

Lusha by Stephanie Laine

DEALTRENDS

FY24 – FY25

KING&WOOD
MALLESONS
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CONTENTS

03

Introduction

04

Deal values

10

Regulatory approvals

15

Deal structuring

21

Cross border deals

24

Anti-bribery, cybersecurity
and privacy protections

27

W&I insurance

29

Contacts

INTRODUCTION

Our 14th edition of DealTrends analyses the deal terms of 103 private M&A control transactions in FY24 and FY25 with an Australian nexus, which King & Wood Mallesons advised on.

Private M&A deal values in FY24 and FY25 have continued to increase steadily, and it is now very clear that the COVID-fuelled deals in FY22 were outliers. However, the high transaction values seen in FY22 have cast a shadow over FY24 and FY25 with valuation gaps making sale processes longer and more difficult to complete successfully.

Private capital deals maintained their upward trajectory and now account for the majority of transactions in our data set, which we believe is due to the ever-expanding number of sponsors, superannuation funds and investment strategies in the Australian market.

Regulatory scrutiny of transactions continues to tighten and may provide headwinds for M&A in coming years. Over time, there has been a consistent upward trend in the proportion of deals requiring foreign investment approval and the expansion of Australia's FIRB regime to specifically cover national security businesses and critical infrastructure assets.

In addition, Australia will introduce a mandatory notification and clearance regime on 1 January 2026 requiring competition approval for transactions that exceed certain monetary thresholds. This will result in significantly more deals, including roll-up acquisitions in the midmarket, becoming subject to ACCC scrutiny.

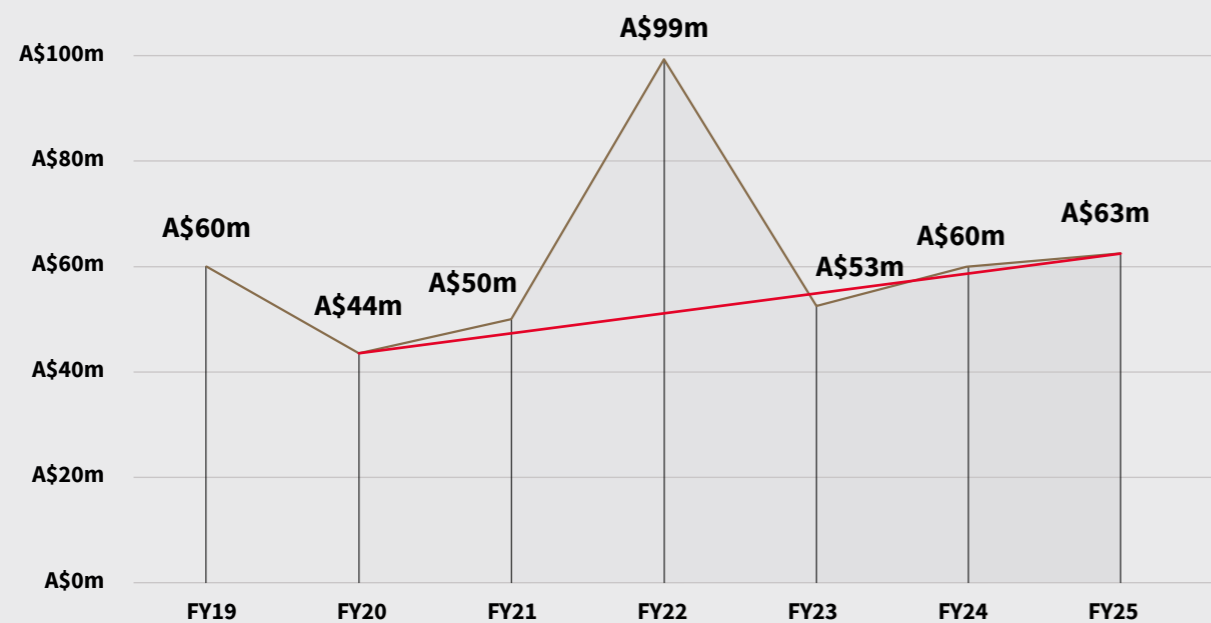
The United States, the United Kingdom, Europe and Singapore continued to be the standout jurisdictions for Australian cross-border deals. While there has been a modest decline in Asian cross-border deals during FY24 and FY25, particularly with China.

DEAL VALUES

Median deal values

M&A activity in Australia is gradually gaining momentum. Deal values have increased since the release of our DealTrends FY23 report, indicating a gradual return to pre-pandemic levels. FY24 and FY25 extended the steady trajectory seen in FY20 - FY21, while FY22 remains an outlier, with deal values inflated by low interest rates and high levels of liquidity. This pre-pandemic trend is expected to continue with moderating interest rate expectations easing funding costs and both strategic and sponsor buyers remaining well capitalised.

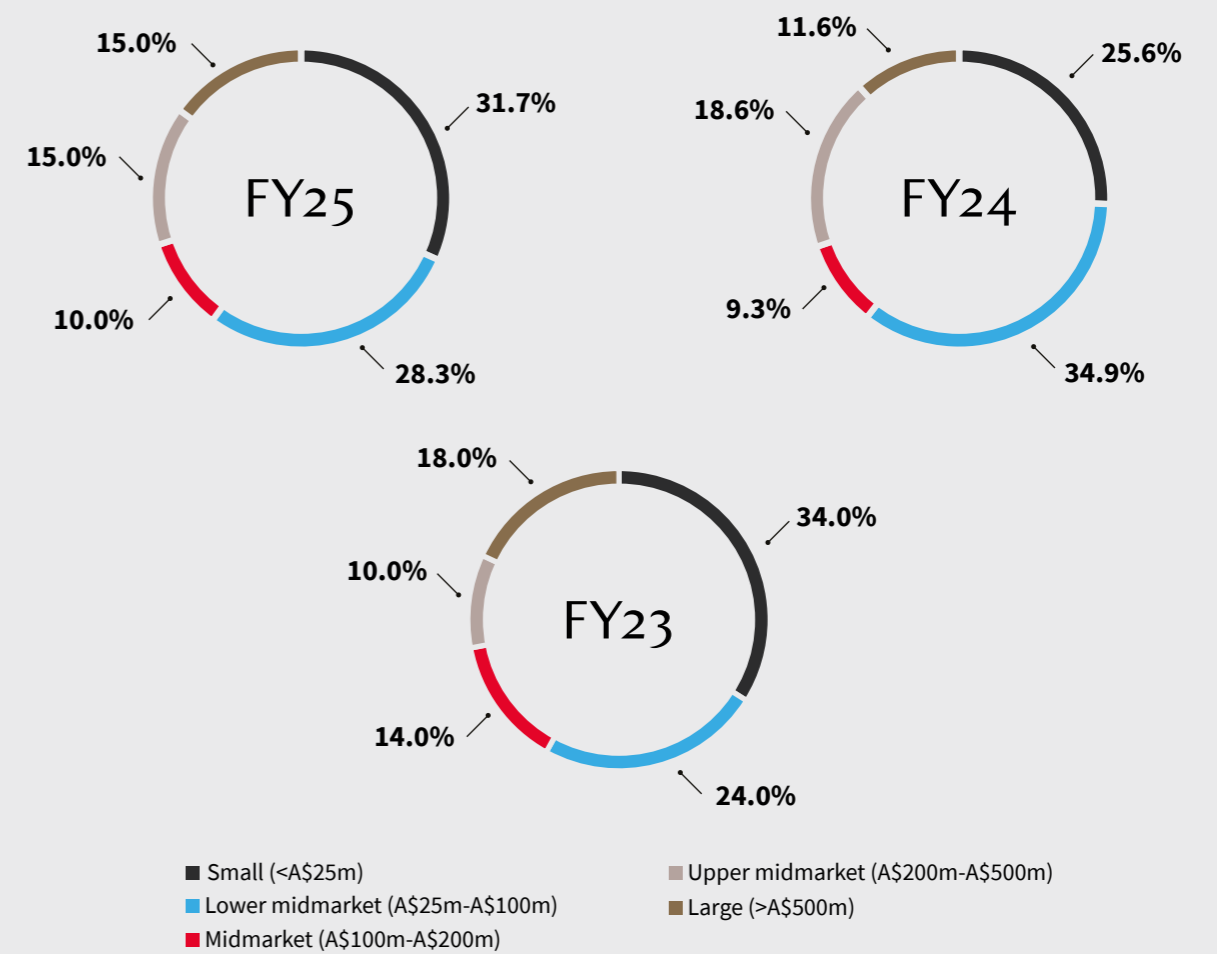
Median deal values



Deal values breakdown

Midmarket and smaller size (sub A\$200 million) deals continue to dominate the Australian M&A landscape, representing 70% of deals in FY25 and mirroring the levels seen in FY23 and FY24. FY25 also saw the reappearance of numerous multibillion dollar transactions, such as Blackstone's acquisition of data centre specialist AirTrunk and KKR's investment in Zenith Energy, suggesting optimism and market conditions are both supportive of sponsors and strategic buyers undertaking transformational transactions for the "right" asset.

