

CORPORATIONS AND SECURITIES
PANEL

ANNUAL REPORT 1994 - 95

CORPORATIONS
AND
SECURITIES PANEL

13/10/95

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 1994 to 30 June 1995.

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

Yours sincerely



John Pascoe AM
President
Corporations and Securities Panel

President: John Pascoe AM. Members: Ross Adler, Elizabeth Alexander AM, Jerrold Cripps QC, David Elsum AM, Ron Evans, Bill Gibson, Warwick Higgs, Stuart Hornery AO, Peter Jooste, Judith Kelly, Helen Lynch AM, Donald Magarey, Russell Miller, Trevor Moring, Peter O'Donohue, Kerry Schott, Michael Sharpe AM, Graham Stanford, Geoff Torney, Peter Wolnizer.
Sec: Nigel Morris

Level 22, 600 Bourke Street Melbourne Vic 3000 GPO Box 5179AA Melbourne Vic 3001
Telephone: 03 9280 3583 Facsimile: 03 9280 3339 DX 423 Melbourne

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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 and unacceptable acquisition are defined in s732 of the Corporations Law (Law). They 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 inquiries, take submissions, 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

Establishment and Commencement of the Panel

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 appointed on 3 July 1991.

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 had twenty one part time members at 30 June 1995.

President

One member of the Panel is appointed by the Governor General to be the President of the Panel (President). Mr John Pascoe AM was appointed as the Third President of the Panel on 1 November 1994. Mr Ron Evans acted for a period immediately prior to Mr Pascoe's appointment. The Panel wishes to express its gratitude to Mr Evans for being prepared to step in and fulfil the role of President when he was needed.

Membership Changes

Eight new members were appointed during 1994-95. They were:

Mr John Pascoe AM	01/11/94
Mr Bill Gibson	11/10/94
Ms Judith Kelly	11/10/94
Ms Helen Lynch AM	11/10/94
Mr Donald Magarey	11/10/94
Mr Michael Sharpe AM	11/10/94
Dr Kerry Schott	11/10/94
Professor Peter Wolnizer	11/10/94

During 1994/95 Mr David Hoare resigned as President to become Chairman of the Companies and Securities Advisory Committee. Mr Ian Clarke and Mr Dean Wills decided not to seek reappointment as members of the Panel when their initial appointment finished at the end of 1994. The Panel wishes to extend its sincere thanks to these initial members for their contributions to the Panel.

New Panel Members

Mr John Pascoe AM

Mr Pascoe is Chief Executive of George Weston Foods Ltd. He has been a partner of the commercial law firm of Stephen Jaques & Stephen. He has been a director of Qantas Airways Ltd and is a trustee of the Sydney Opera House Trust.

The Hon. Mr Jerrold Cripps QC.

The Hon. Mr Jerrold Cripps QC. has had extensive experience in conducting inquiries. His experience includes Chairman of the NSW Legal Commission, President of the NSW Anti-Discrimination Board and Chief Judge of the Land and Environment Court.

Mr Bill Gibson

Mr Gibson is Joint Managing Director and Chief Executive Officer, Development, of Coca Cola Amatil Ltd. He has had extensive experience in the finance industry, being Senior Finance Director at Coca Cola from 1984 to 1987 and Finance Director before that.

Ms Judith Kelly

Ms Kelly has had extensive experience in a wide range of commercial law in the firm of Philip & Mitaros in Darwin.

Ms Helen Lynch AM

Ms Lynch is a highly regarded business consultant. She has been Head of Corporate Affairs and Chief Manager Personnel Policy and Planning at Westpac Banking Corporation. She was appointed to the South Australian Government Management Board in 1990.

Mr Donald Magarey

Mr Magarey is a senior partner in the securities industry division of the commercial law firm of Blake Dawson & Waldron in Brisbane.

The Hon Mr Justice Trevor Morling

The Hon Mr Justice Morling is presently a Judge of the Supreme Court of the Northern Territory. His experience includes Deputy President of the Administrative Appeals Tribunal, Judge of the Federal Court and Chairman of the Australian Electoral Commission.

