

## **GUIDANCE NOTE 10: PUBLIC CONSULTATION - (SUPERSEDED)**

### **Overview**

The Panel has power to make rules clarifying and supplementing Chapter 6 of the Corporations Act and for its own procedures. It also issues guidance notes on how it will exercise its powers under Chapter 6 and on related issues.

The Panel has a procedure which it generally follows when developing Chapter 6 rules or guidance notes. This involves the appointment of a subcommittee (which may consist of members and non-members of the Panel) to prepare a proposal which is then circulated to all Panel members for comment. Informal consultation with relevant third parties, including ASIC, may also occur.

Following development of a draft rule or guidance note, the relevant document will be published as a consultation draft for public consideration with an appropriate time (usually at least six weeks) being allowed for responses.

The Panel will then, as soon as possible, publish its final document on its web site together with its reasons for any material amendments to the public consultation draft and explaining material views expressed during the consultation process.

## Introduction

- 10.1 Under section 658C of the Corporations Act, the Takeovers Panel has power to make rules that clarify and supplement the operation of Chapter 6. It also has power to make its own procedural rules under section 195 of the ASIC Act. The Panel also considers that it will assist market practitioners if the Panel publishes guidance notes on how it will exercise its powers under Chapter 6, and other relevant issues.
- 10.2 The Panel wishes to remind readers of its Guidance Notes that they are necessarily general in nature, and cannot provide detailed rules for any individual case. Each application before a sitting Panel will be considered in light of the Panel's published Guidance Notes, but will also be considered carefully in light of the particular circumstances and facts of the case.
- 10.3 This Guidance Note sets out the process the Panel will usually adopt in consulting with the public and the market in developing and finalising its rules and guidance notes. The Panel believes this is good public policy and is consistent with the approach taken by other public bodies in Australia and overseas including ASIC, ASX, and the Parliamentary Joint Committee on Corporations and Securities.

### *Sources for Guidance Note/Rule Initiatives*

- 10.4 The Panel will consider amendments to its existing Guidance Notes, or proposals for new guidance from members of the Panel, third parties or from the Panel's Executive itself. Proposals may arise from issues dealt with or touched on in matters which come before the Panel or as issues which arise independently, perhaps relating to changes in takeover practice or the law. The Panel welcomes submissions from market participants about current issues on which they consider the Panel would assist the market by providing guidance.

## Purpose

- 10.5 The Panel considers that a transparent consultation process and clear commitment by the Panel to be responsive to submissions will mean that its guidances will:
- (a) receive better acceptance and support from the market;
  - (b) be as least restrictive on the efficiency of the market as possible;
  - (c) cause fewer unwanted costs and frictions in the market;
  - (d) achieve their aims more efficiently and effectively;
  - (e) contain fewer loopholes; and
  - (f) be more responsive to changing circumstances.

## Development and Consultation Process

- 10.6 The Panel generally appoints a sub-committee to consider each rule<sup>1</sup> or guidance proposal. Sub-committees may include non-Panel members. The sub-committee works with the Executive to research and prepare a proposal once a guidance or amendment is under consideration by the Panel.
- 10.7 The sub-committee and the Executive then take the proposal and a draft document to the wider Panel for approval prior to public consultation<sup>2</sup>. In the development phase, the Executive will consult as appropriate with third parties, including ASIC, on an informal basis.
- 10.8 The Panel seeks to notify the widest group of people and stakeholders who it believes will be interested in the issues raised in its Guidance Notes. It will normally publish the consultation draft on its website for public consideration, with an appropriate period for responses (usually at least six weeks). It also advises those people who have joined its mailing list, and any other specific people or groups relevant to the issue.
- 10.9 The Panel will, as soon as practicable, publish its final document (or its conclusion that no amendments are necessary) on its website. It will also publish its reasons for any material amendments to the published consultation draft and an explanation of any material conflicting views expressed by parties consulted informally or respondents to the public consultation.

### *Publishing Responses*

- 10.10 The Panel considers that it may assist the market understand the Guidance Notes which it publishes if it also publishes comments and submissions it receives. If respondents indicate that they consent, the Panel may publish their responses on the Panel's website. It will assist the Panel if respondents indicate at the time of submission whether they consent to their responses being published or wish them to be withheld.

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## Publication History

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<sup>1</sup> The Panel's procedures set out in this Guidance Note are in addition to the statutory requirements in the Corporations Act, for example in section 658C.

<sup>2</sup> At the request of the judges who are members of the Panel, the Panel does not ask them to sit on subcommittees which are developing Panel Guidance Notes where it is possible that cases in which those Guidance Notes are relevant might come before them in their judicial duties. Generally the judges also refrain from comment on Guidance Notes when they come before the wider Panel.