Breakdown of deal values

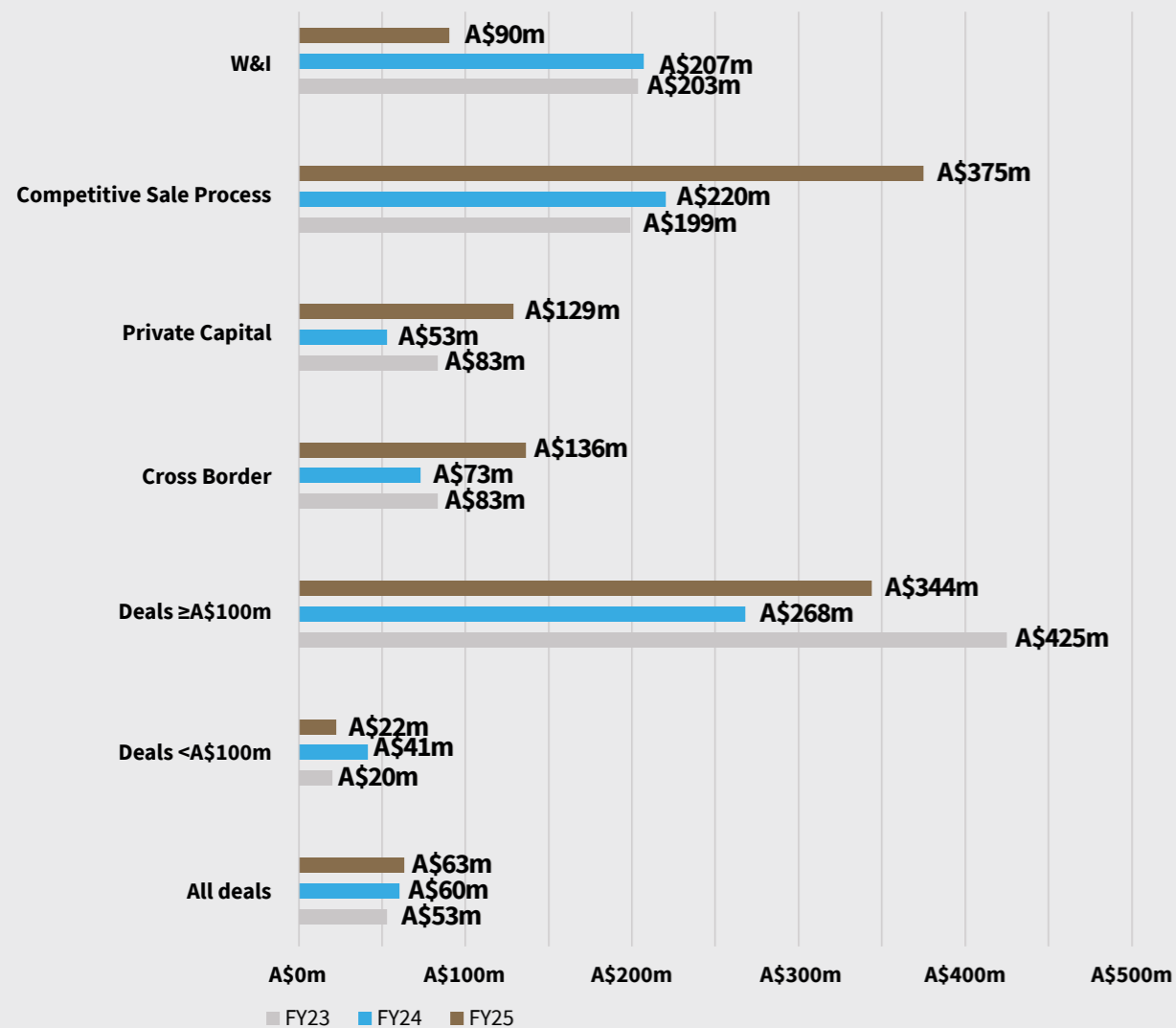


Median values by deal type

Competitive sale processes anchored the upper end of deal activity in FY25 and have shown the greatest growth in deal size since FY23. A key driver of this has been PE sponsors bringing longer-held portfolio companies to market. This trend is likely to continue amid pressure to return capital to investors and raise new funds.

Despite an increase in the number of deals utilising W&I insurance, the fall in the median value of those deals evidences the wide acceptance of that product in all areas of the market.

Median deal values by deal type

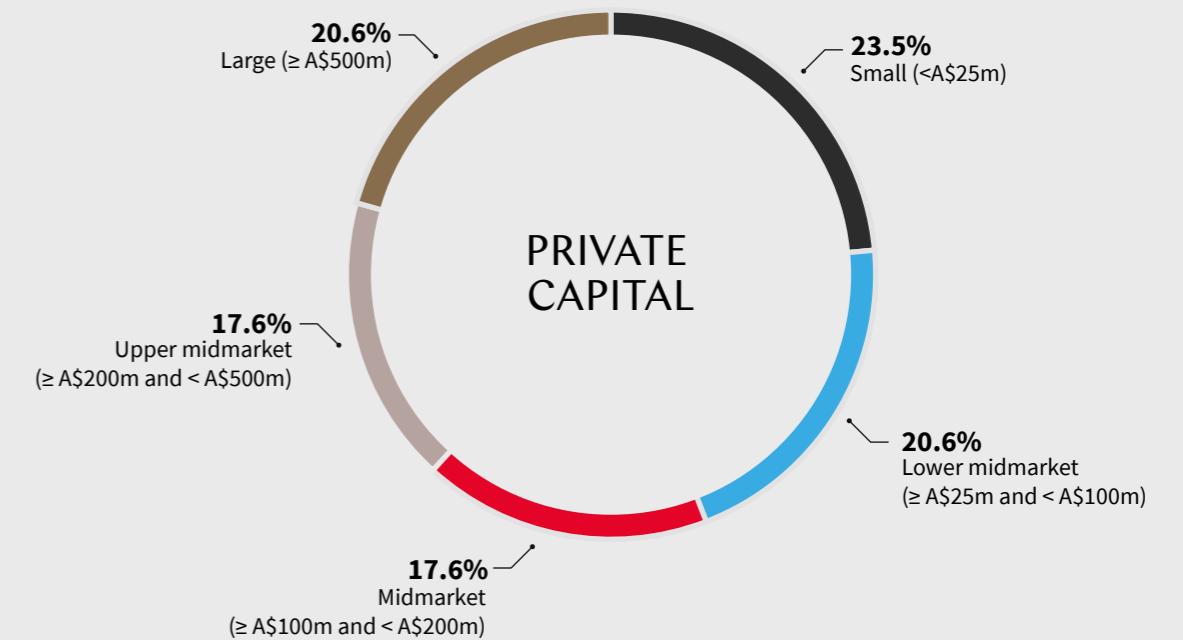


Value breakdown of private capital deals

Private capital deals in FY25 were evenly distributed across the value spectrum. Although a few mega deals punctuated headlines in FY25 (such as Blackstone's acquisition of AirTrunk), smaller and midmarket deals gained the most momentum since FY23, rising by 8.5% and 7.6% respectively since FY23. Sponsors have continued with buy-and-build strategies and bolt-on transactions, with these deals constituting almost half of all private capital transactions, signalling that sponsors are priming themselves for exit opportunities over the coming years.

Sponsors have continued to mature by diversifying investment strategies, including by opening new funds to focus on infrastructure, real estate and growth equity, as well as forming continuation vehicles and seeking other liquidity solutions. Growth equity in particular continued to gain traction, with minority, largely all equity investments used to back expansion in founder-led companies while providing strategic support to accelerate scaling.

Breakdown of private capital deal sizes in FY25

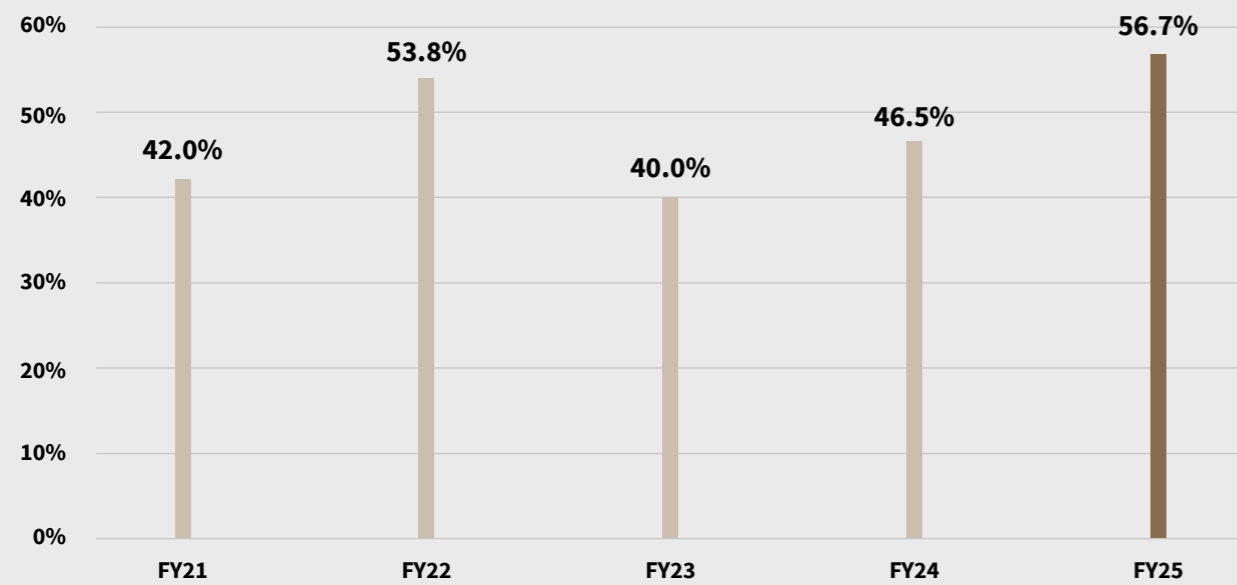


Prevalence of private capital deals

As a proportion of deals overall, private capital maintained its upward trajectory since FY23 and eclipsed pre-pandemic levels. Sponsors showed particular appetite for healthcare, real estate and financial services assets in FY25. Healthcare and real estate assets were favoured for their defensive characteristics, including their predictable cash flows. Private capital investments in the financial services sector have fluctuated over recent years and dipped modestly from FY24.

Substantial dry powder and an accommodative debt market (including the rise of private credit funds) are expected to continue the rise in private capital-backed deals.

Private capital deals as a proportion of total deals

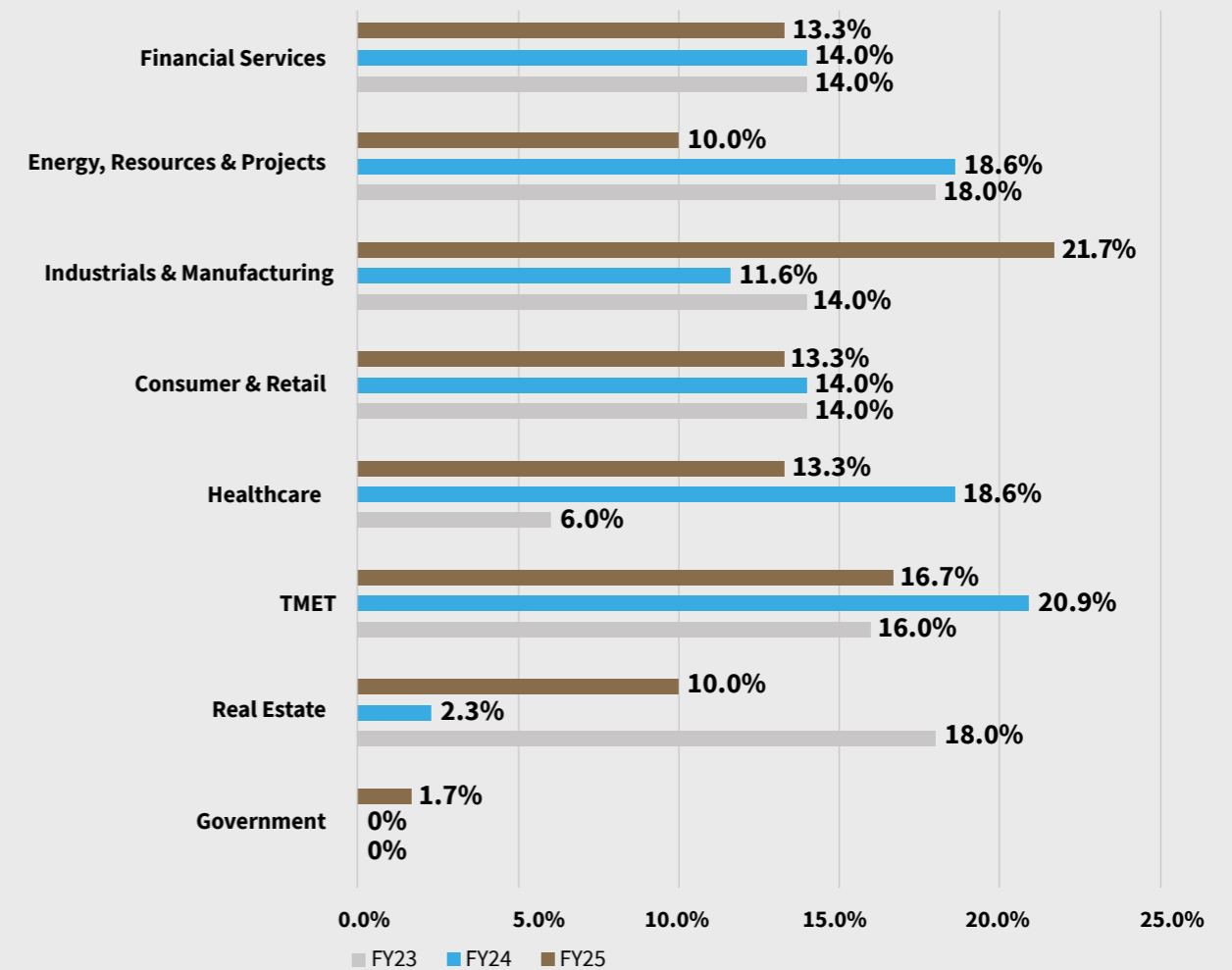


Deals by sector

While deal activity in financial services, consumer & retail and TMET sectors has remained steady over the past 3 years, deals in the industrials & manufacturing and healthcare sectors saw a significant uptick in FY25 since FY23. Real estate deal volumes saw a contraction in FY24 amid interest rate volatility but has since partially recovered.

