



In the matter of Lachlan Farming Limited 02
[2005] ATP 02

Catchwords:

Efficient market; knowledge of shortfall; rights issue; risk; shortfall facility; underwriting

Item 10, Item 9, section 611, section 606, Corporations Act 2000 Cth
Lachlan Farming 01

These are the Panel's reasons for making a declaration of unacceptable circumstances and orders in relation to a proposed acquisition by Lenvat Pty Ltd of a shortfall under a rights issue conducted by Lachlan Farming Ltd. The acquisition of the shortfall would have increased Lenvat's voting power in Lachlan from 21% to 55%. The Panel's orders prevented Lenvat from acquiring any more shares under the rights issue and the shortfall facility than Lenvat would have been entitled to acquire under the rights issue and creep exceptions of section 611.

SUMMARY

1. These reasons relate to an application (**Application**) to the Takeovers Panel (**Panel**) from Lenvat Pty Ltd (**Lenvat**) under section 657C of the *Corporations Act 2001* (Cth) (**Act**)¹ dated 14 January 2005 in relation to the affairs of Lachlan Farming Ltd (**LFL**).
2. On 25 January 2005 the Panel made a declaration of unacceptable circumstances and final orders preventing LFL from issuing shares to Lenvat that would cause Lenvat's voting power to increase by any more than allowed by the Corporations Act pursuant to Lenvat's pro-rata rights entitlement under a rights issue (see below) and under item 10 of section 611 (**item 10**), and its entitlement² under the "Creep" exception in item 9 of section 611³.
3. LFL had been conducting a 1 for 1.19 rights issue (**Rights Issue**) of up to 18 million shares to raise \$9 million. The terms of the Rights Issue were set out in a prospectus dated 17 September 2004 (**Rights Issue Prospectus**). The Rights Issue was underwritten as to the first 14 million shares by Rural Funds Management Limited (**RFM**) as responsible entity of the RFM Australian Cotton Fund (**ACF**) and the Rights Issue Prospectus disclosed the possible effect of a shortfall on RFM's voting power in Lachlan. RFM also provides management services to LFL.
4. Under the terms of the Rights Issue, LFL shareholders were entitled to apply to subscribe for any shares not taken up by other shareholders in the initial offer (**Shortfall Facility**).
5. Lenvat alleged that unacceptable circumstances existed in relation to control of LFL, caused by the decision by the board of LFL to allocate only so many shares in LFL to

¹ Unless otherwise stated, all section references are to the Corporations Act.

² To the extent Lenvat was entitled to acquire any shares in LFL under the creep provision.

³ At the time of the application, Lenvat was the largest single shareholder in LFL.

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Lenvat under the Rights Issue and the Shortfall Facility as would be allowed under item 10 of section 611 (excluding the exception in section 10 relating to an underwriter or sub-underwriter) and item 9 of section 611.

6. On 20 January 2005 the Panel decided that unacceptable circumstances existed in relation to the affairs of LFL due to the proposed acquisition of 17,247,159 shares in LFL by Lenvat under the Rights Issue and the Shortfall Facility (**Lenvat Subscription**). However, the decision that unacceptable circumstances existed is for different reasons than those asserted by Lenvat. The Panel did not accept that the circumstances complained of by Lenvat in its application are unacceptable.
7. The Panel considers that the proposed acquisition under the Lenvat Subscription constituted unacceptable circumstances in relation to the affairs of LFL because:
 - (a) of the effect the acquisition would have on the control of LFL; and
 - (b) the acquisition would give rise to a contravention of section 606 in that Lenvat's voting power in LFL would increase from 21.4% to 55.4% in circumstances other than those contemplated by a statutory exception to the limit set out in section 606.
8. Lenvat had made its application under the Rights Issue and Shortfall Facility half an hour prior to the closing of the Rights Issue and was aware at the time that it made its application of the size of the shortfall and the size and persons involved in all other applications under the Rights Issue and Shortfall Facility. On that basis, the Panel considered that the proposed acquisition of shares under the Shortfall Facility did not fall within the provisions of the exception in item 10 of section 611 for underwriting a complying rights issue because Lenvat's knowledge removed one of the essential elements of underwriting i.e. assumption of risk.
9. When Lenvat made its application, it did so with almost certain knowledge of what the shortfall was going to be. The Panel inferred that Lenvat's final decision as to whether or not to make application under the Rights Issue and the Shortfall Facility, and the size of any application, was very strongly based on the knowledge of the shortfall which it acquired.

