

TAKEOVERS PANEL

ANNUAL REPORT
2018-2019

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2 September 2019

The Hon Josh Frydenberg MP
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer

ANNUAL REPORT 2018-19

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*,
I submit the 2018-19 Annual Report of the Takeovers Panel for presentation to Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Cartel'.

Alex Cartel
President

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PART 1 — BACKGROUND

Who we are?

The Takeovers Panel is a peer review body¹ established as ‘a specialist body largely comprised of takeover experts’² that is the main forum for resolving disputes in takeovers.³ It consists at 30 June 2019 of 43 specialists in mergers and acquisitions — investment bankers, lawyers, company directors and other professionals.

The Panel, established in January 1991, underwent changes to its structure and role in March 2000. It operates under:

- Part 6.10 of the *Corporations Act 2001* (Cth) (Corporations Act);
- Part 10 of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act); and
- Part 3 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Our website

The Panel’s website (www.takeovers.gov.au) includes:

- media releases;
- reasons for decisions and an index of decisions;
- a description of the Panel and its operations and a guide to the takeover provisions in the Corporations Act;
- Guidance Notes;
- consultation papers;
- Procedural Rules;
- privacy policy;

¹ Section 172(4) of the ASIC Act.

² Paragraph [7.16] of the Explanatory Memorandum for the Corporate Law Economic Reform Program Bill 1998 (Cth).

³ Section 659AA of the Corporations Act.

Takeovers Panel Annual Report 2018-2019

- annual reports;
- legislative resources and other background material relating to mergers and acquisitions; and
- the Panel's Information Publication Scheme.

Interested persons may subscribe to the Panel's website to be notified when new items are posted.

Who to contact

Enquiries regarding this report may be directed to:

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Director, Takeovers Panel
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Melbourne VIC 3000
Telephone: +61 3 9655 3500
Facsimile: +61 3 9655 3511
Email: takeovers@takeovers.gov.au



Mr Alex Cartel
President of the Panel

Review by the President

I felt honoured to be appointed as President of the Panel on 8 March 2019 and particularly so as Vickki McFadden’s successor. For the previous six years, under Vickki’s leadership, the Panel met its mandate in deciding disputes in takeovers and other control transactions promptly and commercially. The Panel has also received outstanding feedback from the market.⁴ I consider that the Panel’s public standing and achievements in recent years are a direct reflection of the high level of engagement by the entire Panel membership, as well as the efforts of the Panel’s executive team. While I have ‘big shoes to fill’, I aim to ensure that this continues seamlessly into the future.

The 2018-2019 financial year was a very busy one for the Panel. The Panel received 30 applications. It conducted proceedings in half of those matters and made 12 declarations of unacceptable circumstances. Shareholders made 14 of those applications. Shareholders have become the number one source of applications to the Panel over the last ten years. These applications often require more work, particularly on the part of the executive. This is because shareholder applicants are often unrepresented and their applications can raise novel issues. In addition, other shareholders are keen to express their views in writing to the Panel executive in response to a shareholder application. I noticed as sitting President on the Flinders Mines Limited 02 and 03 matters that numerous retail shareholders supported the two shareholder applicants and were the principal reason why that matter got considerable press coverage.

If this trend continues, the Panel’s overall workload will continue to increase. The Panel executive has responded to this by increasing their investment in IT platforms, in particular in the use of data rooms. I consider that IT and continued working on the business will be vital in ensuring that the Panel is able to fulfil its mandate in the future.

One way the Panel can manage its workload is by providing sufficient guidance so that market participants understand their obligations. The Panel has on issue 18 Guidance Notes to assist market participants to understand the principles and policies, which the Panel will consider in deciding applications. An example of where I think this has been

4 I note that 89% of stakeholders surveyed in 2015 were satisfied with the performance of the Panel.

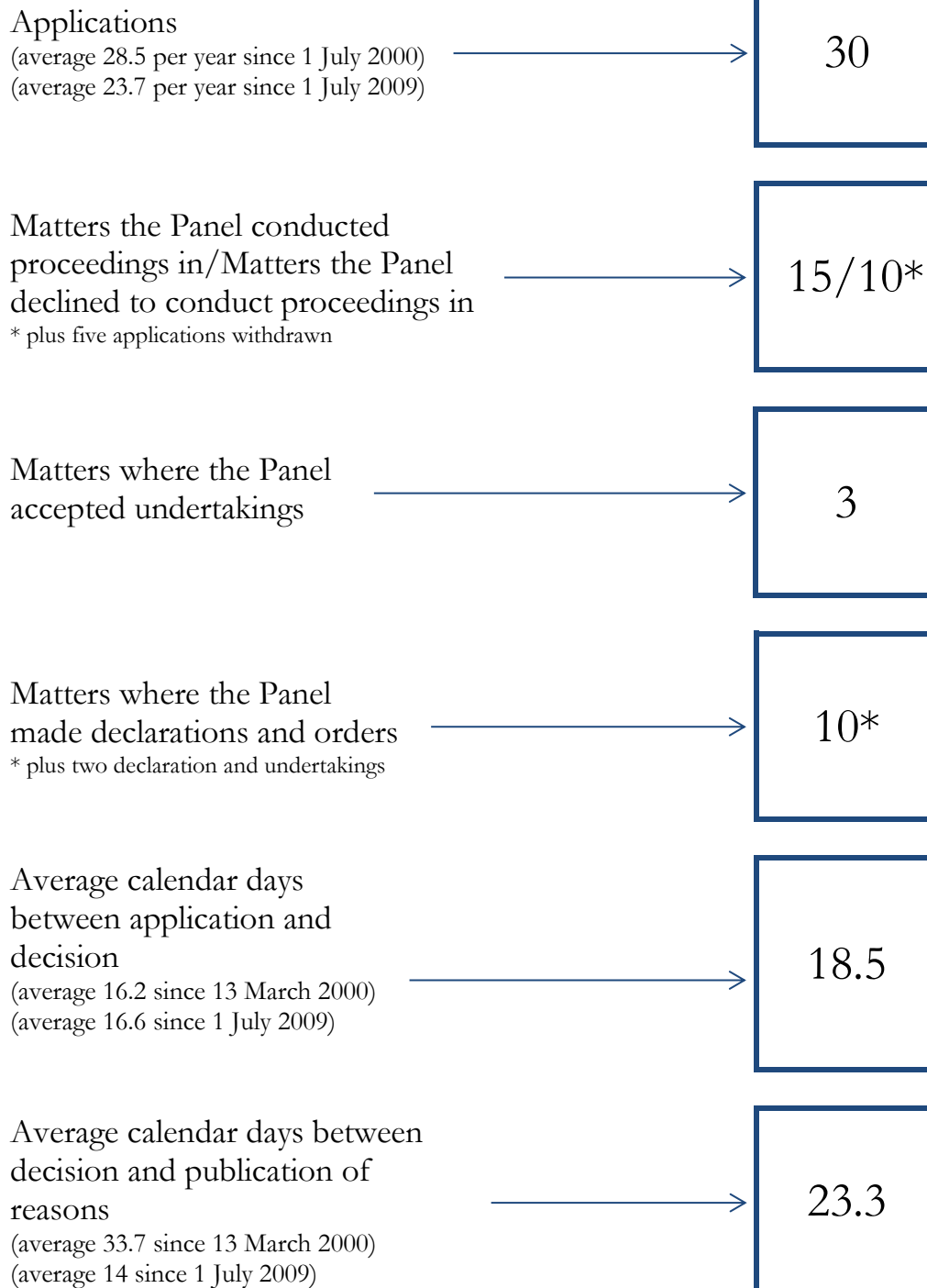
successful is the impact of the Panel's policy on rights issues. Since the Panel released its revised version of Guidance Note 17 on 27 June 2018, we have seen a material decline in the number of rights issues matters before the Panel.