The energy, resources & projects sector faced headwinds in FY25, with deal activity declining by 8% since FY23. The “energy transition” has yet to fully translate into deal activity, but expect a heightened awareness of the importance of critical minerals to ignite deals in this sector over coming years, amid federal government deals with the US.

Breakdown of deals by sector

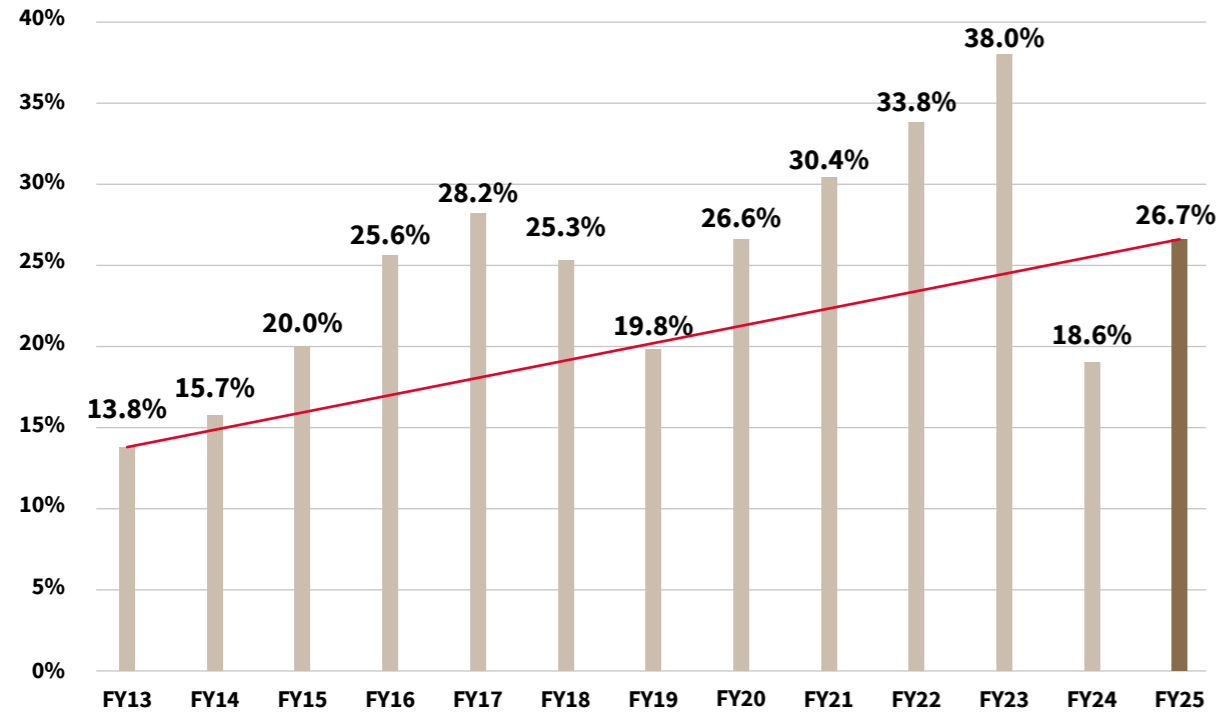


REGULATORY APPROVALS

Foreign investment approval

Surprisingly, the proportion of deals requiring foreign investment approval dipped in FY24 and FY25 amid geopolitical uncertainty. The expanding scope of Australia's FIRB regime, including in respect of national security businesses, critical infrastructure assets and acquisitions of leasehold interests exceeding five years, has resulted in FIRB approval remaining a key consideration for buyers as they continue to factor approval timelines into their transaction planning.

Proportion of deals requiring foreign investment approval

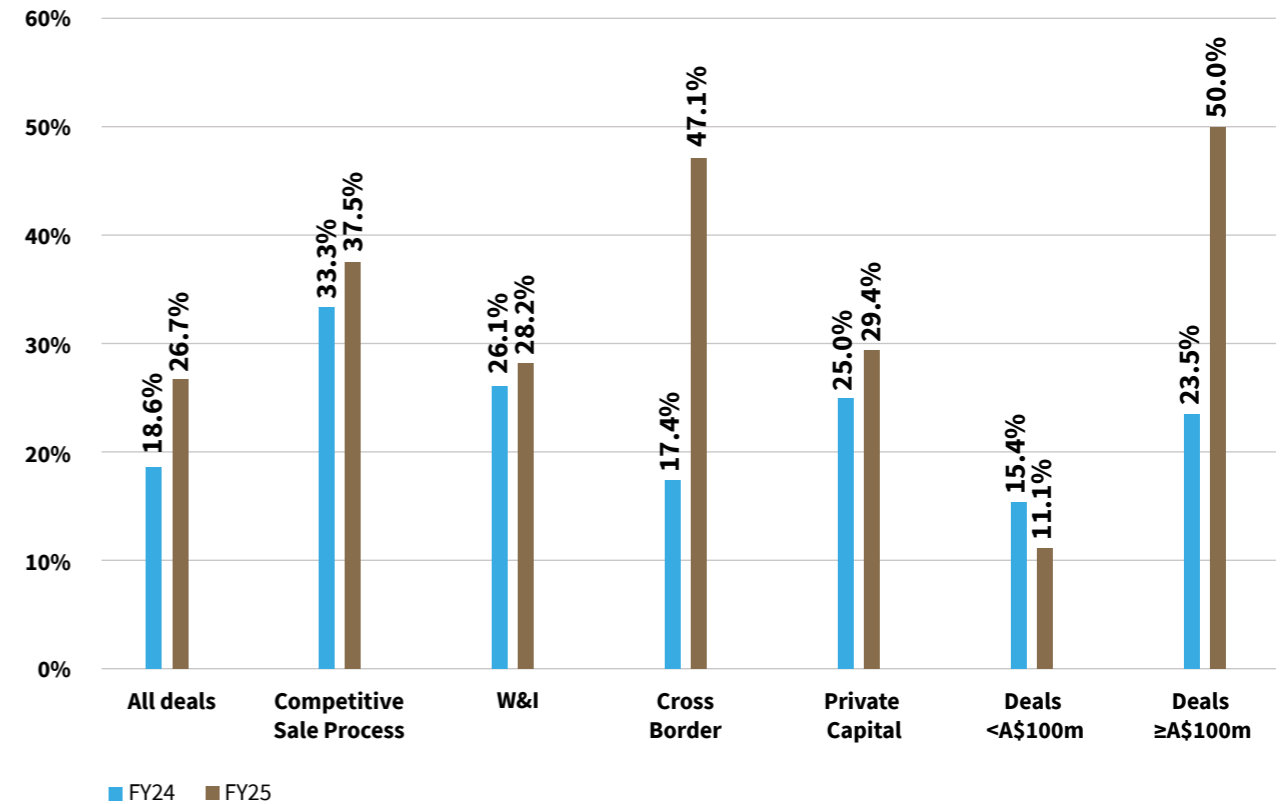


Foreign investment approvals by deal type

Unsurprisingly, cross border deals and deals exceeding A\$100 million are most likely to feature a foreign investment approval condition. A high proportion of competitive sale processes include FIRB approval as a condition precedent, with high application fees discouraging bidders from obtaining FIRB approval before signing. Despite the release of FIRB's guidance note in March 2025 on the regime for refunds and credits of application fees, under which unsuccessful bidders may choose between a refund of up to 75% of the application fee or a credit for the full amount of the fee to a different application within 24 months following the unsuccessful bid, anecdotally we have not seen bidders take advantage of this regime. Rather, sellers are routinely requesting more information on bidders' upstream foreign ownership to assess bidders' risk profiles.

Looking forward, FIRB conditions are also likely to become more seller friendly, following Cosette Pharmaceuticals' seeming attempt to walk away from a deal to acquire Mayne Pharma through an unsatisfied FIRB condition (Cosette Pharmaceuticals announced plans to shut down Mayne Pharma's drug manufacturing plant, raising national interest concerns). This may be a catalyst for more seller-protective terms, like "hell or high water" clauses (requiring buyers to accept any conditions imposed by FIRB), unilateral rights for sellers to extend timing for the satisfaction of FIRB conditions precedent and restrictions on buyers resiling from public statements of intention.

Proportion of deals requiring foreign investment approval by deal type



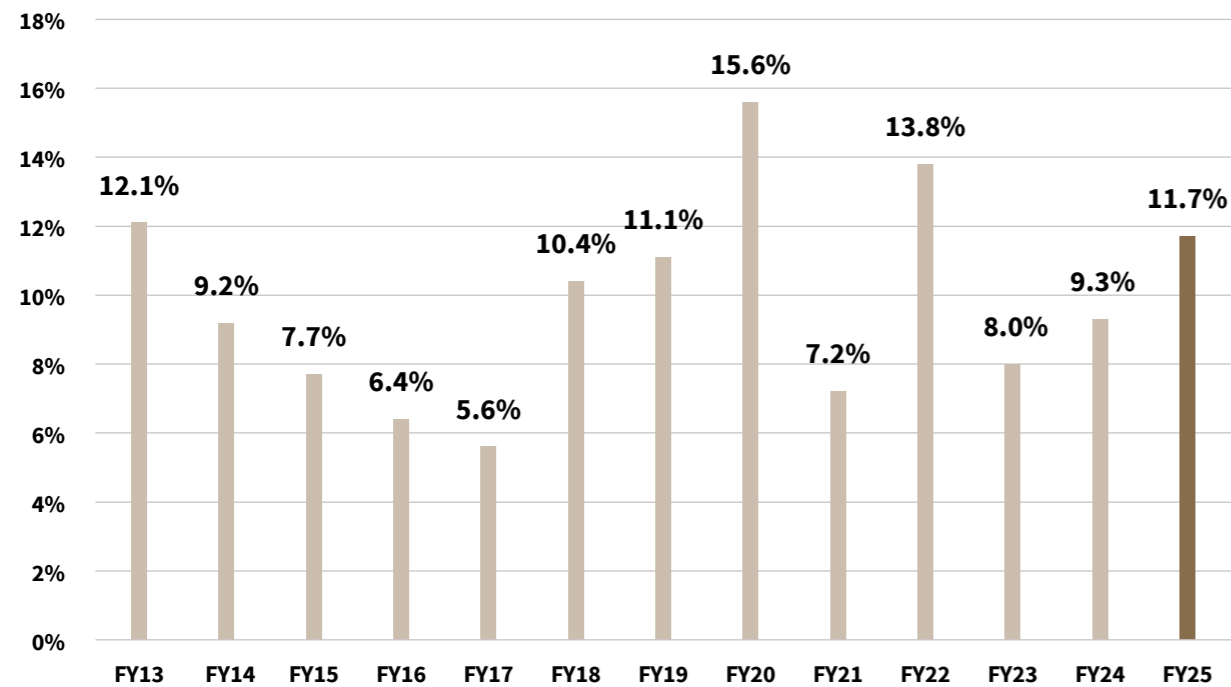
Competition approval

The proportion of deals requiring approval from competition regulators as a condition to closing has remained consistently low since FY13. However, expect this to change with the introduction of the ACCC's new merger control regime from 1 January 2026. Under the new regime, mandatory notification and clearance will be required for transactions exceeding certain monetary thresholds (and completion cannot occur without clearance), regardless of whether the acquirer and target compete.