THE PROCEEDINGS

10. These reasons relate to an application (the **Application**) to the Panel from Lenvat Pty Ltd (**Lenvat**) on 14 January 2005 in relation to the affairs of Lachlan Farming Limited (**LFL**).
11. Lenvat applied for interim orders restraining the issue of shares under the Rights Issue until the determination of the Proceedings. LFL undertook to the Panel not to issue any shares under the Rights Issue until the conclusion of the Proceedings. On that basis the Panel considered that interim orders were not necessary.

THE PANEL & PROCESS

12. The President of the Panel appointed Simon Mordant (sitting President), Karen Wood (sitting Deputy President) and Robyn Pak-Poy as the sitting Panel (the **Panel**) for the proceedings (the **Proceedings**) arising from the Application.

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13. The Panel adopted the Panel's published procedural rules for the purposes of the Proceedings.
14. Lenvat, LFL, RFM Mr Tony Barlow (independent director of LFL) and ASIC provided notices of appearance. The Panel consented to the parties being legally represented by their commercial lawyers in the Proceedings.

BACKGROUND

15. The Application followed another application by Lenvat in relation to the Rights Issue. That decision is Lachlan Farming Ltd [2004] ATP 31 (**LFL 01**). A good deal of the background information as to LFL as a company and to the Application is set out in the reasons for that decision.

LFL 01 Proceedings

16. In LFL 01 the Panel declined to conduct proceedings in response to an application from Lenvat concerning the underwriting of the Rights Issue by RFM. It took into account the actions, or inaction, of Lenvat in objecting to the Rights Issue and the underwriting. It noted that one of the directors of LFL is a person nominated by Lenvat and that Lenvat had therefore been aware of, and a participant in the organisation and preparation of the Rights Issue but had made little or no effort to object to the parts of the Rights Issue and underwriting to which it objected in LFL 01.

Shortfall Facility

17. The Rights Issue Prospectus stated that shareholders could apply for shares not taken up by other shareholders (**Shortfall Facility**). If more shares were applied for than were available under the Shortfall Facility the excess shares would be allotted to shareholders who wished to take them up, in proportion to those shareholders' shareholding in LFL at the date of the Rights Issue Prospectus. However, the LFL directors advised in the Rights Issue Prospectus that this would be subject to any restrictions imposed by the Corporations Act.
18. Page 7 of the Rights Issue Prospectus set out the terms of the Shortfall Facility as follows:

"Each Shareholder is entitled to subscribe for one Share for every 1.19 Shares they currently hold. Any Shareholder may subscribe for more than their Entitlement, in which case they may be able to acquire those Shares not taken up by the other Shareholders. In the case where there are not enough Shares to satisfy these requests, any additional Shares will be allotted to each Shareholder in proportion to the number of Shares held at 5 pm on the date of this Prospectus, up to the maximum amount of the Offer.

The Directors retain unfettered discretion on the allocation of Shares under this Offer where an Existing Shareholder applies for more than their Entitlement. The Directors intend to allocate any Entitlements not subscribed for by Existing Shareholders to other Shareholders who may have applied for more than their Entitlement as described above, and to the Underwriter pursuant to the Underwriting Agreement, subject to the restrictions imposed by the Corporations Act."

