

CORPORATIONS AND SECURITIES
PANEL

ANNUAL REPORT 1996-97

CORPORATIONS
AND
SECURITIES PANEL

Our Reference:

1 October 1997

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 1996 to 30 June 1997.

This report is the sixth 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 A.M Members: Ross Adler, Elizabeth Alexander A.M, Denis Byrne, Jerrold Cripps QC, David Elsum A.M, Ron Evans, Williams Gibson, Brett Heading, Warwick Higgs, Sturt Hornery A.O, Peter Jooste, Judith Kelly, Helen Lynch A.M, Donald Magarey, Russell Miller, Peter O'Donohue, Kerry Schott, Michael Sharpe A.M, Graham Stanford, Peter Wolnizer.
Secretary Jan Horwood
Panel Secretariat: Level 22, 600 Bourke Street, Melbourne 3000. Tel(03)9280 3570 Fax (03) 9280 3339

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Introduction to the Corporations and Securities Panel

The Panel was established under the Australian Securities Commission Act 1989 on 1 January 1991. Its role is to consider applications made by the Australian Securities Commission 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 (the Law). The applications are determined according to the Eggleston Principles set out at section 732. These provisions embody the general policy and spirit of the takeovers provisions of the Law and underpin the more detailed and prescriptive provisions of Chapter 6 of the 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' seeks to ensure that all inappropriate commercial behaviour in relation to the acquisition of shares or affairs of companies is prohibited.

The legislation provides that the Panel must keep within a strict timetable when examining applications to ensure that the Panel is able to make quick decisions. The market, participants in takeovers, and affected shareholders are therefore able to make decisions on the basis of full information.

The Panel's hearing procedures are prescribed 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 and issue orders after holding an inquiry, taking submissions, hearing evidence and requiring persons to appear or to produce documents.

Panel Activities 1996-97

The Panel received the second referral since its inception during this financial year. On 20 January 1997, the Australian Securities Commission lodged an application submitting that unacceptable circumstance had occurred in relation to the conduct of Pivot Nutrition Pty Ltd (Pivot) a subsidiary of Pivot Ltd, leading up to a takeover offer for Gibson Ltd.

The members of the Panel appointed to hear the matter were Mr Russell Miller (President), the Hon Jerrold Cripps QC (Deputy President) and Mr Michael Sharpe.

The ASC alleged that Pivot, though the use of its controlling position, caused the termination of Gibson's long standing arrangement to supply flour to Cripps Bakery and had therefore deprived Gibson's of a valuable asset prior to the takeover offer.

The Panel found that unacceptable circumstances had occurred as a result of Pivot's actions because:

- i. a benefit had accrued directly or indirectly to a shareholder, Pivot;
- ii. that benefit was not available to the other Gibson's shareholders; and
- iii. the offeree shareholders did not have reasonable and equal opportunities to participate in that benefit.

The Panel made a declaration on 17 February 1997 that unacceptable circumstances had occurred. It decided not to make orders after Pivot gave certain undertakings, principally to increase its offer price for the outstanding Gibson's shares.

The Panel made its declaration within 30 days of receiving the ASC's application, as required under section 733(4) of the Law. In reaching its decision, the Panel considered evidence given at a conference with the parties over a number of days. The Panel considered it was assisted in meeting the deadline required by the legislation by the cooperation of all the parties.

Future Direction

The regulation of takeovers is being reviewed by the Government in the context of the Corporations Law Economic Reform Program which was launched by the Treasurer in March 1997. One issue which is being examined in that context is whether or not an expert non judicial body like the Panel could play a more significant role in takeover dispute resolution.

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 because of their knowledge and experience in areas relating to business, administration of companies, financial markets, law, economics and accounting. All members have had extensive 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 1997 the Panel had twenty 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.

Staff

The ASC provides staff and support facilities to the Panel for the performance of its functions. The ASC provides a senior staff officer to act as Secretary to the Panel. When not involved in Panel activities that person undertakes other duties 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 (1)

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	Chartered Accountant	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	Black Dawson Waldron	11 October 1994
Mr Russell Miller	Deacons Graham & James	3 July 1991
Mr Peter O'Donohue	O'Donohue Bros	25 July 1991
Dr Kerry Schott	Deutsche Morgan Grenfell	11 October 1994
Mr Michael Sharpe AM	Coopers & Lybrand (Securities) Ltd	11 October 1994
Mr Graham Stanford	Company Director	12 December 1991
Mr Geoffrey Torney	Byrne Jones & Torney	24 September 1991
Prof Peter	WolnizerDeakin University	11 October 1994

(1) At 30/6/97

Appendix B – Panel Expenditure

The Panel's funding comes via the ASC budget. The ASC allocated from its budget \$160,000 to the Panel for the year 1996-97.

The Panel's expenses for the year 1996-97 were **\$142,499**.

Remuneration

The current (2) Remuneration Tribunal determination is:

Members	
Annual Fee	\$1,820
When Engaged on Panel Business	\$485 per day
Travelling Allowance	\$320 per day (max)
President	
Annual Fee	\$6,000
When Engaged on Panel Business	\$600 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.

(2) The Panel's 1996/97 remuneration is set by Determination No 14 of 1996

Appendix C Financial Statement 1996-97

Corporations and Securities Panel Financial Statement 1 July 1996 to 30 June 1997

	\$	\$
Budget Allocation		160,000
Administrative Expenses		
Stationary	21	
Printing	1,582	
		<u>1,603</u>
Gibson's Inquiry		
Members Daily Fees	16,304	
Travel costs	6,160	
Legal fees	3,840	
Operational costs	3,235	
		<u>29,539</u>
Salaries		
Members Annual fees	41,268	
Employee expenses		
Salaries	66,095	
Employer superannuation	3,994	
		<u>111,357</u>
Subtract accounts unpaid at 30/06/96	nil	
Add accounts unpaid at 30/06/97	nil	
Total Expenses Incurred to 30 June 1996		<u>142,499</u>
Balance of allocation		17,501

Appendix D – Panel Secretariat

Panel Secretary and Contact Officer:-
Ms Jan Horwood

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