

# CORPORATIONS AND SECURITIES PANEL

ANNUAL REPORT 1995 – 96

18/10/96

The Hon Peter Costello MP  
Treasurer  
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 1995 to 30 June 1996.

This report is the fifth 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 Morling, Peter O'Donohue, Kerry Schott, Michael Sharpe AM, Graham Stanford, Geoff Torney, Peter Wolnizer. Act Sec: Chamiaine Farmer

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## **Introduction to the Corporations and Securities Panel**

The Corporations and Securities Panel is a body that was established in 1991 under the Australian Securities Commission Act 1989. Its charter is to consider applications made by the Australian Securities Commission ("ASC") for declarations of unacceptable conduct in relation to acquisitions of shares in companies or in relation to the conduct of the affairs of companies.

The Panel's jurisdiction to hear applications of unacceptable conduct is provided by section 733 of the Corporations Law. These applications are determined according to the Eggleston principles set out at section 732. These general provisions embody the general policy and spirit of the takeovers provisions of the Corporations Law and are a backdrop to the more detailed and prescriptive provisions of Chapter 6 of the Corporations Law. This Chapter sets out technical and prescriptive requirements which govern mergers and acquisition activity in Australia. The balance between prescription and more general concepts of 'unacceptable conduct' seek to ensure that all inappropriate commercial behaviour in relation to the acquisition of securities or affairs of companies is prohibited.

The focus of the Panel is to deal with applications regarding such unacceptable conduct in a timely, flexible and commercially focussed manner so as to promote ethical corporate behaviour. Its inception is a move towards the concept of peer review to determine questions of unacceptable market practices in the takeovers area.

To ensure that referrals are adequately heard and that parties have the opportunity to put their views to the Panel, and also that applications are dealt with in a timely and appropriate manner, the Panel's hearing procedures are prescribed in some detail at sections 184 to 201A of the Australian Securities Commission Act 1989 and regulations 13 to 43 of the Australian Securities Commission Regulations.

These provisions allow the Panel to make its determinations after holding an inquiry, taking submissions, hearing evidence, requiring persons to appear or to produce documents, make declarations of unacceptability and make legally binding orders. They set out specific time frames for Panel inquiries, increase the certainty of the process and allow the Panel to make decisions based on written submissions with oral hearings where necessary. As yet these procedures have not been tested.

## **Panel Activities 1995 – 1996**

Under the Corporations Law all applications made to the Panel must be by the ASC. In 1995/1996 there were no such formal referrals received.

Although there have been no referrals in 1995/1996, the Panel has had a significant deterrent effect on unacceptable conduct in the Australian business community. The Panel is only one option available to the ASC when there has been unacceptable market behaviour in takeovers. In these cases the ASC actively considers a Panel reference as an enforcement alternative and on many occasions the threat of a referral has had a positive regulatory response.

Given this deterrent effect, the Panel provides a definite regulatory benefit to the Australian market. Notwithstanding this, the Panel recognises that there is a need for a broad ranging review of the role and function of the Panel in the Australian business environment and the provisions of the Corporations Law which govern its activity.

In addition to referrals there is a small amount of policy and information work that is performed by the Panel. This is, however, purely ancillary to the Panel's main function to hear referrals of unacceptable conduct.

In 1996 the Panel made a submission to the Corporations Law Simplification Task force regarding the proposals to amend Chapter 6 of the Corporations Law. The proposals have suggested major changes to Chapter 6 and have also suggested changes to the provisions relating to the jurisdictions and powers of the Panel. The Panel supports this process of review and would encourage an even more broad ranging review of the provisions that relate to its roles and functions.

Takeover activity has been steady during 1995/1996. The Panel looks forward to an active year in 1996/1997. In preparation for referrals and other activity the ASC is planning a hypothetical referral for early in 1997. The Panel will be closely involved in this event and welcomes it as an opportunity for both organisations to familiarise themselves with the new provisions regulating Panel procedures and to prepare and facilitate an efficient hearing process.

## Structure of the Panel

The Panel was established by the proclamation of the Australian Securities Commission Act 1989 and its first members were appointed on 3 July 1991.

### Membership of the Panel

The Panel is independent of the ASC and draws its membership from the wider business community. Panel members are selected based on their knowledge and experience in areas relating to business, administration of companies, financial markets, law, economics and accounting. All members have had vast practical involvement in business and bring with them experience and knowledge as to commercial and market practices.