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Subscriptions under the Rights Issue and the Shortfall Facility

19. The total number of LFL shares applied for by all LFL shareholders in aggregate was 18,752,841 LFL shares. Under the Prospectus, a total of 18,000,000 shares were able to be issued by LFL.
20. ACF, the underwriter of the Rights Issue, did not apply for any shares in its capacity as a shareholder of LFL.
21. Only two LFL shareholders applied for additional shares under the Shortfall Facility, namely Lenvat and the Widdup Superannuation Fund (the numbers of shares they applied for are set out in the tables in paragraph 30).
22. On 11 January 2005 (the day after the Lenvat Subscription) the directors of LFL met and decided to apply the legal advice they had received from the company's legal advisers in relation to issuing shares under the Shortfall Facility. Therefore, the LFL board advised Lenvat that it would only issue so many shares to Lenvat as fulfilled its Rights Issue entitlement and increased Lenvat's voting power by 3% from its voting power six months previously. That decision is the basis for the LFL02 application and these proceedings.
23. Lenvat submitted to the Panel that it had provided its legal advice, and copies of correspondence with ASIC, to LFL indicating that on those views, it was open to Lenvat to issue all of the Shortfall Facility shares to Lenvat on the basis that the Lenvat Subscription would constitute either underwriting or sub-underwriting of the issue.

ASIC advice

24. In its first application, Lenvat had stated that it had been operating on the basis that the acquisition of shares under the Shortfall Facility would not constitute underwriting or sub-underwriting for the purposes of item 10. As the LFL 01 Panel decided not to commence proceedings Lenvat did not gain the benefit of detailed submissions on the issue.
25. In its reasons, the LFL 01 Panel recommended that Lenvat seek the advice of ASIC or make an application for a declaration under section 655A to put it beyond doubt that the Lenvat Subscription would attract the underwriting or sub-underwriting exception in item 10.
26. Lenvat made the application soon after the date of the LFL 01 decision. ASIC advised Lenvat that it considered that the application for a declaration was unnecessary and so Lenvat withdrew its application.
27. ASIC advised that its view that acquisitions of LFL shares under the Shortfall Facility would attract the underwriting exception in item 10 was based on previous decisions of the Panel, and that each of those decisions concerned shortfall facilities where the allocation of any shortfall would be on a proportionate basis (unlike the capped allocation suggested by the terms of the Rights Issue Prospectus).
28. ASIC also advised Lenvat that Lenvat should bear in mind that acquisitions under the exceptions in section 611 would always remain subject to review by the Panel for unacceptable circumstances.

APPLICATION

Declaration and orders sought in the Application

29. Lenvat sought a declaration of unacceptable circumstances in relation to the affairs of LFL.
30. Lenvat sought an interim order pending determination of the application for a declaration of unacceptable circumstances, that LFL be prevented from allotting or issuing any shares under the Rights Issue or the underwriting arrangement in relation to the Rights Issue other than for the following shares:

Share Applicant	No. of shares to be allotted and issued
Hosking Family Super Fund	4,667
MF Custodians Pty Limited	720,000
Permanent Trustee Company Limited (WEA 0001 A/C)	17,626
Widdup Superannuation Fund	10,548

(a) Lenvat sought Orders under section 657D of the Act that:

- (i) The 18,000,000 LFL shares be allotted and issued to each of the following persons in response to the share applications lodged with LFL under the Prospectus as follows:

Share Applicant	shares to be issued under the Rights Issue	shares to be issued under the Shortfall Facility	Total No. of shares to be issued
Hosking Family Super Fund	4,667	-	4,667
Lenvat Pty Limited	3,856,803	13,390,356	17,247,159
MF Custodians Pty Limited	720,000	-	720,000
Permanent Trustee Co Ltd (WEA 0001 A/C)	17,626	-	17,626
Widdup Superannuation Fund	3,741	6,807	10,548

- (ii) in the event that the order in paragraph (i) is not granted, the share application lodged by the Applicant under the Rights Issue be withdrawn

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and the subscription proceeds of \$9,000,000 be refunded to the Applicant;
and

(iii) such further orders as the Takeovers Panel considers appropriate.

