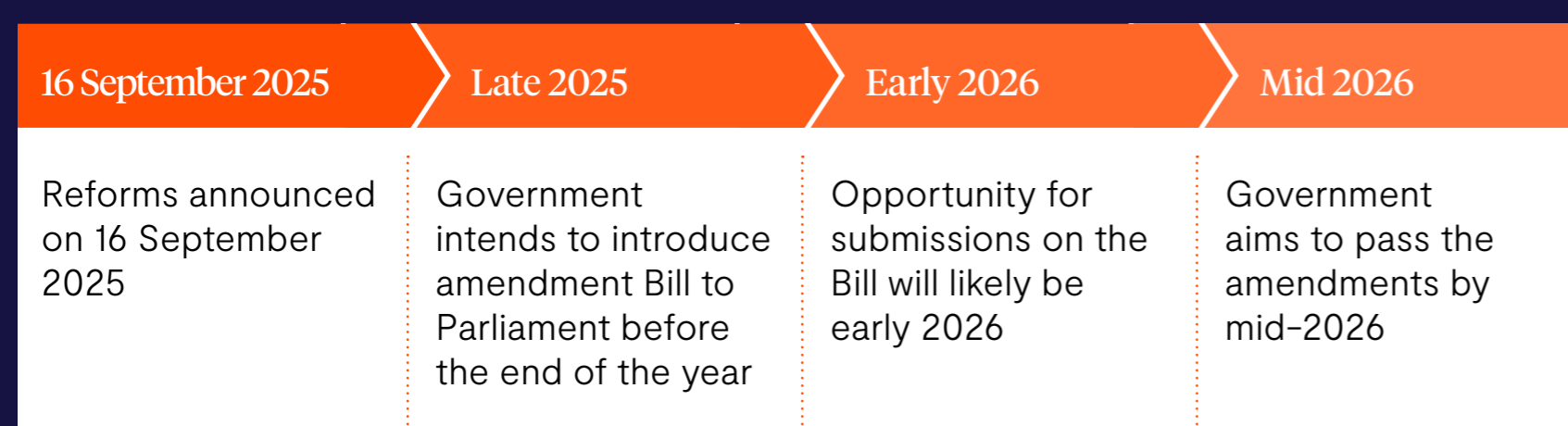


| Merger regime – “killer” and “creeping” acquisitions | Merger regime – other changes (partial acquisitions, behavioural undertakings, call-in powers and timing discipline) | Conduct – making beneficial collaboration easier e.g. environmental initiatives | Conduct – other changes (injunctions, AI and predatory pricing) | Confidential Information – protections against disclosure |
|---|--|---|--|--|
| <ul style="list-style-type: none"> Amendments will make explicit that the “substantial lessening of competition” test includes creating, strengthening, or entrenching market power. While that’s clear from current case law and the Commission’s Merger Guidelines, those points are not in the legislation itself. The amendment is intended to help the Commission assess “killer acquisitions”, i.e. acquisitions by incumbents of small or nascent competitors. The amendments will explicitly empower the Commission to assess patterns of small acquisitions by a business over a three-year period, to address concerns about “serial acquisitions” or roll-ups. The concern appears to be that in the case of serial acquisitions, the Commission may struggle to demonstrate that the marginal transaction has a “substantial” effect on competition. In practical terms, patterns of small acquisitions may now attract greater scrutiny. | <ul style="list-style-type: none"> The amendments will clarify when a partial acquisition gives rise to a “substantial degree of influence”. The Act does not currently say what factors to consider when assessing “substantial degree of influence”. Separately, the amendments will make clear that “assets of a business” include rights, infrastructure, and land, to provide greater certainty about when a transaction may require Commission notification. The Commission will be able to accept voluntary behavioural undertakings from parties to resolve competition concerns, reflecting overseas practice, which should enable more flexible outcomes in mergers that the Commission might otherwise decline. The Commission will have targeted call-in powers to pause and assess mergers before completion, which could create unanticipated delays for some transactions. Statutory timeframes of up to 140-160 working days will apply to complex merger cases, while the Commission must publish a decision summary within one day and full reasons within 20 working days. | <ul style="list-style-type: none"> A statutory notification regime will be introduced (initially for resale price maintenance and small business collective bargaining), allowing businesses to notify the Commission of proposed conduct and proceed unless the Commission objects. The amendment supports constructive engagement with the Commission, rather than the current enforcement-led approach. The Commission will have class exemption powers to exempt categories of conduct that are low-risk or clearly beneficial. The Commission will have discretion to waive or reduce application fees, to reduce the extent to which fees may deter applications. The clearance process will be streamlined, allowing applicants to request assessment of a cartel provision without a full competition impact assessment. The intention is to make it easier and faster to obtain approval. Clearance and authorisation will be available for collaborative arrangements with changing participants over time. This amendment aims to support multi-party initiatives that participants may join or leave over time. | <ul style="list-style-type: none"> The Commission will be able to apply for performance injunctions from the High Court to require market participants to take corrective action to remedy contraventions of the Act. The reforms confirm that prohibitions on anti-competitive conduct apply to behaviour facilitated by AI and algorithms. Businesses will need to ensure that AI or automated systems are competition law compliant. A new objective test for predatory pricing will clarify when below-cost pricing breaches the Commerce Act, without requiring proof that losses will be recouped, and will focus on broader patterns of conduct. Aggressive pricing strategies will become riskier. | <p>Several changes will be made to improve willingness to provide confidential information.</p> <ul style="list-style-type: none"> Confidential information provided to the Commission will be exempt from the Official Information Act for 10 years. The Commission will be able to issue confidentiality orders over classes of information or documents, attach terms and conditions on release, and allow orders to remain in effect for up to 10 years. Individuals who provide information to the Commission will be able to rely on provisions protecting against retaliation, modelled on whistleblower legislation. |

Key dates



Commission governance:

The Government is progressing changes to the governance and structure of the Commission, following the review of its governance and board performance. Key changes are:

- Update of the Commission’s governance model, with a new governing board composed mostly of part-time members.
- Delegation of regulatory decisions to Committees or the Chief Executive. Committees will be composed of individuals with relevant expertise, including commercial experience, and mainly drawn from a new statutory Commission panel.