In the 2018-2019 financial year, the Panel published an amendment to Guidance Note 1 (Unacceptable Circumstances) to provide guidance on how long a bidder must wait before making a new bid if it made a no increase statement during the bid. The Panel also consulted on a proposed replacement Guidance Note 20 on equity derivatives.

The Panel is grateful to the Federal Government for its commitment to a robust, principles-based Panel regime and for its ongoing support. At 30 June 2019, the Panel had 43 part time members. I thank members for their work throughout the year, as participants in sitting Panels, at Panel days and on policy sub-committees. Following the recent appointment and reappointment of Panel members, the Panel now has more women members than men for the first time in the Panel's history.

I wish to thank Bruce Dyer for his service to the Panel as Counsel in 2006-2007 and 2016-2019. Bruce generously shared his considerable knowledge in takeovers and administrative law over this period obtained from many years as partner at Ashurst and as an academic. I am delighted that Tania Mattei was willing to take up the role as Bruce's successor. Tania has been Deputy Counsel at the Panel since September 2015 and was previously Counsel at Shearman & Sterling LLP in New York. Tania has a wealth of experience in advising on large cross border M&A deals and at the Panel. The Panel members and I greatly appreciate the support of Allan, Tania and their small executive team who have worked so hard over the past 12 months to support the Panel during this busy period.

Panel at a glance 2018-19



PART 2 — THE PANEL

The Panel improves the certainty, efficiency and fairness of Australia's takeovers market by:

- resolving disputes in a fair, timely, consistent, informal and sound manner; and
- publishing clear, well-developed guidance.

The Panel's two main dispute resolution functions are considering whether unacceptable circumstances exist⁵ and reviewing certain decisions of ASIC.⁶

Table 1: The Panel's dispute resolution functions

| | Unacceptable circumstances | Review of ASIC decisions |
|----------|--|---|
| What | Deciding applications for a declaration of unacceptable circumstances is the main work of the Panel | The Panel may, on application, review ASIC decisions under Chapter 6 and, during a takeover bid, Chapter 6C |
| How | The Panel (comprising three members) considers the circumstances against the principles in section 602, the provisions and policy of Chapter 6 and the public interest | The Panel may exercise all the powers of ASIC under Chapters 6 and 6C ⁷ |
| Guidance | Guidance Notes, Procedural Rules, legislative policy of Chapter 6, previous decisions | Regulatory Guides, ASIC policies, reasons for ASIC's decision, Panel policy |

⁵ Section 657A and, if a declaration is made, orders under section 657D.

⁶ Under section 655A and, during a takeover bid, section 673 (see s656A).

⁷ Section 656A(3).

Table 1: The Panel's dispute resolution functions (continued)

| | Unacceptable circumstances | Review of ASIC decisions |
|------------------|--|--|
| Outcomes | If a declaration is made the Panel can make any orders to address the unacceptable circumstances, including a 'remedial order' ⁸ | Affirm, vary, set aside (and substitute/remit) the ASIC decision |
| Review | The Panel, on application, conducts a merits review of a decision of the initial Panel. ⁹ A review Panel comprises three different members to the initial Panel. There may be only one review of a Panel decision | As the Panel proceeding is the merits review, there is no review Panel |
| How often | In the current period there were 22 applications for a declaration at first instance and six applications for review | In the current period there were two applications for review of an ASIC decision |

Other features

The Panel may make rules, not inconsistent with the Corporations Act or the Corporations Regulations, to clarify or supplement the operation of the provisions of Chapter 6.¹⁰ It has not made any rules under this power.

The Panel has a power to make Procedural Rules.¹¹ It published revised Procedural Rules in 2010.

The Panel may decide a matter referred from the Court.¹² There were no referrals in the current period.

8 Section 9. However, it cannot make an order directing a person to comply with a requirement of Chapters 6 — 6C.

9 Only with consent of the President if the initial Panel did not make a declaration or orders. See generally section 657EA.

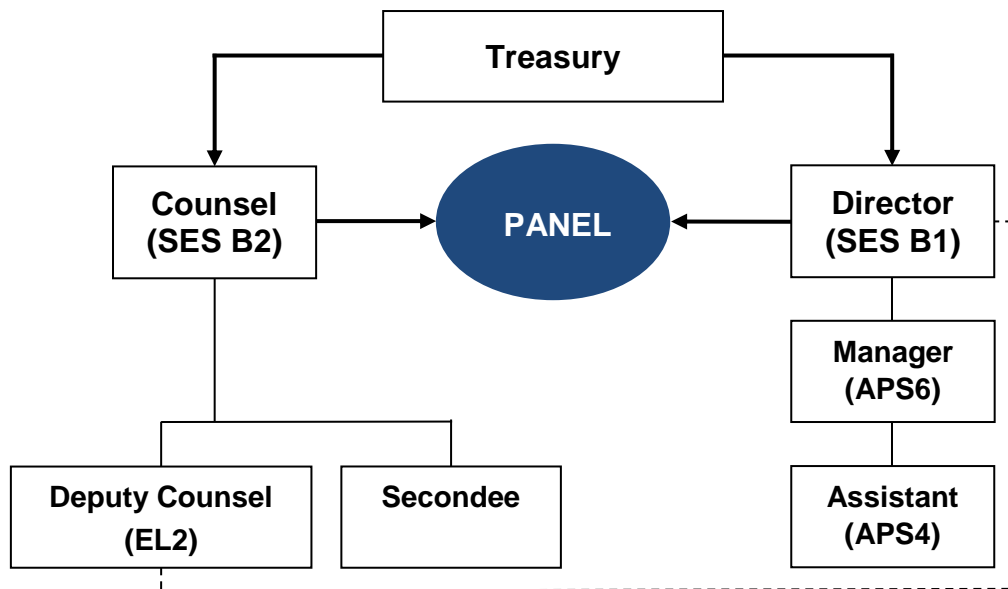
10 Section 658C.

11 Section 195 of the ASIC Act.

12 Section 657EB.

Organisational structure

Chart 1: The Panel's organisation structure



Panel President

Mr Alex Cartel, a member of the Panel, is its President.¹³ His responsibilities include:

- liaising with the Minister, Government, Treasury and stakeholders;
- appointing members to constitute sitting Panels;
- considering the interests of sitting Panel members for possible conflicts; and
- participating in reviewing the performance of the executive.

He regularly sits on matters.