Dr Kerry Schott

Dr Schott is Executive Vice President, Corporate Finance at Bankers Trust Australia Ltd. She has had extensive experience in finance and economics including the areas of trade practices, foreign affairs, industrial relations, merchant banking and the Reserve Bank.

Mr Michael Sharpe AM

Mr Sharpe is the Chairman of Coopers & Lybrand (Securities) Ltd. He has been appointed as a representative to the International Accounting Standards Board, the New South Wales Premier's Accounting Advisory Board and the State Authority Superannuation Board NSW.

Professor Peter Wolnizer

Professor Wolnizer is the Dean of the Faculty of Management of Deakin University in Victoria. He has a Ph. D. in accounting.

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 to the Minister.

Staff

The ASC provides the staff and support facilities to the Panel for the performance by the Panel of its functions and powers. The ASC provides the Panel with a senior officer to act as secretary to the Panel and other facilities for the holding of inquiries.

3. The Work of the Panel in 1994-95

The Panel received no referrals from the ASC in 1994-95.

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.

Development of the Panel's Procedures

The Panel held a two day workshop in May 1995 to bring its members together and commence developing a cohesive view of the Panel's role and the processes for considering a referral. The Panel invited a number of internal and external speakers to the workshop.

The Attorney General, the Hon. Michael Lavarch, spoke to the Panel members on his view of the role of the Panel in setting some of the ethical and business standards of the Australian business community. The Attorney expressed his strong support for the Panel and his desire that it see its role as a broad one and very important for the future of Australian business and regulation. The first Panel President, Mr David Hoare, spoke to the Panel of his experiences as Panel President and his view of the Panel since leaving it.

The Chairman of the ASC, Mr Alan Cameron told the Panel of the ASC's commitment to the Panel and his preparedness to refer suitable matters to the Panel. He said that he considers that its experience in its single referral to date has been an important development and learning process for all concerned. Mr Cameron proposed that the ASC and the Panel should conduct an hypothetical case study to give both organisations experience in handling the new procedures for the Panel.

The President of the Panel said that he is looking forward to the Panel developing its role and taking a robust and positive attitude to its work. He said that the Panel is keen to ensure that its mode of operation is not perceived as having an adversarial and quasi-legal manner but an informal, practical manner with Panel members acting as persons with business and market expertise rather than as inquisitors or judges.

Staff from the Attorney-General's Department, led by the Secretary of the Attorney-General's Department, Mr Stephen Skehill, gave Panel members the Department's perspective of the Regulations which prescribe the procedures for conducting an inquiry.

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 and its supporting regulations set out the procedures of the Panel in its operations and inquiries.

Corporations Legislation Amendment Act 1994 - Changes

The *Corporations Legislation Amendment Act 1994* was intended to increase the certainty of the procedures for the Panel's business by setting them out in a more detailed manner and thereby reducing the possibility of the Panel being thwarted by uncertainty in the content of natural justice it was required to give in the narrow time frame given to it by the legislature.

The *Corporations Legislation Amendment Act 1994* changed the process of the Panel's deliberations from an oral hearing to an inquiry based on written submissions. The Panel may examine persons orally to clarify any parts of an inquiry which it considers appropriate.

The *Corporations Legislation Amendment Act 1994* also amended the definition of "unacceptable circumstances" in section 732 of the Law to include actions of the directors of a company which caused or contributed to a takeover offer not being made to the members of the company. It is to prevent directors from acting in their own interests to stifle a takeover offer rather than allowing the members of the company to decide on the merits of the proposal.

Regulations for the amendments introduced by *Corporations Legislation Amendment Act 1994* were drafted and made during 1994/95. The regulations seek to codify the procedures by which the Panel conducts inquiries and oral examinations. It was intended that the codification and prescription of these procedures would ensure that the Panel's procedures would afford procedural fairness to persons who are the subject of enquiries. Under the originally drafted provisions of the *Corporations Legislation Amendment Act 1994* the requirement for the Panel to be bound by the rules of natural justice was removed. However, later amendments reinserted the requirement for the Panel to observe the rules of procedural fairness where they are not inconsistent with the provisions of the Law, the ASC Law and the Regulations. The Panel will now be subject to both the prescriptive procedures for conducting its inquiries set out in the regulations, and to the residual requirement to follow the rules of procedural fairness.