DISCUSSION

Item 10 Underwriting exception

31. Lenvat submitted that its acquisition of all of its entitlement, and all of the shortfall shares would not constitute unacceptable circumstances or a contravention of the Corporations Act because it would come within the exception for underwriting or sub-underwriting a rights issue in item 10.
32. However, the Panel considered that the Lenvat Subscription would not attract the item 10 underwriting exception.

Knowledge

33. The Panel considered that Lenvat's knowledge of the level of subscriptions under the Rights Issue at the time of making its application for shares under the Shortfall Facility meant that Lenvat's application lacked one of the central elements of underwriting, in that Lenvat effectively bore no risk as to the number of shares it would be required to subscribe for.
34. The Rights Issue was scheduled to close at 5.00 p.m. on Monday 10 January 2005. Lenvat made its application under the Lenvat Subscription at 4.30 p.m. that day. A director of Lenvat, who was also a director of LFL, attended the offices of LFL personally, and only made out the cheque in full and lodged the application after he became aware of the number of applications, the number of shares applied for, and the identity of the applicants, under the Rights Issue. Lenvat made its application at a time when it was virtually certain that the final number of shares applied for, other than under its own application, had been settled, and it was aware of that information.
35. On that basis, the Lenvat Subscription cannot be characterised as underwriting and would not attract the underwriting exception in item 10. Rather, it is better characterised as a deliberate and informed acquisition of the relevant shares and as such constituted unacceptable circumstances and a contravention of section 606 of the Corporations Act.
36. Whether Lenvat obtained knowledge of the number of shares applied for by enquiry or voluntary disclosure by LFL officers is not relevant to the Panel's consideration of the issue. Indeed, how Lenvat became aware is irrelevant as to whether it was bearing any risk at the time of its application under the Rights Issue and the Shortfall Facility. What is relevant is that it was aware of the number of shares available, and likely to be issued, under the Shortfall Facility before it subscribed.
37. Lenvat submitted that the time of its making its application for shares under the Lenvat Subscription was not relevant and did not change the nature of the risk it assumed.
38. While not conclusive that the Lenvat Subscription was not a form of underwriting, the fact of Lenvat waiting until the last hour of the last possible day to make the

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Lenvat Subscription does increase the likelihood that it would not be considered underwriting or sub-underwriting. This is because as the offer period elapses, the nature of any risk bearing changes, until, at a time such as when Lenvat made its Lenvat Subscription there is virtually no risk, the number of shares to be issued under the rights issue and the number of shares to be issued under the shortfall facility are virtually certain and any application becomes a straight acquisition rather than any risk bearing underwriting.

39. In the circumstances, Lenvat's knowledge of the subscriptions under the Rights Issue and under the Shortfall Facility meant that it was not necessary for the Panel to make any determination as to whether an application under the Shortfall Facility in other circumstances could, or could not, be made in reliance on the underwriting exception in item 10. The Panel has not made any such determination.

Other issues

40. Various issues relating to disclosure in the Rights Issue Prospectus were raised in the proceedings. They related primarily to whether there had been sufficient disclosure of the possibility of Lenvat⁴ increasing its voting power from 21% to 55%, and what additional disclosure might have been needed in the event that all of the other reasons for considering the Lenvat Subscription to constitute unacceptable circumstances had been resolved (which the Panel does not consider possible).
41. One of the reasons that the disclosure in the Rights Issue Prospectus would have been inadequate to support the acceptability of the Lenvat Subscription was that the LFL board had received legal advice at the time of finalising the Rights Issue Prospectus that the Shortfall Facility would not constitute underwriting or sub-underwriting and therefore any acquisitions under the Shortfall Facility would be constrained by the other provisions of the takeovers chapters. On that basis the LFL board did not include any information about the effects or likelihood of the sort of material change in voting power that would occur if one shareholder, other than the underwriter, acquired the majority of the Rights Issue shares via an application under the Shortfall Facility. Given the advice to the board, its lack of disclosure of the type which might be required in relation to scenarios such as the Lenvat Subscription is understandable.
42. In the submissions and rebuttals the parties raised a number of very difficult issues which the possibility of an acquisition such as the Lenvat Subscription would raise for a board looking to give adequate disclosure in a rights issue prospectus. The Panel was not required to determine such issues.
43. The Panel considers that if the Lenvat Subscription had proceeded, and increased Lenvat's voting power from 21.4% to 55.4%, those disclosure issues would have been material. However, given the Panel's decision that the Lenvat Subscription should not proceed in its current form, and the outcome of the Rights Issue, most of the disclosure issues become either not relevant or sufficiently immaterial not to warrant any further action.