¹³ Section 173 of the ASIC Act.

Acting Presidents

The following members have been appointed¹⁴ to act as President when the President cannot act:

- Mr Richard Hunt;
- Ms Michelle Jablko;
- Mr Ron Malek;
- Ms Yasmin Allen;
- Ms Tracey Horton AO; and
- Ms Diana Nicholson.

Panel Executive

The executive assists Panel members make consistent, timely and commercial decisions. It provides:

- administrative and legal support for Panel members;
- communication with parties in proceedings;
- liaison with market practitioners, ASIC's takeovers staff and ASX; and
- an interface to prospective parties (for example, discussing issues and providing a perspective on takeovers policy as it may apply to current takeovers).

The Panel's executive comprises:

- Director, Mr Allan Bulman;
- Counsel, Ms Tania Mattei;
- legal secondees. The Panel's normal process is to staff its office, in part, with secondees from major law firms around Australia. The secondees have ably assisted the executive. The Panel appreciates their contributions and the willing support of their firms. During the year, the secondees were Ms Annabel Humphreys (Gilbert + Tobin, Sydney) and Mr Jacob Carmody (Ashurst, Perth); and

¹⁴ Section 182(1)(a)&(b) of the ASIC Act.

- two administrative staff: Ms Karolina Ksiezak as Office Manager and Ms Rebecca Andrewartha as Executive Assistant.



The President with the executive: (L to R) Jacob Carmody, Tania Mattei, Alex Cartel, Karolina Ksiezak, Rebecca Andrewartha and Allan Bulman.

The Office

The Panel maintains an office in Melbourne at Level 10, 63 Exhibition Street.

Appointment of Panel members

Table 2: Appointment of Panel members in 2018-19

| Reappointments (9) | Appointments (6) | Terms completed (6) |
|---------------------------------------|-----------------------|---------------------|
| Mr Kelvin Barry; | Ms Amy Alston; | Mr Peter Day; |
| Mr Robin Bishop; | Mr Michael Borsky QC; | Mr James Dickson; |
| Mr Alex Cartel (appointed President); | Ms Marissa Freund; | Ms Sarah Dulhunty; |
| Mr Bruce Cowley; | Mr John McGlue; | Mr Rod Halstead; |
| Ms Chelsey Drake; | Ms Kerry Morrow; and | Mr Rodd Levy; and |
| Ms Elizabeth Hallett; | Ms Philippa Stone. | Ms Vicki McFadden. |
| Ms Shirley In't Veld; | | |
| Ms Denise McComish; and | | |
| Mr Bruce McLennan. | | |

Members are appointed on a part-time basis, usually for three years, by the Governor-General on the nomination of the Minister.¹⁵ State and Territory Ministers may submit nominations to the Minister. Members are nominated on the basis of their knowledge and experience in one or more of the fields of business, administration of companies, financial markets, financial products and financial services, law, economics and accounting.¹⁶ A mix of expertise, geographical representation and gender representation is also considered.

¹⁵ Section 172 of the ASIC Act.

¹⁶ Section 172(4A) of the ASIC Act.

Chart 2: Panel members by Profession at 30 June 2019

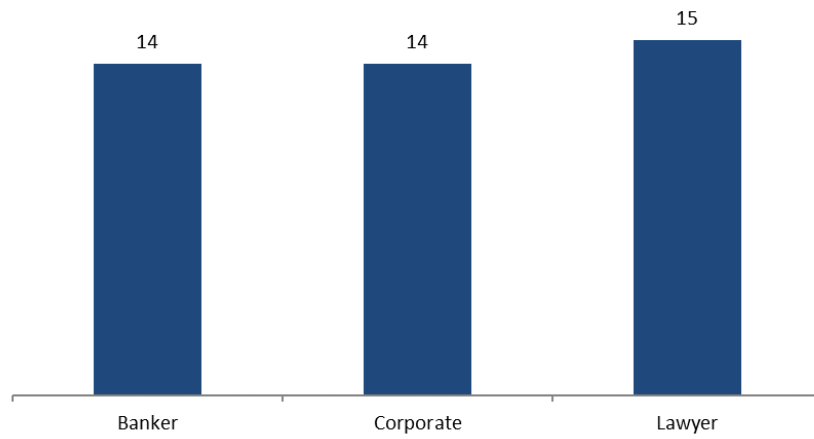


Chart 3: Panel members by Location at 30 June 2019

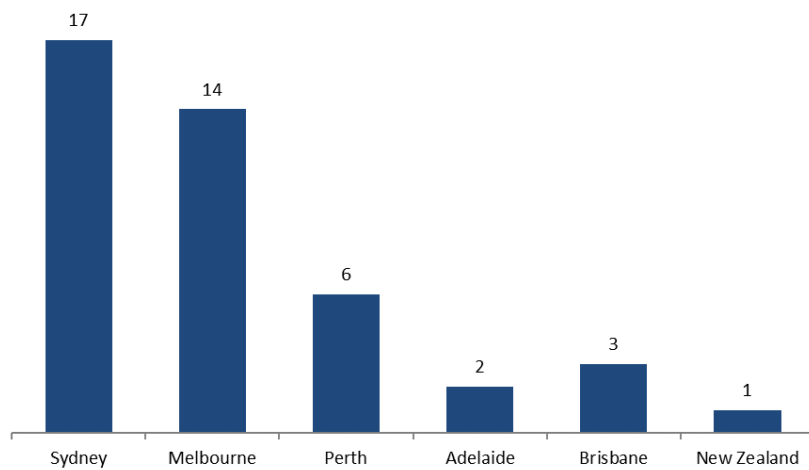
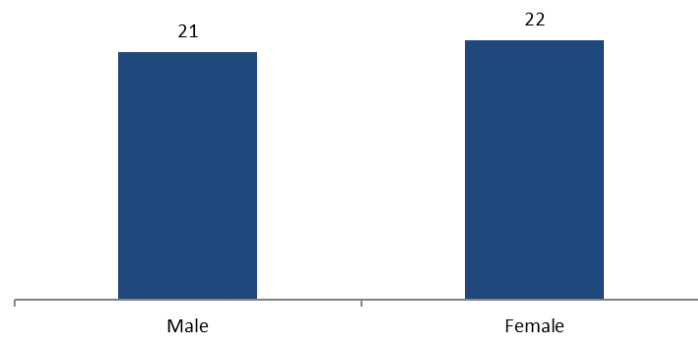


Chart 4: Panel members by Gender at 30 June 2019



Members' biographies (as at 30 June 2019)

Alex Cartel (President) — Managing Director and Head of Investment Banking Coverage at Deutsche Bank AG Australia. Member since 2015.

Yasmin Allen (Acting President) — Chairman of Advance Global, non-executive director of Cochlear Limited, Santos Limited, ASX Limited, National Portrait Gallery and The George Institute for Global Health. Member since 2017.

Amy Alston — Sabbatical, previously General Counsel and Corporate Affairs Director at Murray Goulburn Co-Operative Co Limited. Member since 2019.

Kelvin Barry — Managing Director and Head of Corporate Advisory at UBS AG. Member since 2016.

