

CORPORATIONS AND SECURITIES PANEL

ANNUAL REPORT 1992-93

**CORPORATIONS
AND
SECURITIES PANEL**

21/10/93

The Honourable M Lavarch
Attorney General
Parliament House
Canberra ACT 2600

Dear Minister,

I have the honour to submit to you, in accordance with section 183 of the Australian Securities Commission Act 1989, this report on the operations of the Corporations and Securities Panel for the period 1 July 1992 to 30 June 1993.

This report is the second report on the operations of the Panel, the Panel having been established on 1 January 1991 did not come into being until 3 July 1992 with the appointment of its first members.

Yours sincerely

David Hoare
President
Corporations and Securities Panel

President: David Haste Members: Ross Adler, Elizabeth Alexander Ian Clark David Elsum AM, Ron Evans Warwick Higgs Sturt
Hornery AO, Peter Jooste Russell Mina, Peter O'Donohue Graham Stanford Geoff Torney Dean Wills AM.

Sec: Nigel Morris

Level 22, 600 Bourke Street Melbourne Vic 3000 (GPO Box 5179AA Melbourne Vu 3001
Telephone 03 280 3583 Facsimile: 03 230 3339 DX 423 Melbourne

Contents

	Page No
1. The Role of the Panel.....	1
2. The Structure of the Panel.....	2
Members.....	2
President.....	2
Establishment and Commencement of the Panel.....	2
Sitting Panel.....	2
Reporting.....	2
Staff.....	2
3. The Work of the Panel in 1992-93.....	3
Titan Hills.....	3
Panel Procedures.....	3
4. Legislation.....	3
5. Future Directions.....	4
6. Panel Expenditure.....	4
Remuneration.....	4
7. Appendix A - Panel Members.....	5
8. Appendix B - Panel Financial Statement 1992-93.....	6

1. The Role of the Panel

The Panel was brought into law with the introduction of the Corporations Law on 1 January 1991. It is partly a response to concerns of the legislature and the business community that the previous regulator of the market for control of Australian companies, the National Companies and Securities Commission (NCSC) ran the risk of being perceived as prosecutor, judge, jury and executioner. The Panel is also partly a move to bring the concept of peer review to the difficult concept of acceptable behaviour and market integrity.

Panel members are selected for their knowledge of, or experience in, business, the administration of companies, the financial markets, law, economics and accounting. They are persons who have practical experience in the operation of business and who will bring to the Panel's deliberations on unacceptable circumstances their experience and expertise and also, importantly, knowledge of the standard of behaviour which the market expects of its participants.

The Panel's role is to consider applications from the Australian Securities Commission (ASC) for a declaration that an acquisition or acquisitions of shares in a company or conduct engaged in by a person in relation to shares in, or the affairs of, a company is or are unacceptable. Unacceptable conduct or acquisition are defined in s732 of the Corporations Law (Law) and are based on the "Eggleston Principles" which were set out in the Company Law Advisory Committee's Second Interim Report to the Standing Committee of Attorneys General of February 1969 and chaired by R M Eggleston. In determining whether an acquisition or conduct is unacceptable the Panel must consider whether the Eggleston principles have been breached, any other matters which the Panel considers relevant and whether it is in the public interest to declare the acquisition or conduct to be unacceptable.

In performing its role the Panel may hold hearings, hear evidence, require persons to appear or to produce documents, make declarations of unacceptability, and make legally binding orders. The orders are those it considers necessary or desirable to protect the rights or interests of persons in a takeover or to negate the effects of unacceptable conduct or acquisitions referred to the Panel.

2. The Structure of the Panel

Members

The Panel has at least five members who may be full or part time members. The legislature considered that part time membership would allow active members of the business community to participate on the Panel. This would widen the range of potential members and ensure that the Panel reflects current standards of the securities market.

The Governor General appoints members on the nomination of the minister. They are appointed for a period of no more than five years. The relevant Ministers from the States and Territories may give the names of suitable nominees to the Minister for consideration. The Panel currently has fourteen part time members

President

One member of the Panel is appointed by the Governor General to be the President of the Panel (President). Mr David Hoare has been appointed President.

Establishment and Commencement of the Panel

Although the Panel was established with the proclamation of the Law and the Australian Securities Commission Law (ASC Law) on 1 January 1991, its first members were not appointed to the Panel until 3 July 1991.

Sitting Panel

To perform its functions in relation to a particular application, the Panel is constituted by three members selected by the President. Those three members then constitute the "Sitting Panel" and may hold hearings and exercise the powers of the Panel.

Reporting

The Panel is required under s183 of the ASC Law to prepare a report as soon as practicable after 30 June and in any case before 31 October each year and give a copy of the report to the Minister.

Staff

Under section 11(2) of the ASC Law, the ASC provides the staff and support facilities to the Panel necessary for the performance by the Panel of its functions and powers. The ASC has provided the Panel with a senior officer to act as secretary to the Panel and other facilities for the holding of hearings.

3. The Work of the Panel in 1992-93

The Panel received no applications from the ASC in 19993. The Panel has received only one application since its inception.

Titan Hills

The sole matter so far related to what is generally referred to as a reverse takeover by Precision Data Holdings Ltd (PDHL) of Titan Hills Australia Ltd (THAL or Titan Hills).

Panel Procedures

In its first determination of an application the Panel found many complicating factors in its path to a conclusion. The process through which the Panel attempted to reach its determination has been criticised by some as being too cumbersome and legalistic. The Panel had to consider issues of conflict of interest and interpretation of the legislation and encountered many delaying factors. Such problems were to be expected.