As a result, a significantly broader spectrum of deals, including midmarket transactions, will be subject to ACCC scrutiny. When assessing whether a revenue threshold is met, the revenue of the acquirer and its connected entities, that is attributable to transactions or assets within Australia, is aggregated. This has implications for PE sponsors, in particular, as the revenue of sponsor-managed funds may be captured. The calculation can also include the cumulative revenue from acquisitions of targets providing similar goods or services over the prior 3 years, bringing bolt-on acquisitions into scope.

Importantly, notification and pre-completion clearance of transactions which meet the monetary thresholds is mandatory, and non-compliance with the regime carries the risk of the transaction being void and the imposition of substantial financial penalties. These changes are expected to make ACCC notification, and potentially clearance, a central consideration for both buyers and sellers when negotiating conditions precedent going forward.

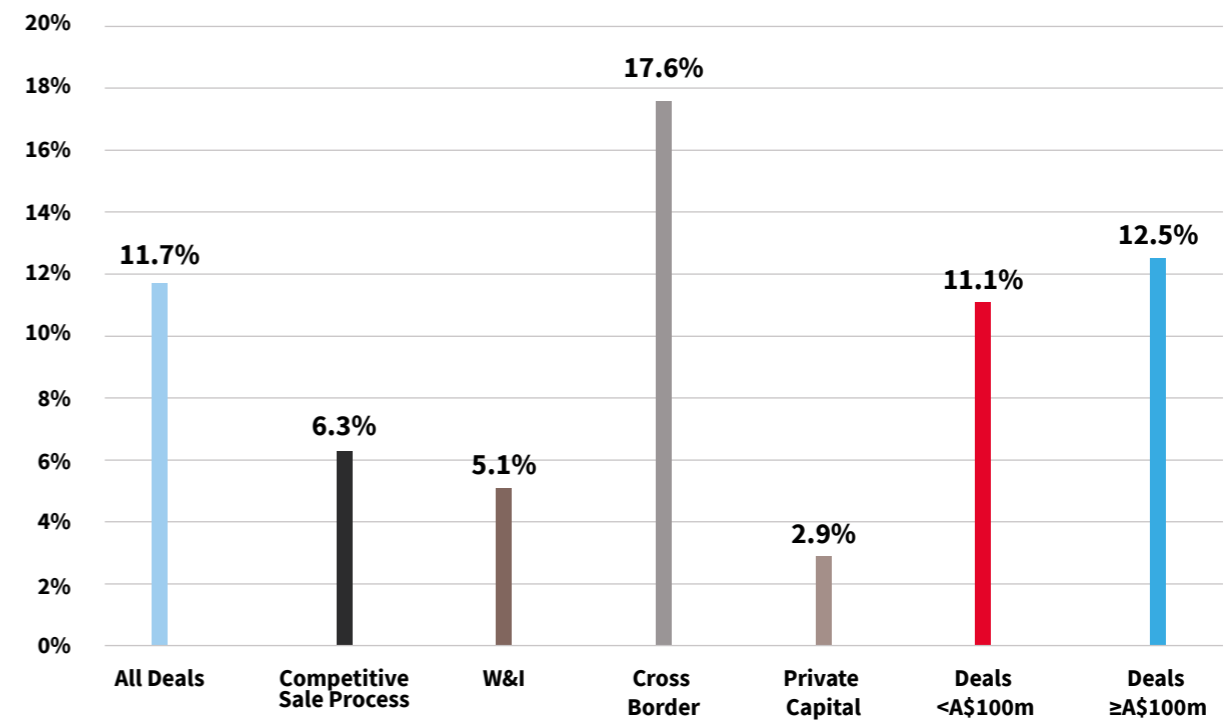
Proportion of deals requiring competition approval



Competition approval by deal type

Cross border deals have the highest incidence of competition approval conditions precedent. The introduction of ACCC's new merger control regime will align Australia's approach to requiring CPs with mandatory and suspensory competition frameworks seen in other jurisdictions such as the EU and US – regimes with which many non-Australian buyers are already well acquainted. This convergence is expected to streamline compliance for foreign investors but will also require careful navigation of Australia's notification requirements, making early regulatory engagement a critical component of deal planning.

Proportion of deals in FY25 requiring competition approval by deal type

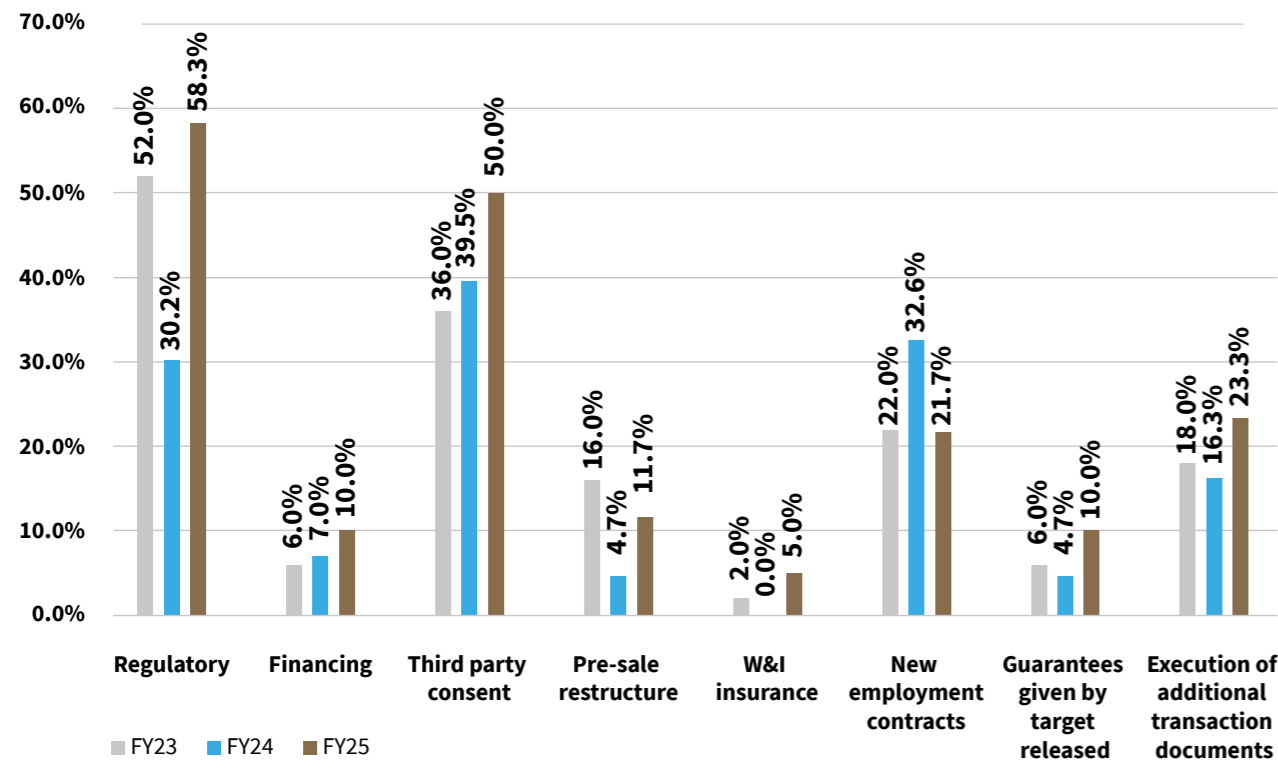


Regulatory and other CPs

For each of the past 3 years, the most prevalent conditions to closing have consistently been regulatory approvals (driven primarily by foreign investment approvals), alongside third-party consents, such as from key contract counterparties and landlords.

Entry into new employment contracts by key personnel has also remained a significant condition precedent, particularly in deals with a value of less than A\$100 million, where it featured in one-third of deals in FY25, underscoring the focus on retention of key employees and management continuity in smaller sized deals where individual founders are key to the value of those businesses.