Robin Bishop — Managing Partner at BGH Capital, director of the Burnet Institute for Medical Research and AFL Commissioner. Member 2011-2014 and re-appointed 2016.

Michael Borsky QC — Barrister, member of the Business Law Section of the Law Council of Australia. Member since 2019.

Stephanie Charles — Partner at BGH Capital. Member since 2015.

Andy Coupe — Chairman of New Zealand Takeovers Panel, non-executive director of Gentrack Group, Briscoe Group, Kingfish, Barramundi, Marlin Global and Television New Zealand. Member since 2016.

Bruce Cowley — Partner at MinterEllison, member of the Corporations Committee of the Law Council of Australia and AICD Law Committee. Member since 2016.

Chelsey Drake — Partner at Allens, member of the Corporations Committee of the Law Council of Australia. Member since 2016.

Paula Dwyer — Chairman of Tabcorp Holdings Limited, non-executive director of ANZ Banking Group, Lion Pty Limited and Allianz Australia Limited. Member 2008-2014 and re-appointed 2017.

Teresa Dyson — Non-executive director of Seven West Media, Genex Power, Consolidated Tin Mines, Energy Super, Energy Queensland, Power & Water Corporation, member of FIRB. Member since 2018.

Karen Evans-Cullen — Partner at PricewaterhouseCoopers, member of the Corporations Committee of the Law Council of Australia. Member since 2014.

Marissa Freund — Chief Operating Officer (Australia & New Zealand) Mergers & Acquisitions at Goldman Sachs. Member since 2019.

Elizabeth Hallett — Non-executive director of Sunsuper and NSW Land Registry Services and a member of the advisory board of The John Sample Group. Member since 2013.

Tracey Horton AO (Acting President) — Chairman of Navitas Limited, non-executive director of The GPT Group, Commissioner of the Tourism Commission of WA, non-executive national director of the AICD, member of ASIC Director Advisory Panel. Member since 2015.

Richard Hunt (Acting President) — Executive Chairman of Corporate & Institutional at Evans Dixon. Member since 2012.

Shirley In't Veld — Deputy Chairman of CSIRO, non-executive director of APA Group, Northern Star Resources and NBN Co. Member since 2016.

Michelle Jablko (Acting President) — Chief Financial Officer of ANZ Banking Group Limited. Member since 2014.

Ian Jackman SC — Barrister. Member since 2014.

Christian Johnston — Head of Investment Banking (Australia and New Zealand) at Goldman Sachs. Member since 2014.

Bill Koeck — Chairman of Coronado Global Resources Inc, non-executive director of Poulos Goup and consultant to Ashurst. Member since 2015.

Jeremy Leibler — Partner at Arnold Bloch Leibler, non-executive director of Thorney Technologies Limited, member of the Business Law Section of the Law Council of Australia and AICD. Member since 2015.

Ron Malek (Acting President) — Founder and Executive Co-Chairman of Luminis Partners, a director of the National Institute of Dramatic Art (NIDA) and a member the UNSW Council's Investment Committee. Member since 2012.

Rebecca Maslen-Stannage — Partner at Herbert Smith Freehills, chair of the Business Law Section of the Law Council of Australia. Member since 2017.

Denise McComish — Partner at KPMG, a Chartered Accountant, member of Chief Executive Women and AICD and former member of the Corporations and Markets Advisory Committee. Member since 2013.

John McGlue — Managing Director of Castle Gates Australia and non-executive director of HDR Energy. Member since 2019.

Robert McKenzie — Partner at Blackwall Legal, member of the International Insolvency Institute, non-executive director of Black Swan State Theatre Company and Keystart Loans Limited. Member since 2014.

Bruce McLennan — Managing Director and Co-Head of Advisory at Gresham Advisory Partners, non-executive director of Kingspan Group Plc. Member since 2016.

Rory Moriarty — Partner at Clayton Utz. Member since 2018.

Kerry Morrow — Director at Laity Morrow. Member since 2019.

Diana Nicholson (Acting President) — Partner at King & Wood Mallesons. Member since 2017.

Tony Osmond — Managing Director, Head of Corporate and Investment Banking for Australia and New Zealand at Citigroup, non-executive director of The Australian Ballet. Member 2011-2014 and re-appointed 2015.

John O'Sullivan — Non-executive director of AMP and Roads Retained Interest Pty Limited and the WestConnex entities. Member 2005-2011 and re-appointed 2018.

Tara Page — General Counsel and Company Secretary at Royal Automobile Association of South Australia Inc, previously partner at Thomson Geer. Member since 2017.

Neil Pathak — Partner, Co-Head of M&A/Corporate and Board Member at Gilbert + Tobin, Senior Fellow of the University of Melbourne Law School. Member since 2017.

Karen Phin — Non-executive director of Magellan Financial Group, IMF Bentham and ARB Corporation. Member since 2015.

Sarah Rennie — Managing Director, Head of Equity Capital Markets (Australia & New Zealand) at Goldman Sachs. Member since 2015.

John Sheahan QC — Barrister, a member of the Board of Governors of the Law and Justice Foundation and a Fellow of the Australian Academy of Law. Member since 2014.

Philippa Stone — Partner at Herbert Smith Freehills, non-executive director of the Centre for Independent Studies. Member since 2019.

Nicola Wakefield Evans — Non-executive director of Macquarie Group, Lendlease Corporation, Clean Energy Finance Corporation. Member since 2015.

Sharon Warburton — Co-Deputy Chairman of Fortescue Metals Group, non-executive director of NEXTDC, Gold Road Resources and WorleyParsons. Member since 2015.

David Williamson — Deputy Chairman of Flagstaff Partners, previously a corporate lawyer (partner of Blake Dawson Waldron/Ashurst) and Head of Group Legal and Compliance at BHP Billiton. Member since 2017.