The Panel is, however, concerned that what should be, and is directed in the legislation to be, as informal and expeditious a process as possible, can become unnecessarily protracted and ponderous. To this end the President of the Panel has had discussions with the AttorneyGeneral, his Department and the ASC on the procedures of the Panel. The discussions have considered making recommendations as to the improvement of the Panel's procedures to ensure that they do meet the legislative criteria of informality, expedition and minimal technicality. The discussions have looked at both procedural changes within the current law and possible legislative reform if the procedural changes do not provide the required solutions.

4. Legislation

The legislation under which the Panel operates is in Part 6.9 of the Law and Part 10 of the ASC Law. Part 6.9 sets out the definition of unacceptable circumstances, and the provisions relating to the making of declarations and orders by the Panel. Part 10 of the ASC Law sets out the procedures of the Panel in its operations and hearings.

Following the decision of the full bench of the Federal Court that the Panel could not make interim orders prior to having made a declaration of unacceptability, the Corporations (Unlisted Property Trusts) Amendment Bill 1991 amended the interim order provisions of the Law to ensure that the Panel has power to make interim orders prior to the making of a declaration of unacceptability. The Panel considers that this amendment is very important to its effective operation. It is essential that the Panel be able to ensure that the subject matter of its determination is not removed from it by the actions of an interested party. To this end, interim orders preventing such behaviour are essential to the Panel's operation.

The amendments are included in sections 733A, 733B, 735(2), 735(2A) and 735(3).

5. Future Directions

The work of the Panel is primarily determined by the complexity and number of matters referred to it by the ASC. There is a small amount of informational and policy development work required but this is minor compared to that required by even a single application.

The Panel considers that its experience in its single referral to date has been an important development and learning process for all concerned. Future applications will be conducted in light of the lessons learned in Titan Hills.

The Panel is keen to ensure that its mode of operation is not one of perceived adversarial, quasi legal warmer but an informal, practical manner with Panel members acting as persons with business and market expertise rather than as inquisitors or judges.

The Panel considers that the discussions that the Presided has had with the Minister, his Department and the ASC will ensure that it is able to fulfil its role, efficiently and in the timely commercial manner intended of it.

6. Panel Expenditure

The Panel's funding comes via the ASC budget. The ASC allocated from its budget \$211 100 to the Panel for the year 1992-93.

The Panel's expenses for the year 1992-93 were \$93,895. This includes accounts payable of \$3,076 remaining on hand at 30 June 1993 but excludes accounts payable of \$37,236 which were remaining on hand at 30 June 1992 and were paid during the financial year 1992/93.

Remuneration

The current Remuneration Tribunal determination is:

Members	
Annual Fee	\$1514
When Engaged on Panel Business	\$411 per day
Travelling Allowance	\$ 300 per day (max)
President	
Annual Fee	\$5514
When Engaged on Panel Business\$	\$511 per day
Travelling Allowance	\$ 300 per day (max)

Audit

The Panel's expenditures are audited by Australian National Audit Office as part of the ASC's financial statements.

7. Appendix A - Panel Members

Name	Organisation	Date of Appointment
Mr David Hoare	BT Australia Ltd	3 July 1991
Mr Ross Adler	Santos Ltd.	3 July 1991
Ms Elizabeth Alexander	Price Waterhouse	3 July 1991
Mr Ian Clark		3 July 1991
Mr David Elsum AM	AAT	12 December 1991
Mr Ronald Evans	Spotless Group Ltd.	3 July 1991
Mr Warwick Higgs		24 September 1991
Mr Stuart Hornery AO	Lend Lease Corporation Ltd.	3 July 1991
Mr Peter Jooste	Parker & Parker	3 July 1991
Mr Russell Miller	Sly & Weigall	3 July 1991
Mr Peter O'Donohue	Nicholas O'Donohue & Co	25 July 1991
Mr Graham Stanford	AAT	12 December 1991
Mr Geoffrey Torney	Byrne Jones & Torney	24 September 1991
Mr Dean Wills AM	Coca-Cola Amatil Ltd.	3 July 1991

Panel Secretary and Contact Officer: -

Nigel Morris

Office of the Chairman
Australian Securities Commission
Level 22
600 Bourke Street
Melbourne
Ph: 03 280 3583 Fax: 03 280 3339

GPO Box 5179AA
Melbourne
Vic 3001

8. Appendix B - Panel Financial Statement 1992-93

Corporations and Securities Pared Financial Statement 1 July 1992 to 30 June 1993

Budget Allocation 1992/93	\$	\$
		211,100
Less: Administrative Expenses(1)		<u>38,320</u>
Salary Related Expenses		
Members' Annual Fees(2)	22,043	
Staff Salaries (incl below-line cost)	60,090	
Employer Superannuation	6,526	
Workers Compensation	<u>1,076</u>	
		<u>89,735</u>
Expenditure to 30 June 1993		<u>128,055</u>
Add: Accounts Payable at 30/06/93	3,076	
Deduct: Accounts Paid from 30/06/92	<u>-37,236</u>	
		<u>-34,160</u>
Total Expenses Incurred to 30 June 1993		<u>93,895</u>
Balance of Allocation		117,205

(1)Accounts totalling \$37,236 which remained on hand as at 30 June 1992 were paid during 1992/93.

(2)Fees owing to members totalling \$3076 remained to be paid as at 30 June 1993.