⁴ The disclosure issues would also relate to any other LFL shareholder who might have sought to acquire all of the shortfall under the Shortfall Facility and increased their percentage voting power in the way that Lenvat would have if the Lenvat Subscription had been allowed.

DECISION

44. The Panel decided that unacceptable circumstances existed in relation to the proposed acquisition under the Lenvat Subscription in relation to the affairs of LFL because:
- (a) of the effect the acquisition would have on the control of LFL; and
 - (b) the acquisition would give rise to a contravention of section 606 in that Lenvat's voting power in LFL would increase from 21.4% to 55.4% in circumstances other than those contemplated by a statutory exception to the limit set out in section 606.
45. The Panel made the declaration of unacceptable circumstances attached as Annexure A.

The orders

46. Having decided that unacceptable circumstances existed, the Panel made the final orders set out in Annexure B in order to remedy the unacceptable circumstances and return the affairs of LFL to the state they would have been had the unacceptable circumstances not existed.
47. The Panel ordered that LFL not allot shares to Lenvat under the Lenvat Subscription which would increase Lenvat's voting power above that allowed under item 9 of section 611. This allowed Lenvat to subscribe for its full entitlement under the Rights Issue and to "creep" by up to 3% under the Shortfall Facility (if Lenvat is entitled to rely on the creep provisions), but not to subscribe for any greater number of shares under the Shortfall Facility. The Panel understands from the submissions in these proceedings that the maximum number of shares which Lenvat would be entitled to subscribe for under this order to be 5,041,688. Lenvat's voting power in LFL after acquiring those shares would be 24.4%.
48. The Panel also ordered that Lenvat have the right to withdraw all of its application or to subscribe for any number of shares between zero and 5,041,688.
49. The Panel ordered that LFL refund to Lenvat any excess subscription monies in the manner set out in the Rights Issue Prospectus.
50. The Panel ordered that Lenvat give its decision to LFL as to the number of shares it wished to subscribe for by 5.00 p.m. AEDT on Tuesday 25 January 2005. If Lenvat did not advise LFL as to its preference, LFL was to allot 5,041,688 shares in response to the Lenvat Subscription (i.e. Lenvat's Rights Issue entitlement and a "creep" entitlement of 3%) and refund the balance of the Lenvat Subscription monies.
51. The Panel did not order that the Rights Issue be re-opened, nor that LFL or Lenvat make any further disclosure.

Balance

52. The Panel considered that its orders struck the most appropriate balance between remedying the unacceptable circumstances that it considered existed and minimising any prejudice which its orders might cause.