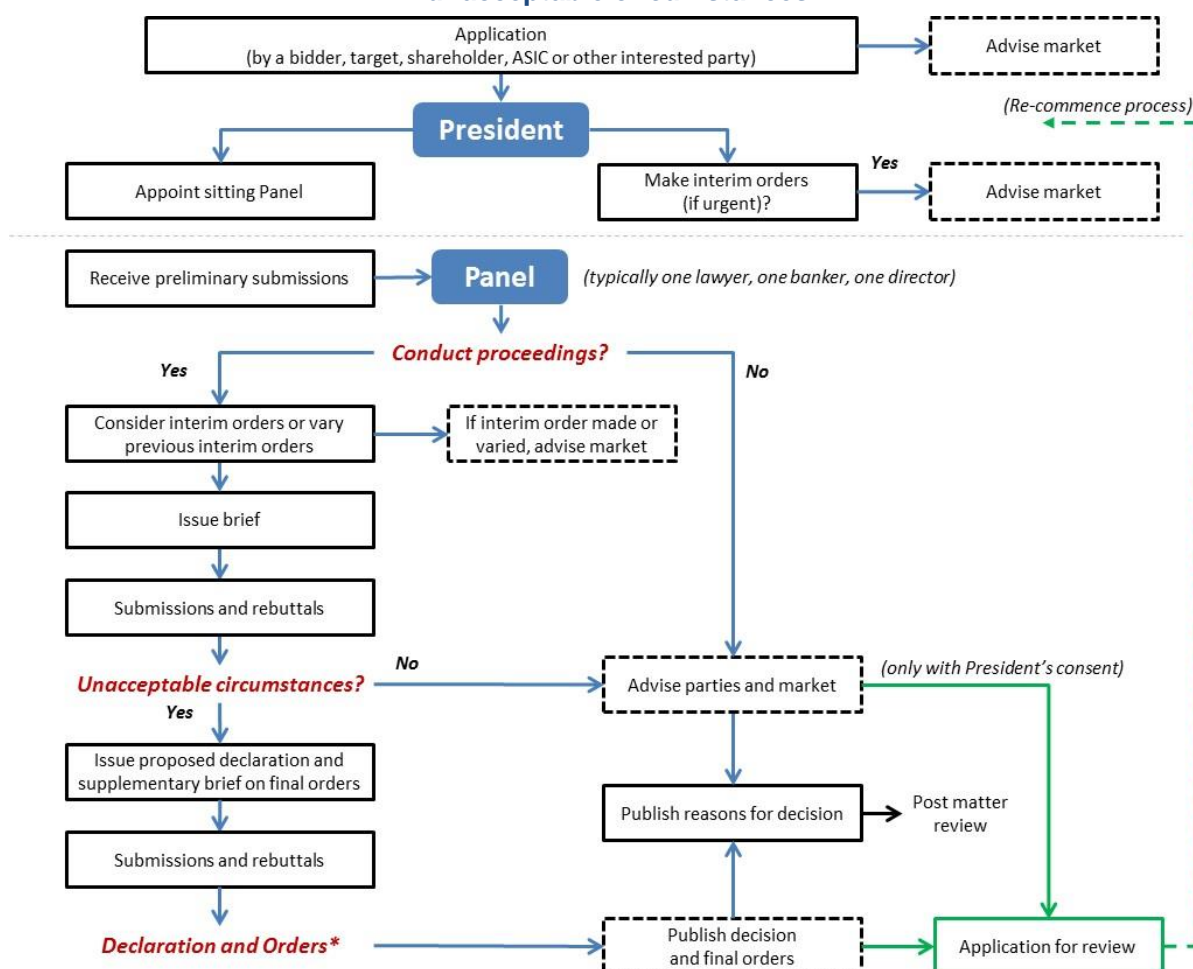
PART 3 — THE WORK OF THE PANEL

Matters

The Panel resolves matters as quickly and as informally as a proper consideration of the issues permits. Timeliness remains one of the key performance indicators for the Panel. Proceedings are generally conducted in private because of commercial sensitivity and time constraints. The Panel has power to invite or accept submissions from any person and to call for persons to make submissions.

The following chart maps the Panel's usual process in relation to applications for declarations of unacceptable circumstances.

Chart 5: The Panel's process for applications for declarations of unacceptable circumstances



* Alternatively, accept undertaking in lieu of declaration or orders or make no orders

Further description of the Panel's process can be found on its website.

Appendix 3 lists the applications in the current period (30 in total). Table 3 groups the applications by outcome. Table 4 groups them by subject matter.

Table 3: Outcome of applications received by the Panel in 2018-19

| Form of resolution | Number of matters | Comments |
|---|-------------------|--|
| Declaration and Orders ¹⁷ | 10 | Circumstances are unacceptable and may be remedied with orders |
| Declaration and Undertakings ¹⁸ | 2 | Potential substitute for orders |
| Conduct proceedings, no declaration, orders or undertaking | 3 | Panel decides to conduct proceedings, but does not find any unacceptable circumstances |
| Decline to conduct proceedings, undertaking/action by party | 4 | Panel decides to not conduct proceedings after a party provides an undertaking or takes an action that resolves any potential unacceptable circumstances |
| Decline to conduct proceedings | 6 | Panel does not conduct proceedings, for example, because it did not think the circumstances complained of would be unacceptable, or there was not a sufficient basis for inquiring further |
| Proceedings withdrawn | 5 | Applicant withdraws (Panel consent is required) |
| Total | 30 | |

17 Bullseye Mining Limited 02 also accepted an undertaking under section 201A of the ASIC Act.

18 Section 201A of the ASIC Act.

Issues in applications

Table 4: Issues in 2018-19

| Issue | Number of matters | Name of case |
|---|-------------------|---|
| Association/ breach of s606 | 12 | Bullseye Mining Limited, Baraka Energy and Resources Limited, Tribune Resources Limited, Tribune Resources Limited 02R, Nimrod Resources Limited, Yowie Group Ltd 01, Yowie Group Ltd 02, Print Mail Logistics Limited, Donaco International Limited, Agua Resources Limited, Australian Whisky Holdings Limited, Aurora Absolute Return Fund |
| Disclosure | 9 | Explaurum Limited, Benjamin Hornigold Limited, Henry Morgan Limited, Benjamin Hornigold Limited 02, Henry Morgan Limited 02, Benjamin Hornigold Limited 03R and Henry Morgan Limited 03R, Benjamin Hornigold Limited 04R, Henry Morgan Limited 04R, Riversdale Resources Limited |
| Securities issue/shareholder approval | 4 | Tikforce Limited, Bullseye Mining Limited 02, IndiOre Limited, Factor Therapeutics Limited |
| Delisting proposal | 3 | Flinders Mines Limited 02, Flinders Mines Limited 03, Flinders Mines Limited 04R |
| Frustrating action | 1 | Molopo Energy Limited 12R |
| Rights issues | 1 | Poseidon Nickel Limited |
| Total | 30 | |

Note: the table captures the main basis for an application (or if there are two they are shown as 'in part' and contribute to half scores).

Ensuring consistency

The Panel holds meetings of all its members at least two times each year. These sessions are a valuable opportunity for them to get together and discuss past proceedings, policy issues and market developments.

Panel members' firms host these meetings, as well as allow members time to attend, and the Panel appreciates this support.

The executive has issued an index of Panel decisions from 2000-2017.

Guidance

The Panel publishes Guidance Notes to assist the market in relation to takeovers matters and to assist Panel members make consistent decisions. In the current period the Panel amended one Guidance Note.

Table 5: Guidance Notes issued or amended in 2018-19

| Guidance Note | GN Issue | Date |
|---------------------------------|----------|------------|
| GN 1 Unacceptable Circumstances | Sixth | 11/07/2018 |

Guidance Notes are generally developed by sub-committees of Panel and non-Panel members. Appendix 2 lists sub-committee members. The Panel thanks them for their contributions.

Consultation

In addition to post matter reviews (see below), the Panel undertakes public consultation in relation to policy or procedural issues. The Panel may approach interest groups if they are likely to be materially affected or may provide specialised input. The Panel publishes all submissions. The Panel also publishes a response to submissions addressing the main comments received and the reasons for adopting or rejecting them. For more information see the section 'How We Consult' under 'Consultation' on the Panel's website.

In the current period the Panel published one consultation paper.