Proportion of deals featuring various CPs

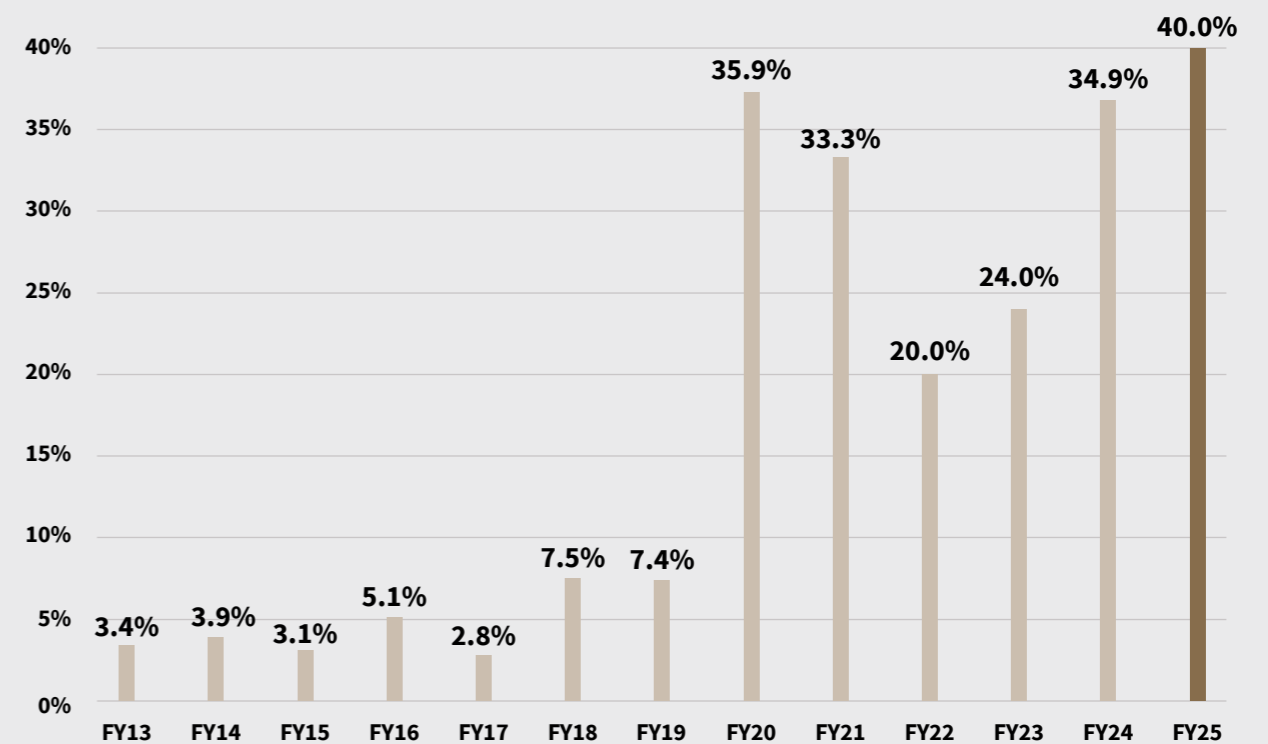


DEAL STRUCTURING

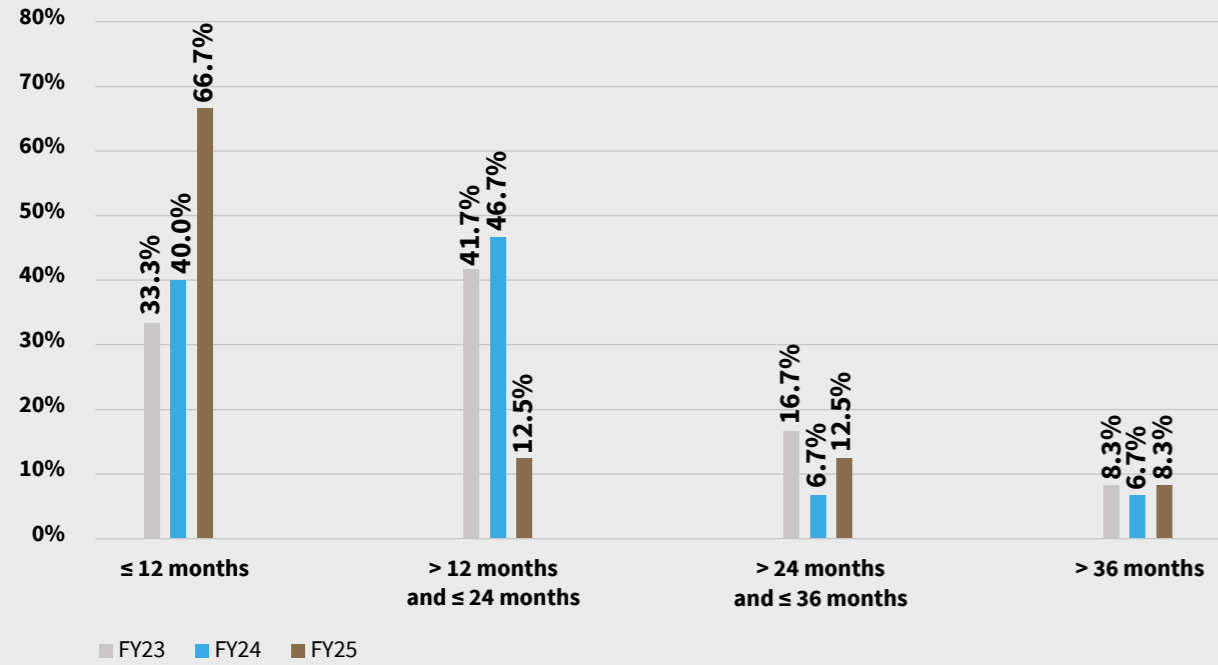
Deferred consideration

Deferred consideration (excluding earn-outs) has become an increasingly prominent deal structuring tool in buyers' arsenal, appearing in 40% of transactions in FY25, the highest rate recorded in over a decade. Having risen in prominence during COVID, buyers are reluctant to give it up. Sellers have, however, been successful in resisting extended payment timelines. Since FY23, there has been a trend towards shorter deferral periods, with a time horizon of 12 months or less now prevailing.

Proportion of deals with deferred consideration



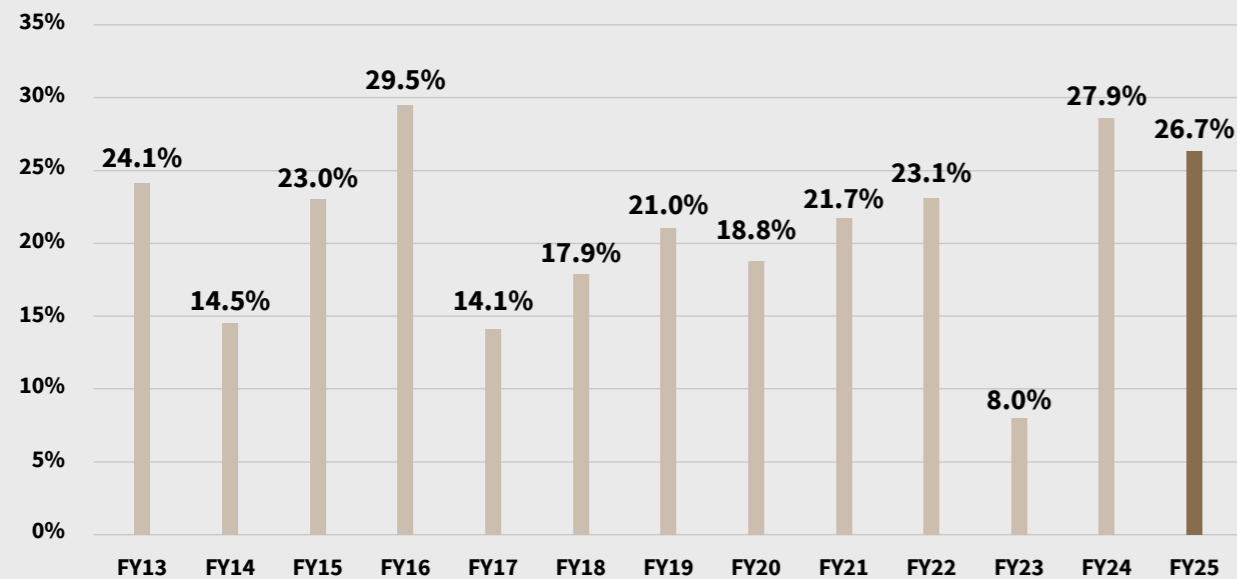
Proportion of deals with deferred consideration by deferral period



ESCROW

Despite a blip in FY23, escrow use has gradually trended upwards since FY17, but is still at relatively modest levels overall. The quantum of escrowed funds has remained stable since FY13, typically representing 5% to 10% of total deal value. However, sub-A\$100 million deals continue to attract higher levels of escrowed funds (as a percentage of deal value). This reflects buyers having more bargaining power and being less willing to accept risk for known issues in lower value transactions with sellers that may have less to offer in the way of credit support.