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53. Lenvat was prevented from acquiring the full 17,247,159 shares which it contended it was entitled to because to do so would constitute unacceptable circumstances. Those unacceptable circumstances were brought about in this instance by Lenvat's timing of its application for the Lenvat Subscription with knowledge of the status of other applications prior to making its own application.
54. However, the Panel believed it was appropriate to give Lenvat the option of subscribing for all or part of the shares which the Panel believed it was entitled to acquire, because it appeared that Lenvat had been acting on the basis of external advice it received as to the operation of section 611. Having said that, the Panel considered that Lenvat should also have been put on notice by that advice that the use of the underwriting exception is subject to review on the grounds of unacceptable circumstances and that the results that would have occurred under the Lenvat Subscription were susceptible to such review.
55. Any of the outcomes that the other shareholders of LFL (whether they subscribed for shares or not) may have been faced with under the Panel's proposed orders were outcomes which they should reasonably have expected to be possible under the terms and disclosure of the Rights Issue Prospectus.
56. LFL would also only be faced with outcomes which could be reasonably expected to be possible on the basis of the Rights Issue Prospectus and the Shortfall Facility as proposed by LFL, with only a short delay in reaching the outcome. If Lenvat withdrew its application in full, LFL would still raise the minimum amount it could have expected to raise i.e. the 14 million shares which were underwritten. If Lenvat chose to subscribe for its maximum permissible number of shares under the Rights Issue and the Shortfall Facility, LFL would raise the maximum amount of money it could have expected under the Rights Issue and underwriting arrangements that it had put in place.
57. The Panel considered that ACF was also unlikely to be unfairly prejudiced, for the same reasons as for LFL. ACF had been exposed to the commercial risks of LFL as a debtor for a long period. The Panel's orders did not materially affect LFL's business or its ability to raise the funds proposed under the Rights Issue.
58. Given the period of time which LFL's creditors had accepted the then current level of LFL's debts and arrangements, there seemed very little real likelihood that the few extra days which LFL and its creditors would be required to wait under the Panel's orders would materially prejudice LFL or its creditors. This was further supported by the fact that the Panel's orders did nothing to prejudice LFL's raising of the minimum subscription under the Rights Issue.

Underwriting agreement

59. The above analysis of unfair prejudice was based on the Panel's view that none of its orders would cause any commercial unfair prejudice to ACF as underwriter to the Rights Issue. Therefore, the Panel's analysis was based on the underwriting arrangements remaining in place.
60. In order to ensure that its analysis was on a sound basis, the Panel raised the issue with ACF and ACF advised the Panel that it considered that there was no basis on which it was entitled, nor did it wish, to withdraw from the underwriting agreement

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with LFL in relation to the Rights Issue as a consequence, direct or indirect, of the Panel's orders.

Costs

61. The Panel made no order for costs.

Underwriting and shortfall facilities in general

62. The Panel notes that it has not been necessary, given the specific circumstances of these proceedings, to make any general decision in relation to whether or not an application under a shortfall facility would generally attract the underwriting or sub-underwriting exceptions in item 10 of section 611.
63. However, the Panel considers it undesirable for the type of uncertainty which the Lenvat Subscription suggests may be in the market to continue. Therefore, this sitting Panel will be recommending to the wider Panel that it commence a project to provide guidance on rights issues in general, and which will cover the use of the underwriting exception in rights issues.

Simon Mordant

President of the Sitting Panel

Decision dated 25 January 2005

Reasons published 15 February 2005

Corporations Act
Section 657A
Declaration of Unacceptable Circumstances

In the matter of Lachlan Farming Limited 02

WHEREAS

- A. Lachlan Farming Limited (**LFL**) has offered a 1:1.19 rights issue (**Rights Issue**) to its shareholders under a prospectus dated 17 September 2004 (**Rights Issue Prospectus**). The Rights Issue was to raise up to \$9 million to repay a series of previously shareholder approved convertible notes, repay an unsecured loan and for working capital. The maximum number of shares to be issued under the Rights Issue was 18 million, of which the issue of 14 million was underwritten by a trust associated with Rural Funds Management Limited (**RFM**), the company which provides management services to LFL. LFL had previously conducted a rights issue in 2003 which had failed to meet the minimum subscription;
- B. Lenvat Pty Limited (**Lenvat**) is the largest shareholder in LFL, holding 21.4% of the voting power at the date of the Rights Issue Prospectus. Lenvat has nominated one director to the board of LFL (Mr T Allen);
- C. It was a term of the Rights Issue that shareholders of LFL could apply for shares not taken up by other shareholders (**Shortfall Facility**) and that they would be allotted shares under the Shortfall Facility in proportion to the shares they held at the date of the Rights Issue Prospectus if more shares were subscribed for under the Shortfall Facility than were available;
- D. The Rights Issue Prospectus stated that the directors of LFL retained unfettered discretion on the allocation of shares under the Rights Issue where a shareholder applied for more than their entitlement. The Rights Issue Prospectus stated that the directors intended to allocate any entitlements not subscribed for by shareholders to other shareholders who may have applied for more than their entitlement, and to the underwriter pursuant to the underwriting agreement between LFL and the underwriter, in accordance with the terms of the Rights Issue Prospectus (see C above) and subject to the restrictions imposed by the Corporations Act;
- E. On 29 December 2004, the directors of LFL wrote to shareholders:
- (a) reaffirming that the offer period of the Rights Issue had been extended until 10 January 2005;
 - (b) advising that the take-up levels by shareholders under the Rights Issue and Shortfall Facility was, at that stage, very low; and
 - (c) setting out the underwriter's intention not to subscribe for the 4 million non-underwritten shares under the Rights Issue;

