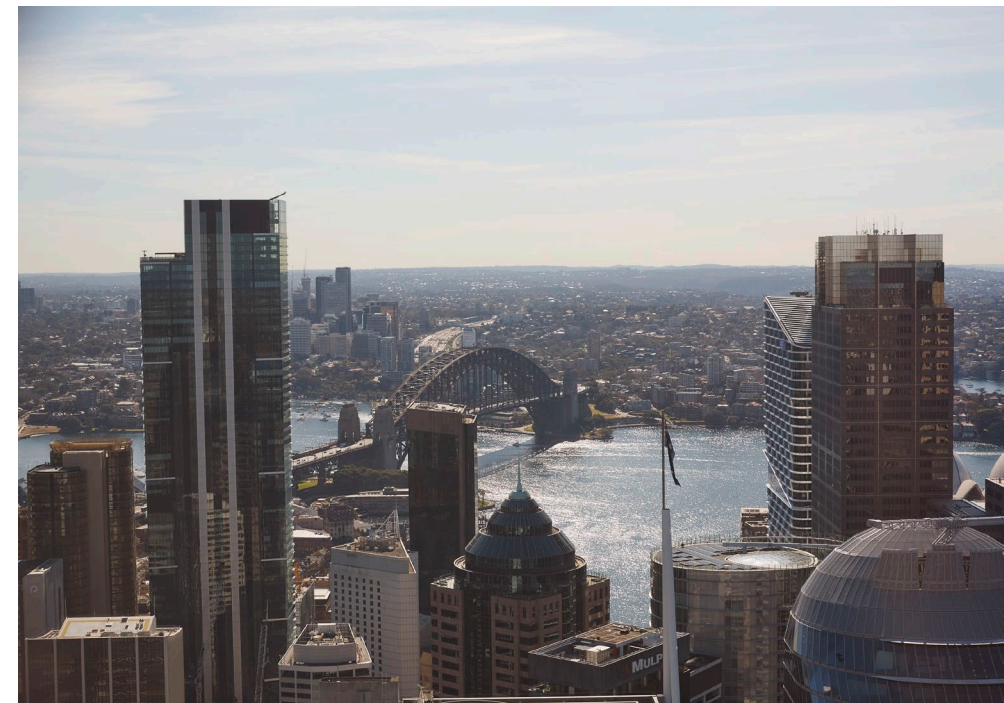
Our team consists of dedicated, multi-disciplinary lawyers with substantial mergers and acquisitions, financing, and governance experience.

The group is led by partners who are specialists in M&A, ASX Listing Rules and public company law, equity capital markets, corporate governance and advisory, financing and securitisation, and funds management.

We primarily act for an established middle market client base consisting of both international and Australian companies. Our M&A expertise includes public takeovers – hostile and friendly; negotiated acquisitions and dispositions, including with private equity; strategic mergers; cross-border transactions; schemes of arrangement; take-private transactions; corporate restructures; joint ventures and strategic alliances; and foreign investment.

For the past five years, our team has been named as a finalist for Transaction Team of the Year at the Lawyers Weekly Australian Law Awards. In 2024, we were also shortlisted for the first time for both Banking and Finance Team of the Year and Commercial Team of the Year.

Additionally, our national practice was recognised in the inaugural edition of the Best Law Firms – Australia by Best Lawyers, with rankings for corporate law in Sydney (Tier 1), Brisbane (Tier 2) and at the national level.



Our team



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