Table 6: Consultation papers issued in 2018-19

| Consultation Paper | Issue Date | Close Date | Number of submissions |
|--------------------------|------------|------------|-----------------------|
| GN 20 Equity Derivatives | 10/04/2019 | 31/05/2019 | 10 |

Legislation

The Panel operates under the Corporations Act and ASIC Act.

Judicial review

On 14 September 2017, the Panel was served with a Federal Court application for judicial review of the Panel's decision in Molopo Energy Limited 03R, 04R & 05R. The Federal Court heard the matter on 22 October 2018, reserving judgment.

On 16 July 2018, the Panel was served with a Federal Court application for judicial review of the Review Panel’s decision in Finders Resources Limited 03R. The Federal Court dismissed the application.¹⁹

On 19 November 2018, the Panel was served with a Federal Court application for judicial review of the Panel’s decision in Tribune Resources Limited. It was subsequently amended to be a judicial review of the Review Panel’s decision in Tribune Resources Limited 02R and was later withdrawn.

¹⁹ See *Eastern Field Developments Limited v Takeovers Panel* [2019] FCA 311

PART 4 — PERFORMANCE REPORTING

Matter reviews

Panel decisions are discussed at Panel days. The Panel also invites parties to participate in a post matter review after a matter has concluded (four post matter reviews were held in the 2018-2019 year).

Industry liaison

The Panel liaises with the major regulators in the takeovers area in Australia and overseas. Liaison with Australian regulators (ASIC, with which the Panel executive has an MOU, ASX and FIRB) ensures that the Panel has effective working relations and its regulatory role fits appropriately with theirs. The Panel holds regular liaison meetings with ASIC staff to discuss policy developments and recent issues.

The Panel executive contributes to an Asia Pacific Takeovers Regulators Forum.

The Panel also maintains contact with organisations such as the Business Law Section of the Law Council of Australia. Panel members and the executive also attend and speak at industry meetings, education sessions and seminars.

Referrals to ASIC

ASIC is involved in every application. Matters might be specifically referred to ASIC because:

- a sitting Panel considers that ASIC should look into aspects of the application that might give rise to concerns under the Corporations Act generally; or
- the Panel wants ASIC to consider whether to make an application.²⁰

There were no referrals made during the current period.

²⁰ ASIC Regulation 18.

Website

The Panel uses its website (www.takeovers.gov.au) to maintain a market presence, inform, invite contact, publish documents and undertake policy consultation. In the current period, 50,826 people visited the Panel's website (up by 11% on last year) and there were 247,900 page views (up by 2% on last year).

Announcements and media releases

Panel decisions are available through the Panel's website or RSS feed.

If the entity involved in a Panel matter is listed, the Panel's media releases in relation to that matter are also made available on the ASX website or the relevant Australian securities exchange.

Corporate governance

Planning and review

The executive holds regular operational review meetings with the President and Treasury.

Executive staff performance is reviewed as part of Treasury's performance appraisal program.

The APS Values and Code of Conduct apply to the executive and, in certain circumstances, Panel members.

Fraud control

The Panel is covered by Treasury's Fraud and Corruption Control Plan 2018-2020.

Risk management

The Panel has a risk register and a risk dashboard that is considered at regular administration meetings of the executive.

Outcome and output information

Organisational budget

The Panel's funding is included in Treasury's budget. The Panel relies on Treasury's administrative infrastructure and processes.

Treasury accountability

The Director provides monthly reports on financial and operational issues to the President and to the Deputy Secretary, Markets Group in Treasury.

Outcome and output structure

In the current period, the Panel's functions contributed to Treasury's Outcome 1: *'Supporting and implementing informed decisions on policies for the good of the Australian people, including for achieving strong, sustainable economic growth, through the provision of advice to Treasury Ministers and the efficient administration of Treasury's functions.'*

The Panel's outputs contribute to Treasury's Program 1.1: Department of the Treasury.

Table 7: Summary resource statement

| | Actual budget allocation 2018-19 (\$'000) | Expenses 2018-19 (\$'000) | Balance remaining 2018-19 (\$'000) |
|--|---|---------------------------------|---|
| Revenue | | | |
| Revenue (Department of the Treasury budget allocation and section 74 relevant agency receipts) | 2,013 | 1,930 | 83 |
| Total resourcing | 2,013 | 1,930 | 83 |
| | | 2018-19 | 2019-20 |
| Average staffing levels (number) | | 5.7 | 6.0 |

Treasury outcome

The Panel contributes to Treasury's outcome by:

- timely, clear and consistent decisions in line with market practice;
- guidance to assist market participants regarding takeover aspects of the Corporations Act and ASIC Act (including seeking public consultation from market participants); and
- procedural rules for fair, timely and cost-effective resolution of disputes.

Financial information

Schedule of Revenues and Expenditures

Table 8: Income statement (Showing Net Cost of Services) (unaudited) for the year ended 30 June 2019

| | \$ |
|---|--------------------|
| NET COST OF SERVICES | |
| Employee expenses | |
| Salaries | 947,088 |
| Employer superannuation | 134,645 |
| Members' annual retainer and sitting fees | 460,178 |
| Total employee expenses | 1,541,911 |
| Operating expenses | |
| Property operating expenses | 182,651 |
| Travel | 79,218 |
| Legal | 34,620 |
| General Office | 34,324 |
| Publications and subscriptions | 19,488 |
| Contractors | 17,599 |
| Conferences and training | 10,129 |
| Official entertainment | 6,537 |
| Grants | 3,500 |
| Total operating expenses | 388,066 |
| Total expenses incurred to 30 June 2019 | 1,929,977 |
| Other revenue | 0 |
| Total Revenue | 0 |
| Total own-source income | 0 |
| Net cost of/(contribution by) services | (1,929,977) |
| Revenue (Department of the Treasury budget allocation) | 2,013,000 |
| Surplus/(deficit) | 83,023 |

Audit

The Panel is a division of the Treasury. Treasury's financial statements are subject to audit by the ANAO.

The Panel's operations are also subject to review under Treasury's internal audit program.

Notes to the Schedule of Revenues and Expenditures

Statement of accounting policies

The significant accounting policies that have been adopted in the preparation of this financial information are:

Basis of preparation

The financial information is special purpose financial information and is required under section 183 of the ASIC Act.

The financial information has been prepared on an accruals basis.

Revenue

Revenue represents the Panel's budget allocation of Treasury's appropriation (revenue from Government) for the financial year. Other revenue represents retained revenue receipts under section 74 of the *Public Governance, Performance and Accountability Act 2013*.

Expenses

Expenses are recognised on an accruals basis. Expenses only relate to the direct costs of the Panel.

Surplus

The surplus represents the Panel's underspend against its budget allocation for the 2018-19 financial year.

Salaries and members' annual and sitting fees

Salaries and member sitting fees are recognised as they occur.

Salaries for the current financial year include payments to firms for secondees' services. The payments are treated as payments for employees, not consultants.

GST

Revenues and expenses are recognised net of goods and services tax.