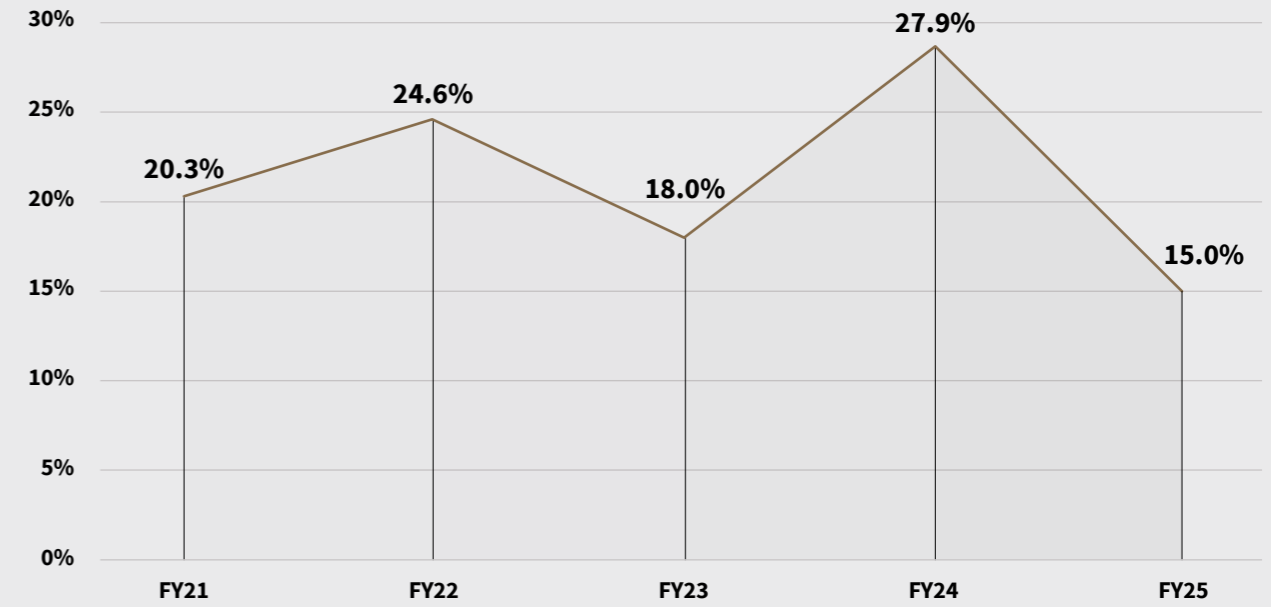
Proportion of deals using escrow



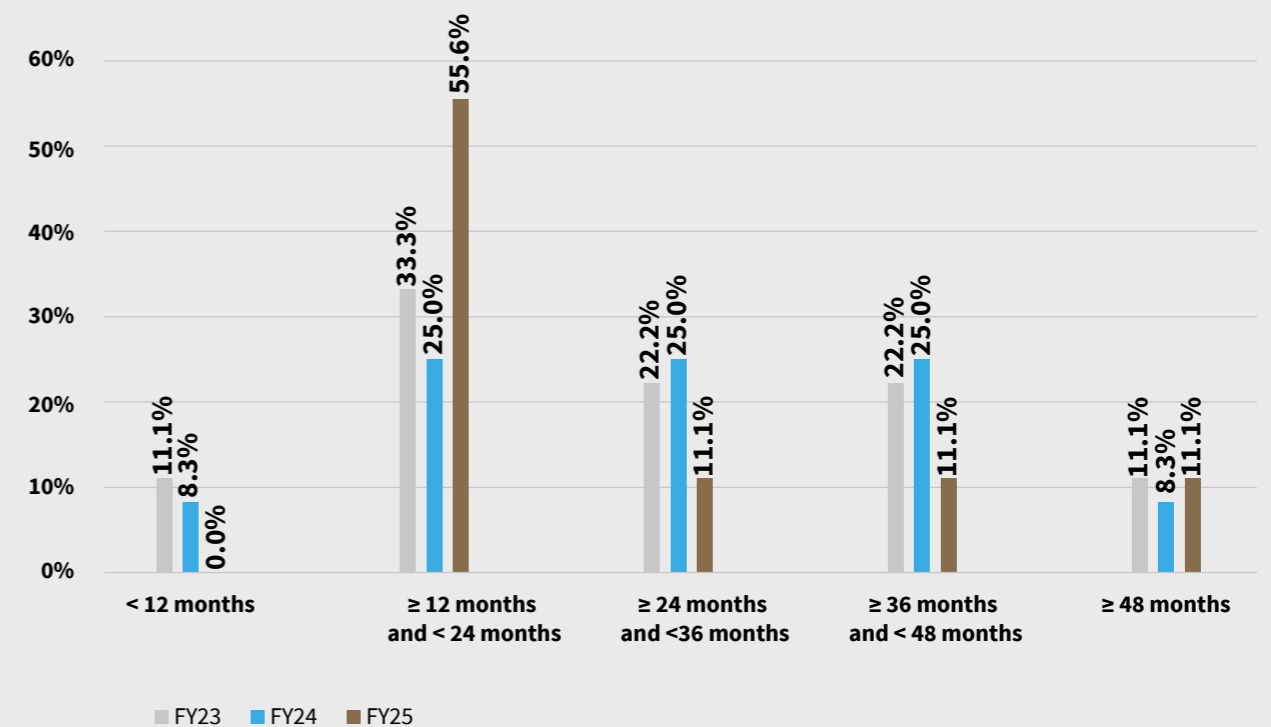
Earn-outs

The prevalence of earn-outs has fluctuated over the past 5 years (albeit within a relatively narrow range), but they continue to serve as an important mechanism for buyers to bridge valuation gaps and incentivise post-completion performance, appearing in 15% of deals in FY25. Sellers have gained ground in negotiations, driving a shift toward shorter earn-out periods. In FY25, over half of earn-outs have been structured within a 12 to 24 month window.

Proportion of deals with earn-outs



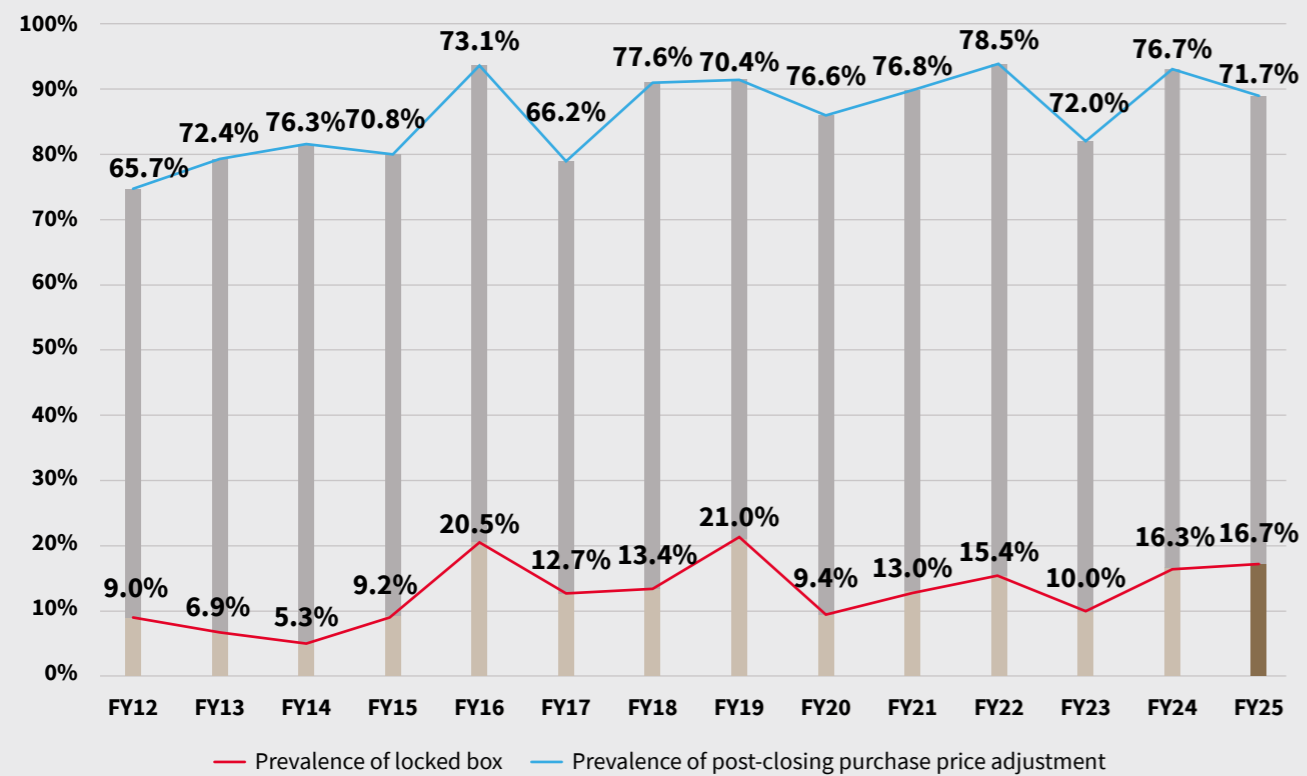
Proportion of deals with earn-outs by duration of earn-out



Locked box

While the locked box purchase price mechanism saw a modest increase in adoption in FY24 and FY25, it remains a niche feature in Australian deals, with uptake still well below that of markets such as the UK and Europe. The mechanism is favoured by sellers for its price certainty, featuring in 16.7% of sell-side private capital deals in FY25 versus 9.5% of private capital deals on the buy-side. Anecdotally, we would have expected to see more locked box transactions if the number of mooted sale processes during this period translated into successful transactions. Post-closing purchase price adjustments continue to dominate as the preferred approach.

Proportion of deals using locked box vs post-closing adjustments

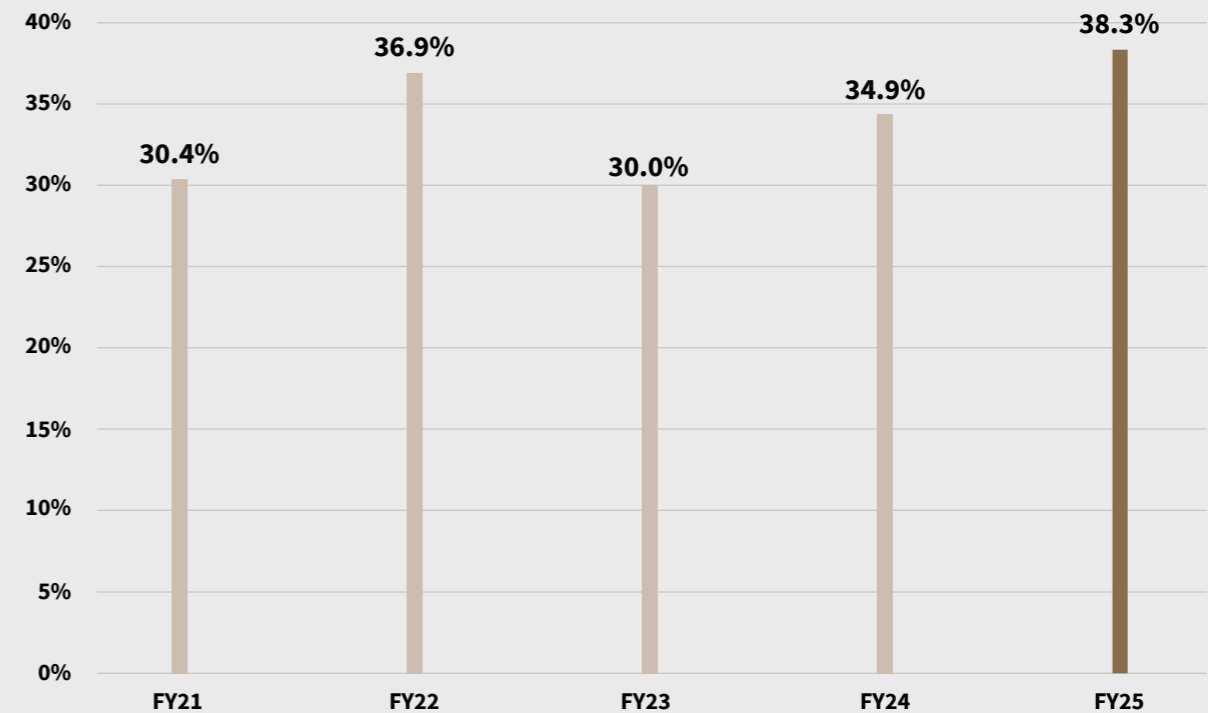


MAE CPS

The use of provisions requiring the absence of a Material Adverse Event as a condition to closing has hovered around the same levels for the past 5 years, featuring in less than 40% of deals in FY25. Most of the provisions are tightly drafted and metric-driven with 65% of MAE/MAC conditions in FY25 deals linked to a defined reduction in net profit or EBITDA.

In October 2025, the New South Wales Supreme Court in the Cosette Pharmaceuticals / Mayne Pharma matter (referred to in the 'Regulatory Approvals' section of this report), affirmed the high evidentiary burden on parties seeking to rely on quantitative MAE/MAC provisions. A party seeking to invoke a MAE/MAC clause which is tied to a quantitative metric must prove that the effect of the relevant matter(s), in isolation from other factors, is more likely than not to meet the relevant quantitative threshold. In particular, the Court clarified that failure to meet a financial forecast was not an adverse change in itself, but evidence of such a change.