5. Appendix A - Panel Members¹

Name	Organisation	Date of Appointment
Mr John Pascoe AM	George Weston Foods Ltd	1 November 1994
Mr Ross Adler	Santos Ltd	3 July 1991
Ms Elizabeth Alexander AM	Price Waterhouse	3 July 1991
The Hon. Mr Jerrold Cripps QC		4 March 1994
Mr David Elsum AM	AAT	12 December 1991
Mr Ronald Evans	Spotless Group Ltd	3 July 1991
Mr William Gibson	Coca Cola Amatil Ltd	11 October 1994
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
Ms Judith Kelly	Philip & Mitaros	11 October 1994
Ms Helen Lynch AM		11 October 1994
Mr Donald Magarey	Blake Dawson Waldron	11 October 1994
Mr Russell Miller	Sly & Weigall	3 July 1991
The Hon Mr Justice Trevor Morling		4 March 1994
Mr Peter O'Donohue	O'Donohue Bros	25 July 1991
Dr Kerry Schott	Bankers Trust Ltd	11 October 1994
Mr Michael Sharpe AM	Coopers & Lybrand (Securities) Ltd	11 October 1994
Mr Graham Stanford	AAT	12 December 1991
Mr Geoffrey Torney	Byrne Jones & Torney	24 September 1991
Prof Peter Wolnizer	Deakin University	11 October 1994

¹At 30/06/1994

6. Panel Expenditure

The Panel's funding comes via the ASC budget. The ASC allocated from its budget \$148,000 to the Panel for the year 1994-95.

The Panel's expenses for the year 1994-95 were **\$135,867**.

Remuneration

The current² Remuneration Tribunal determination is :

Members	
Annual Fee	\$1,703
When Engaged on Panel Business	\$ 456 per day
Travelling Allowance	\$ 300 per day (max)
President	
Annual Fee	\$5,675
When Engaged on Panel Business	\$ 569 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 B - Panel Financial Statement 1994-95

Corporations and Securities Panel Financial Statement 1 July 1994 to 30 June 1995

	\$	\$
Budget Allocation 1994/95		148,000
Less: Administrative Expenses		<u>17,707</u>
Salary Related Expenses		
Members' Fees	54,957	
Staff Salaries (incl below-line cost)	63,203	
		<u>118,160</u>
Total Expenses Incurred to 30 June 1995		<u>135,867</u>
Balance of Allocation		12,133

²The Panel's remuneration was amended by determination no. 29 of 1994 on 05/12/94.

The Panel's 1995/96 remuneration is determined by determination no. 11 of 1995, effective from 01/07/95.

**Corporations and Securities Panel
Financial Statement
1 July 1994 to 30 June 1995**

Admin

postage	82	
workshop consultant	4,000	
workshop venue expenses	5,697	
fares	<u>7,928</u>	
		<u>17,707</u>

Salaries

Members' Fees

Annual Fees	40,214	
Daily Fees	14,743	

Staff Costs

Salaries (ex below-line cost)	54,422	
Employer Superannuation	7,899	
Workers Compensation	<u>882</u>	

118,160

Total Expenditure 1994/95 135,867

Subtract accounts unpaid at 30/06/94 nil

Add accounts unpaid at 30/06/95 nil

Total Expenses Incurred to 30 June 1995 135,867

8. Panel Secretariat

Panel Secretary and Contact Officer:-
Nigel Morris

Office of the Chairman
Australian Securities Commission
Level 22
600 Bourke Street
Melbourne GPO Box 5179AA
Melbourne
VIC 3001

Ph: 03 9280 3583 Fax: 03 9280 3339