PART 5 — MANAGEMENT AND ACCOUNTABILITY

External scrutiny

Panel decisions in relation to unacceptable circumstances and orders are subject to internal review by another Panel.²¹ All Panel decisions are subject to judicial review.²² However, most reviews of Panel decisions end with the review Panel process.

Government scrutiny

The Panel was not subject to any reports by the ANAO in 2018-19.

The Panel attends hearings of the Senate Standing Committee on Economics Estimates and the Parliamentary Joint Committee on Corporations and Financial Services as required. The Panel's operations and performance were discussed in the following reports of the Parliamentary Joint Committee on Corporations and Financial Services:

- “Statutory Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and to Corporations Legislation, Report No.1 of the 45th Parliament”, February 2019; and
- “Report on the 2017-2018 annual reports of bodies established under the ASIC Act”, April 2019.

Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2018-19 in relation to the Panel.

Management of human resources

Staffing

At 30 June 2019, the executive consisted of four permanent staff and one legal secondees.²³ Permanent staff are employed under the *Public Service Act 1999* (Cth).

21 Section 657EA.

22 Section 75(v) of the Constitution, the *Judiciary Act 1903* and the *Administrative Decisions (Judicial Review) Act 1977*, see page 23 for details about current judicial reviews of Panel decisions.

23 The Panel also engaged one senior lawyer as a consultant for a period.

Table 9: Operative staff by classification and gender²⁴

| Classification | Full time | | Total |
|----------------|-----------|----------|----------|
| | Male | Female | |
| APS4 | | 1 | 1 |
| APS6 | | 1 | 1 |
| SEB1 | 1 | | 1 |
| SEB2 | | 1 | 1 |
| Total | 1 | 3 | 4 |

Note: Acronyms in the table can be found in Appendix 4.

Secondments

The small number of permanent staff on the executive is supplemented by secondees from law firms and other professional firms or ASIC. The Panel executive organises functions and meetings with former staff and secondees, in part for succession planning purposes.

Staff development

The Panel seeks to ensure that its staff develop their core skills. Legal staff are encouraged to attend legal and commercial training and conferences. Non-legal staff are encouraged to attend training, including in relation to management and administration.

Executive remuneration

As Panel executive staff are Treasury employees, information about executive remuneration can be found in Treasury's Annual Report (Part 3: Management and Accountability, Management of Human Resources).

The Panel did not make any specific performance payments or bonus payments.

Remuneration for non-SES

The Treasury Enterprise Agreement 2018-21 determines salary rates for non-SES Panel staff. Details and statistics on non-SES remuneration are included in Treasury's Annual Report (Part 3: Management and Accountability, Management of Human Resources).

²⁴ No employees identified themselves as Indigenous at 30 June 2019.

Workplace diversity

The Panel values diversity and benefits from Treasury's Inclusion and Diversity Strategy 2019-21. Details and statistics on workplace diversity are included in Treasury's Annual Report (Part 3: Management and Accountability, Management of Human Resources).

Industrial democracy

Panel staff utilise Treasury's Performance Development System and Integrated Leadership System. Treasury's Workplace Relations Committee deals with industrial democracy issues.

Work Health and Safety

Panel staff have the benefit of Treasury's Work Health and Safety Management System. Services provided to the Panel for the year included flu injections for the Panel executive. There were no reported accidents or dangerous occurrences during the year.

The Panel utilises Treasury's Employee Assistance Program, an external and confidential counselling service for Treasury staff and their families.

Commonwealth disability strategy

Changes to disability reporting in annual reports

Since 1994, non-corporate Commonwealth entities have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007-08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service* reports and the *APS Statistical Bulletin*. These reports are available at www.apsc.gov.au. From 2010-11, entities have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010-2020, which sets out a ten-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high level, two-yearly report will track progress against each of the six outcome areas of the strategy and present a picture of how people with disability are faring. The first of these progress reports was published in 2014, and can be found at www.dss.gov.au.

Purchasing

The Panel follows Treasury's procurement framework to ensure that it undertakes competitive and non-discriminatory tendering and quoting processes which are designed to result in value for money.

All proposed procurements valued at \$10,000 or more were reviewed by Treasury's Procurement Team.

During the current period the Panel entered into contracts related to one secondment agreement, one consultant and two legal representation agreements that each exceeded \$10,000.

Consultants

The Panel engaged one consultant in 2018-19, who was a senior lawyer to assist the Panel executive during busy periods.

Small business

The Panel supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available in the Department of Finance's website – www.finance.gov.au.

Discretionary grants

During 2018-19, the Panel made a discretionary grant to the Australasian Legal Information Institute (AustLii) of \$3,500 (reported by Treasury on GrantConnect – www.grants.gov.au).

Advertising and market research

The Panel did not undertake any advertising or market research during 2018-19.

Environmental performance

As a small office, the Panel executive's operations have a relatively small impact on the environment. The Panel seeks to minimise the use of electricity, water, paper and other materials consumed. The Panel recycles paper.

Freedom of information

Entities subject to the *Freedom of Information Act 1982* (Cth) (FOI Act) are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a section 8 statement in an annual report. Each agency must display on its website a plan showing what information it publishes in accordance with the IPS requirements. The Panel's IPS can be found on its website.

Regulatory Impact Statements

The Panel did not submit any Regulatory Impact Statements in 2018-19.

APPENDIX 1 — PANEL MEMBERS

Table 10: Members of the Panel at 30 June 2019

| | |
|----------------------------|----------------------------|
| Mr Alex Cartel (President) | Mr Jeremy Leibler |
| Ms Yasmin Allen | Mr Ron Malek |
| Ms Amy Alston | Ms Rebecca Maslen-Stannage |
| Mr Kelvin Barry | Ms Denise McComish |
| Mr Robin Bishop | Mr John McGlue |
| Mr Michael Borsky QC | Mr Robert McKenzie |
| Ms Stephanie Charles | Mr Bruce McLennan |
| Mr Andy Coupe | Mr Rory Moriarty |
| Mr Bruce Cowley | Ms Kerry Morrow |
| Ms Chelsey Drake | Ms Diana Nicholson |
| Ms Paula Dwyer | Mr Tony Osmond |
| Ms Teresa Dyson | Mr John O’Sullivan |
| Ms Karen Evans-Cullen | Ms Tara Page |
| Ms Marissa Freund | Mr Neil Pathak |
| Ms Elizabeth Hallett | Ms Karen Phin |
| Ms Tracey Horton AO | Ms Sarah Rennie |
| Mr Richard Hunt | Mr John Sheahan QC |
| Ms Shirley In’t Veld | Ms Philippa Stone |
| Ms Michelle Jablko | Ms Nicola Wakefield Evans |
| Mr Ian Jackman SC | Ms Sharon Warburton |
| Mr Christian Johnston | Mr David Williamson |
| Mr Bill Koeck | |

Table 11: Members appointed to the Panel in 2018-19

| | |
|----------------------|-------------------|
| Ms Amy Alston | Mr John McGlue |
| Mr Michael Borsky QC | Ms Kerry Morrow |
| Ms Marissa Freund | Ms Philippa Stone |

