



Australian Government

Takeovers Panel

**Reasons for Decision
Finders Resources Limited 03R (Variation of Orders)
[2019] ATP 7**

Catchwords:

Variation of orders

Corporations Act 2001 (Cth), sections 657D, 657EA(4)

Eastern Field Developments Limited v Takeovers Panel [2019] FCA 311

Finders Resources Limited 03R [2018] ATP 11

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
N/A	N/A	YES	N/A	YES	N/A

INTRODUCTION

1. The Panel, Ian Jackman SC, Ron Malek (sitting President) and David Williamson, varied the final orders the Panel made on 6 June 2018. The variation makes it possible to comply with the orders following the Federal Court’s discharge of a stay.

FACTS

2. The facts are as set out in our previous reasons¹ as supplemented below:
 - (a) By application dated 16 July 2018, Eastern Field sought judicial review of our decision in Finders Resources Limited 03R.
 - (b) On 18 July 2018, the Federal Court made orders (**stay**) suspending our orders² dated 6 June 2018 (**Orders**).
 - (c) After dismissing Eastern Field’s application for judicial review,³ the Court made orders on 12 March 2019 to discharge the stay with effect from 18 March 2019.
 - (d) Due to the stay, it was no longer possible for Taurus to comply with time periods specified in the Orders.
3. On 12 March 2019, Taurus applied for a variation of the Orders under s657D(3).⁴

¹ Finders Resources Limited 03R [2018] ATP 11. Terms defined in our previous reasons have the same meaning in these reasons.

² other than Orders 1 and 4

³ *Eastern Field Developments Limited v Takeovers Panel [2019] FCA 311*

⁴ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001 (Cth)*, and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC).

DISCUSSION

4. Section 657D(3) provides that:

The Panel may vary, revoke or suspend an order made under this section. Before doing so, it must give an opportunity to make submissions in relation to the matter to:

- (a) each person to whom the order is directed; and*
- (b) each party to the proceedings in which the order was made; and*
- (c) ASIC.*

5. The requirements of the Orders have not been performed, and now cannot be, due to the stay. In our view, sections 657D(3) and 657EA(4) clearly give power to vary the Orders. Given that, and the fact that we have not yet completed our functions under the Orders,⁵ it is necessary for us to consider whether a variation is appropriate.

6. We gave parties, persons to whom the relevant Orders are directed and ASIC an opportunity to make submissions, as required by s657D(3). Taurus modified its requested variations, in the light of those submissions, to reflect those in Annexure A, the effect of which is:

- (a) to give Taurus until 25 March 2019 to publish the notices required by Order 33 and
- (b) to change the definition of "Effective Date" in Order 37 to "18 March 2019".

7. The variation described in paragraph 6(b) aligns the Effective Date (which provides a reference point for various time periods specified in the Orders) with the lifting of the stay.⁶ We consider that appropriate to ensure that the Orders, and the lifting of the stay, operate as intended.

8. Taurus submitted that the variation described in paragraph 6(a) was necessary also to allow sufficient time for it to obtain our approval of and publish notices in accordance with Order 33. We accept that submission.

9. We did not receive any submissions opposing either of the variations described in paragraph 6.⁷

10. We also considered whether:

- (a) the variations, or the Orders as varied, would unfairly prejudice any person.⁸ We are satisfied that neither the variation, nor the varied Orders, unfairly prejudice any person.

⁵ which include approving documents under Orders 16, 33 and 34, receiving reports under Order 28 and considering matters referred to us under Orders 11 or 22

⁶ See paragraph 2(c)

⁷ Eastern Field submitted that the definition of "Effective Date" should simply refer to a fixed date which should be the date the Orders are varied

⁸ See s657D(1)

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- (b) given the Orders were made under s657D(2)(a), the Orders as varied are appropriate to protect rights or interests of persons who have been, are being or will be or are likely to be affected by the unacceptable circumstances. We are satisfied that they are, for reasons similar to those in our previous reasons.⁹

DECISION

11. For reasons above, we made the variation orders set out in Annexure A.

Ron Malek

President of the sitting Panel

Variation Orders dated 16 March 2019

Reasons given to parties 21 March 2019

Reasons published 25 March 2019

⁹ See, in particular, [2018] ATP 11 at [27]-[39]

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Advisers

Party	Advisers
Eastern Field	Johnson Winter & Slattery
Finders	N/A
Messrs Comb and Cahill	N/A
Taurus	King & Wood Mallesons



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Annexure A

**CORPORATIONS ACT
SECTIONS 657EA AND 657D
VARIATION OF ORDERS**

FINDERS RESOURCES LIMITED 03R

Pursuant to sections 657EA(4) and 657D(3) of the Corporations Act 2001 (Cth)

THE REVIEW PANEL ORDERS

The final orders made on 6 June 2018 are varied by:

- 1 Replacing “within 2 business days of the Effective Date” in Order 33 with “by 25 March 2019”.
- 2 Replacing the definition of “Effective Date” in Order 37 with “18 March 2019”.

**Bruce Dyer
Counsel
with authority of Ron Malek
President of the sitting Panel
Dated 16 March 2019**