The Panel has at least five members who may be full or part time members. Part time membership allows active members of the business community to participate ensuring that the Panel reflects the current standards of the securities market.

The members are appointed by the Governor General on nomination by the Minister for a period of no more than five years. The relevant Ministers from the States and Territories may provide the names of suitable nominees to the Minister for consideration. At 30 June 1996 the Panel had twenty one full time members.

### President

One member of the Panel is appointed by the Governor General to be the President of the Panel. Mr John Pascoe AM was appointed as the third President of the Panel on 1 November 1994.

### Members

The members of the Panel as at 30 June 1996 were:

Mr John Pascoe AM

Ms Helen Lynch AM

Mr Ross Adler

Mr Donald Magarey

Ms Elizabeth Alexander AM

Mr Russell Miller

The Hon. Mr Jerrold Cripps QC

The Hon Mr Justice Trevor Morling

Mr David Elsum AM

Mr Peter O'Donohue

Mr Ronald Evans

Dr Kerry Schott

Mr William Gibson

Mr Michael Sharpe AM

Mr Warwick Higgs

Mr Graham Stanford

Mr Stuart Hornery AO

Mr Geoffrey Torney

Mr Peter Jooste

Prof Peter Wolnizer

Ms Judith Kelly

#### Staff

The ASC provides staff and support facilities to the Panel for the performance of its functions. The ASC provides a staff member to act as Secretary to the Panel. That person is available for Panel assistance as a priority and when not so engaged is involved in other policy work for the ASC.

### **Reporting**

The Panel is required under section 183 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.

**Appendix A - Panel Members ,**

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	(Company Director)	11 October 1994
Mr Warwick Higgs		24 September 1991
Mr Stuart Hornery AO	Lend Lease Corporation Ltd	3 July 1991
Mr Peter Jooste		3 July 1991
Ms Judith Kelly		11 October 1994
Ms Helen Lynch AM		11 October 1994
Mr Donald Magarey	Blake Dawson Waldron	11 October 1994
Mr Russell Miller	Deacons Graham & James	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

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'At 30/06/1996



## Appendix B - Panel Expenditure

The Panel's funding comes via the ASC budget. The ASC allocated from its budget \$138,700 to the Panel for the year 1995-96.

The Panel's expenses for the year 1995-96 were **\$82,250**.

### Remuneration

The current(2) Remuneration Tribunal determination is :

Members	
Annual Fee	\$1,737
When Engaged on Panel Business	\$465 per day
Travelling Allowance	\$320 per day (max)
President	
Annual Fee	\$5,789
When Engaged on Panel Business	\$580 per day
Travelling Allowance	\$320 per day (max)

### Audit

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

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<sup>2</sup> The Panel's 1995/96 remuneration is determined by determination no. 11 of 1995, effective from 01/07/95.

## Appendix C - Panel Financial Statement 1995-96

### Corporations and Securities Panel Financial Statement 1 July 1995 to 30 June 1996

<b>Budget Allocation 1994/95</b>	\$	\$ <b>138,700</b>
Less: <b>Administrative Expenses</b>		<u>670</u>
<b>Employee Expenses</b>		
Staff Salaries	42,788	
Members' Annual Fees	38,792	
 <b>Total Expenses Incurred to 30 June 1995</b>		 <u>82,250</u>
 <b>Balance of Allocation</b>		 <b>56,540</b>

**Corporations and Securities Panel**  
**Financial Statement**  
**1 July 1995 to 30 June 1996**

**Admin**

Library subscriptions	20
Printing	640
Bank Charges	10

670

**Salaries**

Members' Fees

Annual Fees	38,792
Daily Fees	0

Employee Expenses

Salaries	37,846
Employer Superannuation	4,423
Workers Compensation	<u>519</u>

81.580

Total Expenditure 1995/96

82.250

Subtract accounts unpaid at 30/06/95

nil

Add accounts unpaid at 30/06/96

nil

**Total Expenses Incurred to 30 June 1996**

82,250

## **Appendix D - Panel Secretariat**

Acting Panel Secretary and Contact Officer: -  
Ms Charmaine Farmer

Office of the Chairman  
Australian Securities Commission  
Level 16  
2 Chifley Square  
Sydney NSW 2000

GPO Box 4866  
DX 653  
Sydney NSW 2001

Ph: 02 9911 2666

Fax:02 9911 2066