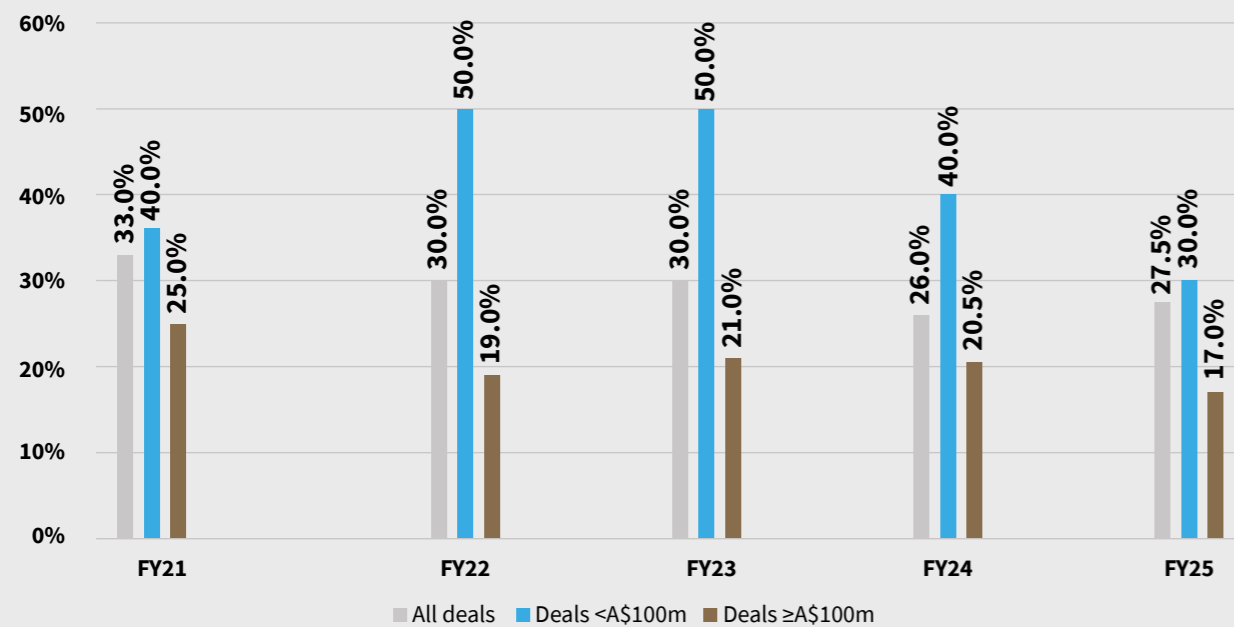
Proportion of deals with MAE CPS



Median levels of caps for business warranty breaches

Seller liability caps for breaches of business warranties have remained broadly stable as a percentage of deal value over the past 5 years, reflecting relatively entrenched market norms. As expected, smaller transactions (valued at less than A\$100 million) continue to attract materially higher caps, typically ranging from 40% to 50% of the deal value. Sellers, however, have been successful in negotiating lower caps in such transactions in recent years with caps having decreased from 50% of the purchase price in FY23 to 30% in FY25. In contrast, deals above A\$100 million consistently feature lower caps, generally falling between 17% and 25% of the purchase price.

Median levels of caps for business warranty breaches (as a percentage of deal value)

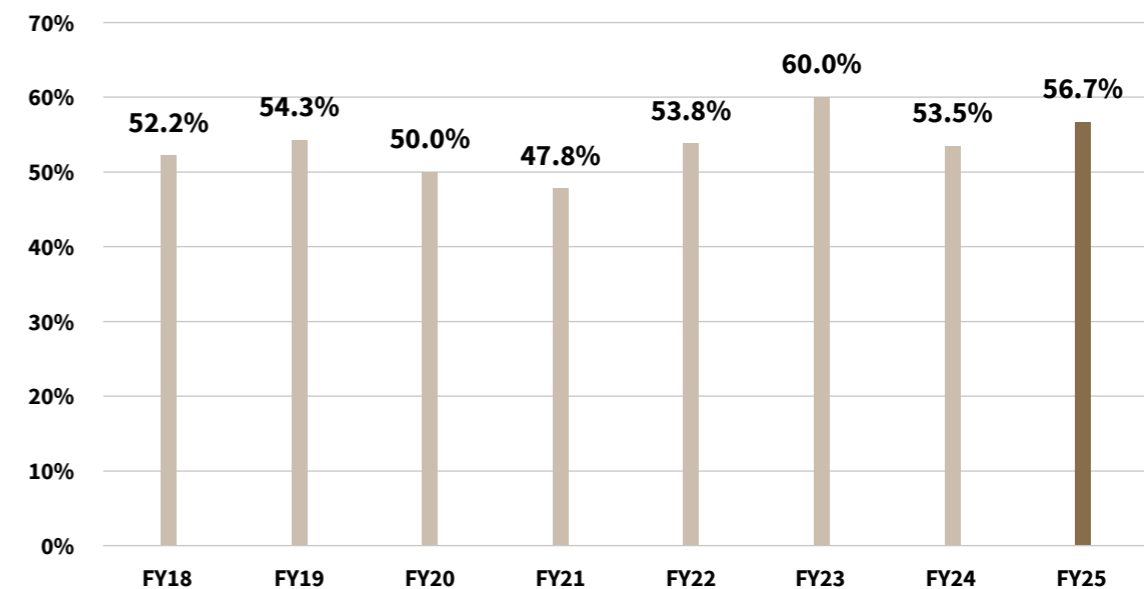


CROSS BORDER DEALS

Cross border transactions

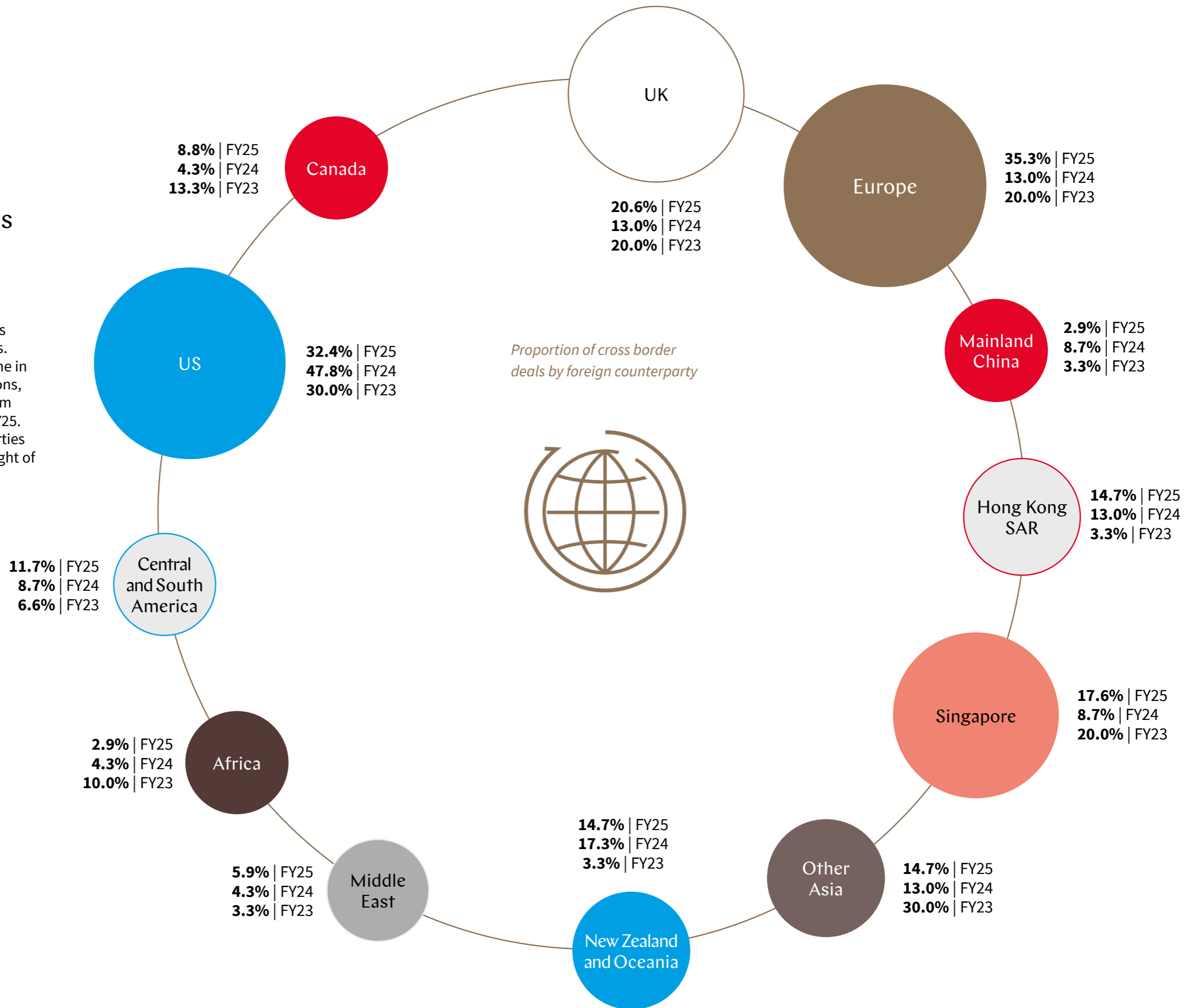
The prevalence of cross-border deals has remained stable from FY18 through FY25, including during the disrupted COVID period. This reflects the enduring appeal of Australia as a stable and strategic market whilst geopolitical concerns have disrupted deal flow in other markets. In FY25, three-quarters of successful bidders in competitive sale processes were not Australian.

Proportion of deals involving non-Australian counterparties



Cross border deals by country

In FY25, the US, UK/EU and Singapore continued to be the most active foreign jurisdictions participating in Australian deals. There has been a modest decline in deals involving Asian jurisdictions, with participation dropping from nearly 60% in FY23 to 50% in FY25. Deals involving PRC counterparties continue to be challenging in light of geopolitical factors.

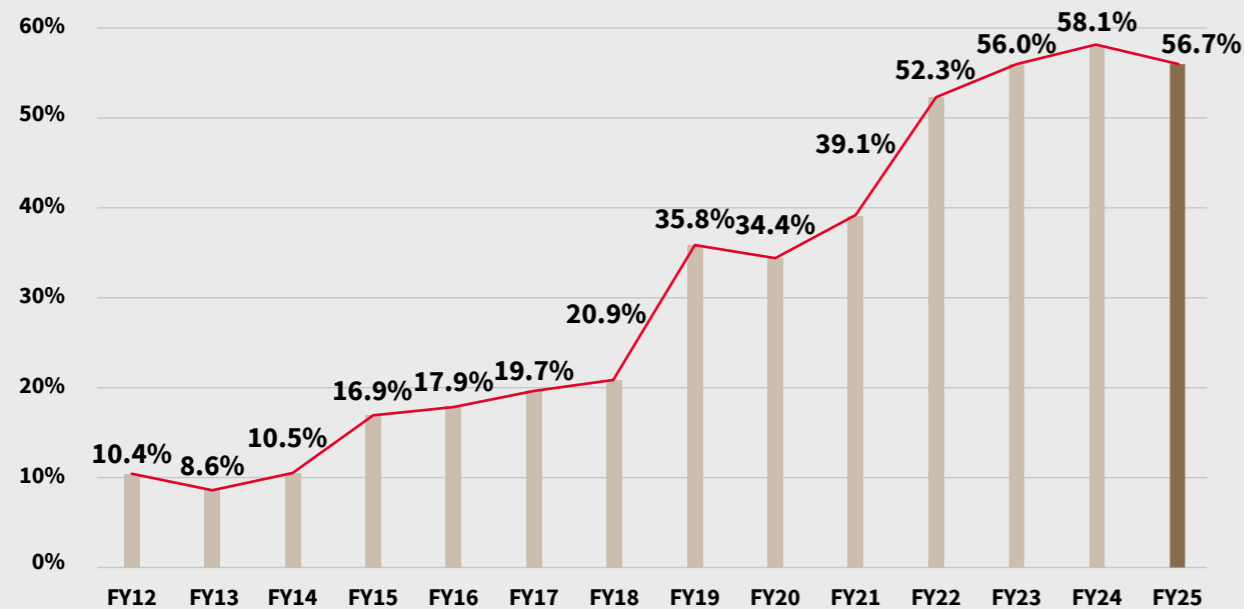


ANTI-BRIBERY, CYBERSECURITY AND PRIVACY PROTECTIONS

Anti-bribery and corruption warranties

Despite a minor dip in the use of anti-bribery and corruption (ABC) warranties in FY25, they still remain a common feature in deals, particularly in larger transactions. Changes to the Criminal Code Act 1995 came into force in September 2024 which introduced into Australia a new corporate offence for failing to prevent the bribery of foreign public officials in the absence of adequate procedures. ABC compliance will likely be a continued area of focus during diligence especially for target companies with international operations, exposure to high-risk jurisdictions and interactions with government bodies.