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- F. Prior to 4.30 p.m. on 10 January 2005, the last day of the extended Rights Issue, subscriptions remained very small (constituting approximately 4.2% of the maximum issue);
- G. At about 4.30 p.m. on the last day of the Rights Issue, the director of LFL nominated by Lenvat (Mr T Allen) attended the offices of LFL. He became aware of information on the then low level of acceptances under the Rights Issue and applications under the Shortfall Facility. He then made application, on behalf of Lenvat (**Lenvat Subscription**), for all 18 million shares, made up of 3,856,803 shares as Lenvat's entitlement under the Rights Issue and 14,143,197 shares under the Shortfall Facility (although this would be reduced according to the number of shares applied for by LFL shareholders under their entitlements and under the Shortfall Facility); and
- H. If Lenvat acquired all of the shares it applied for under the Lenvat Subscription, taking into account the other applications for shares and the provisions of the Rights Issue Prospectus, Lenvat would have acquired 17,247,159 shares under the Lenvat Subscription. Lenvat's voting power in LFL would have been increased from 21.4% to 55.4%.

Under section 657A of the Corporations Act, the Takeovers Panel declares that the combination of the circumstances set out in recitals A to H constitute unacceptable circumstances in relation to the affairs of LFL.

Simon Mordant

President of the Sitting Panel

Dated 25 January 2005

**Corporations Act
Section 657D
Orders**

In the matter of Lachlan Farming Limited 02

Pursuant to:

- (a) section 657D of the *Corporations Act 2001* (Cth) (the **Act**); and
- (b) a declaration of unacceptable circumstances in relation to the affairs of Lachlan Farming Limited (**LFL**) made by the Sitting Panel on **25 January 2005**,

the Takeovers Panel HEREBY ORDERS:

- (i) LFL not to allot shares to Lenvat Pty Limited (**Lenvat**) under the shortfall facility (**Shortfall Facility**) set out in the prospectus dated 17 September 2004 (**Rights Issue Prospectus**) related to a 1:1.19 rights issue (**Rights Issue**), which would increase Lenvat's voting power in LFL above that allowed under the exceptions in item 9 of section 611 and item 10 of section 611 of the Act (but not that part of the exception which relates to underwriting or sub-underwriting);
- (ii) LFL to allow Lenvat to withdraw part or all of its application for shares under the Rights Issue and the Shortfall Facility, made on 10 January 2005 (**Lenvat Subscription**), so that Lenvat's application is reduced to an application for any number of shares in LFL between zero and 5,041,688 (that being the maximum amount which would comply with the restriction in (i) above);
- (iii) LFL to allot to Lenvat 5,041,688 shares in LFL if Lenvat has not advised LFL, by **5.00 p.m. AEDT on Tuesday 25 January 2005**, of the number of shares Lenvat wishes to subscribe for under (or withdraw from) the Lenvat Subscription; and
- (iv) LFL to refund to Lenvat, in the manner set out in the Rights Issue Prospectus, any excess monies subscribed by Lenvat for shares under the Rights Issue and the Shortfall Facility.

Simon Mordant

President of the Sitting Panel

Dated 25 January 2005