Table 12: Members who ceased their membership of the Panel in 2018-19

| | |
|-------------------|--------------------------------|
| Mr Peter Day | Mr Rod Halstead |
| Mr James Dickson | Mr Rodd Levy |
| Ms Sarah Dulhunty | Ms Vickki McFadden (President) |

APPENDIX 2 — SUB-COMMITTEE MEMBERS

Table 13: Sub-committees

| Topic | Sub-committee members | |
|---------------------------------|----------------------------|-----------------|
| | Panel member | External member |
| GN 1 Unacceptable Circumstances | Mr Peter Day | |
| | Ms Karen Evans-Cullen | |
| | Ms Tracey Horton | |
| | Mr Richard Hunt | |
| | Mr Christian Johnston | |
| | Mr Bill Koeck | |
| | Mr Rodd Levy | |
| | Mr Andrew Lumsden | |
| | Mr Ron Malek | |
| | Ms Vicki McFadden | |
| | Mr Bruce McLennan | |
| | Ms Sophie Mitchell | |
| | Mr David Williamson | |
| GN 20 Equity Derivatives | Mr Alex Cartel (President) | |
| | Mr Kelvin Barry | |
| | Ms Stephanie Charles | |
| | Mr Richard Hunt | |
| | Mr Rodd Levy | |
| | Ms Vicki McFadden | |
| | Mr Neil Pathak | |
| | Ms Sarah Rennie | |

APPENDIX 3 — PANEL APPLICATIONS

Table 14: Applications received by the Panel in 2018-19²⁵

| Matter No. | Section | Matter name | Decision | Application Date | Decision date |
|------------|---------|-------------|-------------------------------------|--|---------------|
| 1 | 2018/19 | 657EA,D | Molopo Energy Limited 12R | Declaration and orders | 20/07/2018 |
| 2 | 2018/20 | 657A,D,E | Bullseye Mining Limited | Declined to conduct proceedings | 27/07/2018 |
| 3 | 2018/21 | 657A,D,E | Baraka Energy and Resources Limited | Declined to conduct proceedings | 01/08/2018 |
| 4 | 2018/22 | 657A,D,E | Tikforce Limited | Declined to conduct proceedings, action by party | 14/08/2018 |
| 5 | 2018/23 | 657A,D,E | Tribune Resources Limited | Declaration and orders | 20/08/2018 |
| 6 | 2018/24 | 657A,D,E | Bullseye Mining Limited 02 | Declaration and orders, undertaking | 03/09/2018 |
| 7 | 2018/25 | 657A,D,E | Poseidon Nickel Limited | Withdrawn | 12/09/2018 |
| 8 | 2018/26 | 657A,D,E | Explaurum Limited | Declined to conduct proceedings, action by party | 24/10/2018 |
| 9 | 2018/27 | 657EA,E | Tribune Resources Limited 02R | Declaration and orders | 30/10/2018 |
| 10 | 2018/28 | 656A,657D,E | Benjamin Hornigold Limited | Conducted proceedings, affirmed ASIC decision | 22/11/2018 |

²⁵ Under ss 657C and 657EA. The Panel received one application to vary the final orders in Henry Morgan Limited 02.

Table 14: Applications received by the Panel in 2018-19 (continued)

| Matter No. | Section | Matter name | Decision | Application Date | Decision date |
|------------|---------|---|--|------------------|---------------|
| 11 | 2018/29 | 656A, 657D, E Henry Morgan Limited | Conducted proceedings, affirmed ASIC decision | 22/11/2018 | 26/11/2018 |
| 12 | 2018/30 | 657A, D, E Benjamin Hornigold Limited 02 | Declaration and orders | 28/12/2018 | 25/01/2019 |
| 13 | 2018/31 | 657A, D, E Henry Morgan Limited 02 | Declaration and orders | 28/12/2018 | 25/01/2019 |
| 14 | 2019/01 | 657A, D, E Flinders Mines Limited 02 | Declaration and undertaking | 10/01/2019 | 08/02/2019 |
| 15 | 2019/02 | 657A, D, E Flinders Mines Limited 03 | Declaration and undertaking | 11/01/2019 | 08/02/2019 |
| 16 | 2019/03 | 657A, D IndiOre Limited | Declined to conduct proceedings, action by party | 23/01/2019 | 15/02/2019 |
| 17 | 2019/04 | 657EA Benjamin Hornigold Limited 03R and Henry Morgan Limited 03R | Withdrawn | 30/01/2019 | 14/02/2019 |
| 18 | 2019/05 | 657EA Benjamin Hornigold Limited 04R | Withdrawn | 30/01/2019 | 14/02/2019 |
| 19 | 2019/06 | 657EA Henry Morgan Limited 04R | Withdrawn | 30/01/2019 | 14/02/2019 |
| 20 | 2019/07 | 657A, D, E Nimrod Resources Limited | Declined to conduct proceedings | 01/02/2019 | 08/02/2019 |
| 21 | 2019/08 | 657A, D, E Factor Therapeutics Limited | Declined to conduct proceedings | 06/02/2019 | 18/02/2019 |
| 22 | 2019/09 | 657EA Flinders Mines Limited 04R | Withdrawn | 12/02/2019 | 19/02/2019 |
| 23 | 2019/10 | 657A, D, E Riversdale Resources Limited | Declined to conduct proceedings, action by party | 25/03/2019 | 29/03/2019 |
| 24 | 2019/11 | 657A, D, E Yowie Group Ltd 01 | Declaration and orders | 27/03/2019 | 26/04/2019 |
| 25 | 2019/12 | 657A, D, E Print Mail Logistics Limited | Declined to conduct proceedings | 04/04/2019 | 12/04/2019 |

Table 14: Applications received by the Panel in 2018-19 (continued)

| Matter No. | Section | Matter name | Decision | Application Date | Decision date | |
|------------|---------|-------------|------------------------------------|---------------------------------------|---------------|------------|
| 26 | 2019/13 | 657A,D,E | Donaco International Limited | Declaration and orders | 08/04/2019 | 06/05/2019 |
| 27 | 2019/14 | 657A,D,E | Yowie Group Ltd 02 | Declaration and orders | 11/04/2019 | 26/04/2019 |
| 28 | 2019/15 | 657A,D,E | Agua Resources Limited | Declaration and orders | 01/05/2019 | 31/05/2019 |
| 29 | 2019/16 | 657A,D,E | Australian Whisky Holdings Limited | Declined to conduct proceedings | 14/05/2019 | 17/05/2019 |
| 30 | 2019/17 | 657A,D,E | Aurora Absolute Return Fund | Conducted proceedings, no declaration | 18/06/2019 | 11/07/2019 |

APPENDIX 4 — ABBREVIATIONS AND ACRONYMS

| | |
|------|--|
| AICD | Australian Institute of Company Directors |
| ANAO | Australian National Audit Office |
| APS | Australian Public Service |
| ASIC | Australian Securities and Investments Commission |
| ASX | ASX Limited |
| EL | Executive Level |
| FIRB | Foreign Investment Review Board |
| M&A | Mergers and Acquisitions |
| MOU | Memorandum of Understanding |
| SEB | Senior Executive Band |
| SES | Senior Executive Service |

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