Proportion of deals featuring ABC warranties



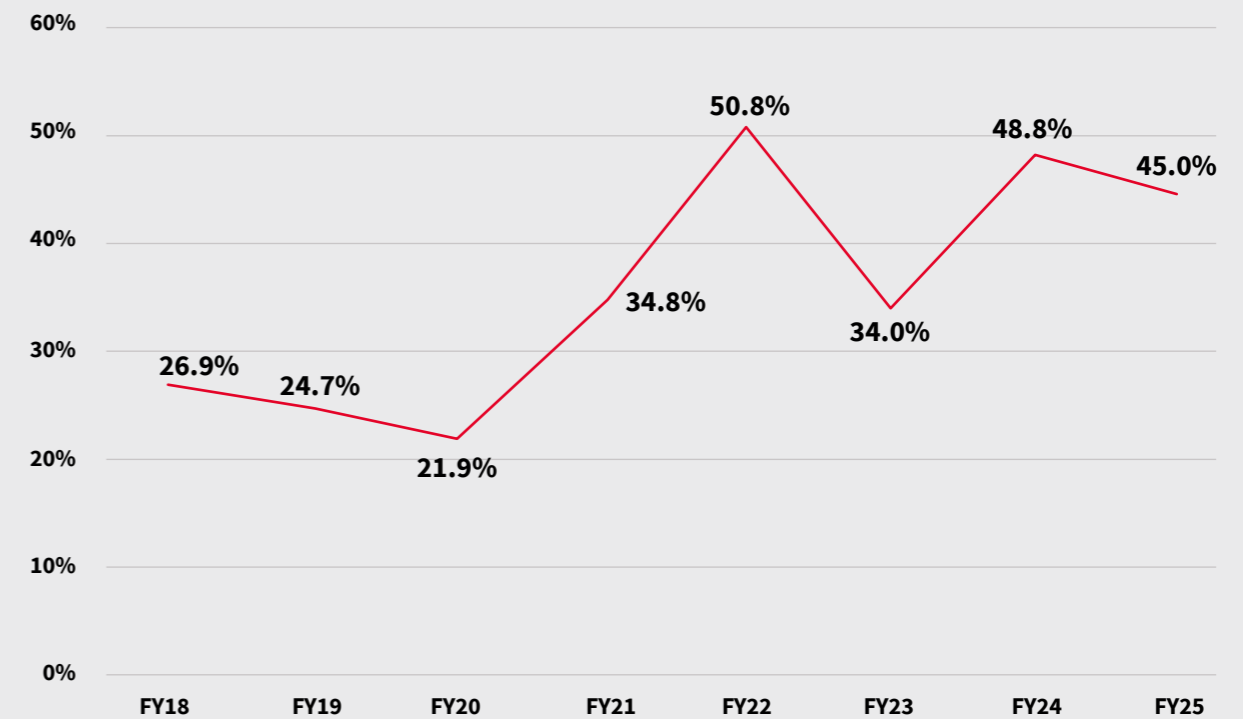
Proportion of deals in FY25 featuring ABC warranties by deal size



Cybersecurity warranties

Cybersecurity warranties having become an increasingly prominent feature in transactions. Against a backdrop of technological advancement, high-profile cyber incidents (such as the Optus data breach) and FIRB's ongoing focus on data security, with conditions being routinely imposed on foreign buyers regarding access and storage of sensitive information, it is unsurprising that buyers continue to prioritise cybersecurity warranties as a risk mitigation tool. In FY24 and FY25, cybersecurity warranties were included in just under half of all deals, regardless of deal size, reflecting their broad market acceptance in transactions where the nature of the target lends itself to digital vulnerability. Beyond contractual protections, buyers' commercial due diligence typically seeks confirmation that targets have undertaken the appropriate testing of their IT systems and remediated identified security vulnerabilities.

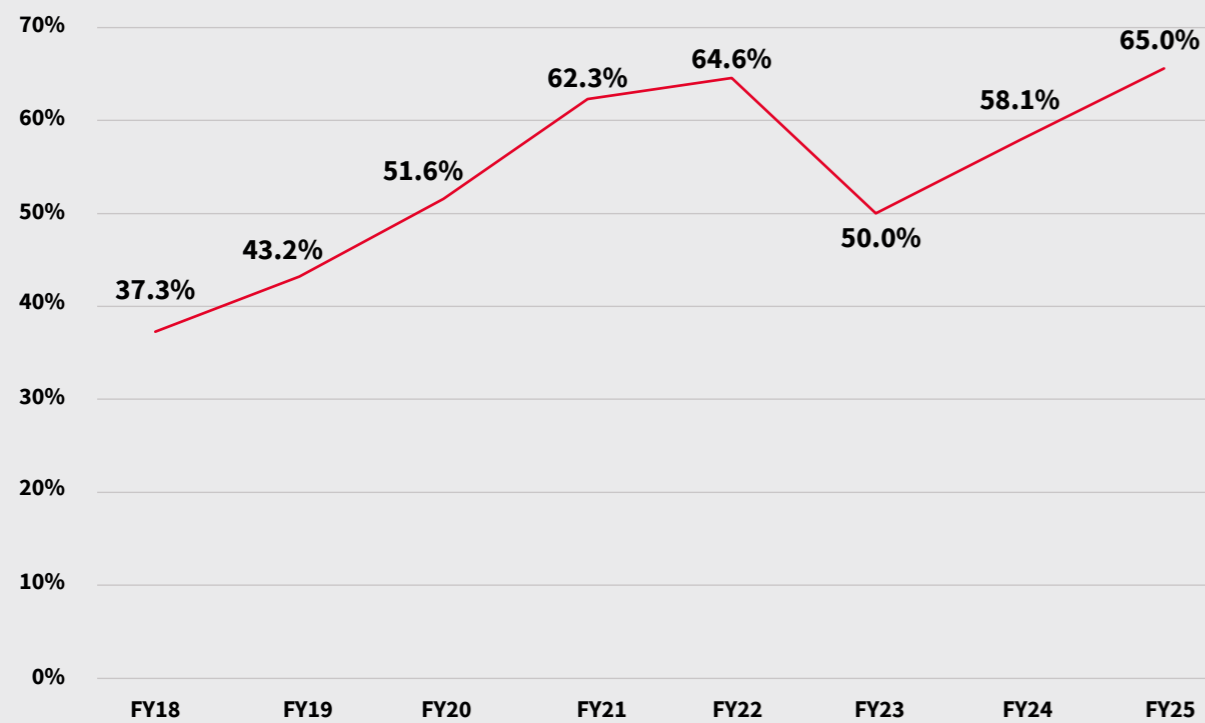
Proportion of deals featuring cybersecurity warranties



Privacy warranties

In the same vein, the use of privacy warranties has continued to rise, featuring in 65% of deals in FY25, the highest level seen in 8 years and reflecting heightened awareness of data protection issues in sectors handling high volumes of personal or sensitive information, such as healthcare. Against a backdrop of geopolitical tensions, expect FIRB to continue imposing privacy conditions, particularly where foreign buyers may gain access to Australians' personal information or where that information is transferred offshore.

Proportion of deals featuring privacy warranties

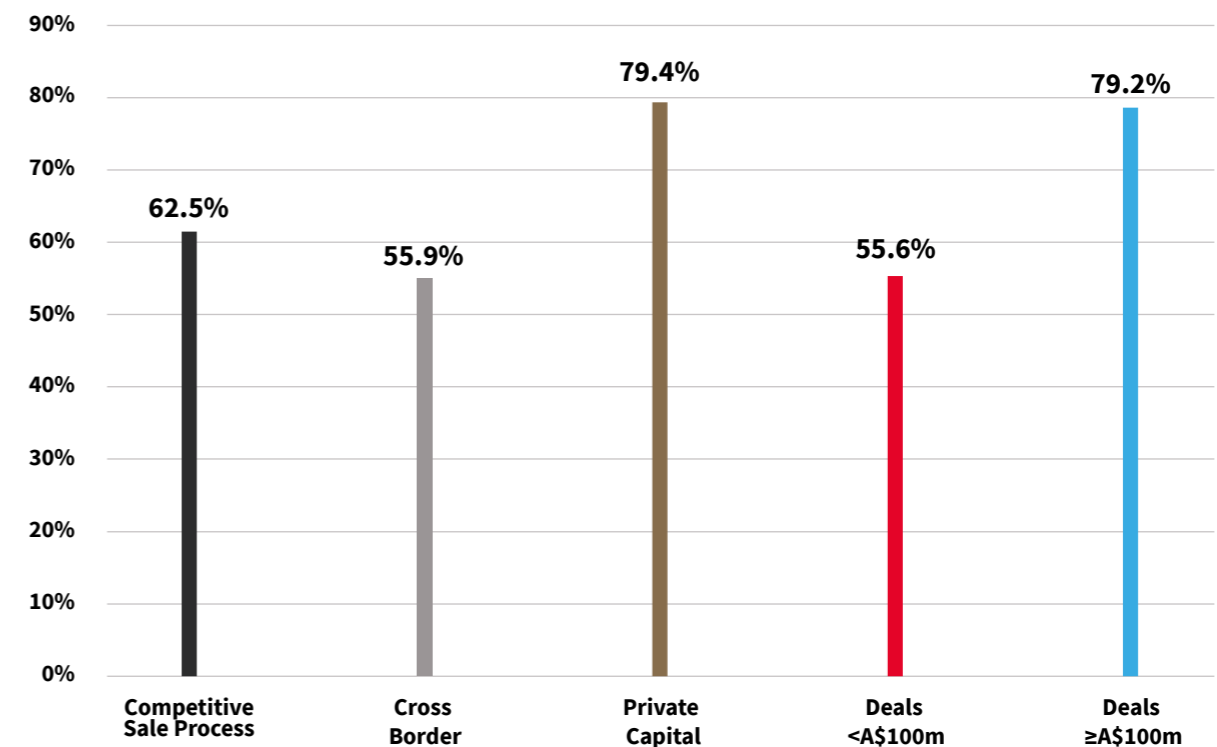


W & I INSURANCE

W&I insurance take-up by deal type

W&I insurance remains most commonly used in private capital deals (both on buy and sell-side) and deals with a value exceeding A\$100 million. Utilisation of W&I insurance has risen across all deal types since FY23, including deals with a value of less than A\$100 million where uptake increased by 35%, the largest increase in any segment.

Proportion of deals using W&I insurance by deal type



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Matthew also regularly advises on joint ventures, reconstructions and general corporate law. Matthew has represented clients with interests in a wide range of industries, including technology, healthcare, financial services, resources, manufacturing and FMCG.



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