

# **TAKEOVERS PANEL**

**ANNUAL REPORT**  
**2019-2020**

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**Australian Government**  
**Takeovers Panel**

Level 16, 530 Collins Street  
Melbourne VIC 3000  
Telephone: 03 9655 3500  
Internet: [www.takeovers.gov.au](http://www.takeovers.gov.au)  
Email: [takeovers@takeovers.gov.au](mailto:takeovers@takeovers.gov.au)

2 September 2020

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
Canberra ACT 2600

Dear Treasurer

**ANNUAL REPORT 2019-20**

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*,  
I submit the 2019-20 Annual Report of the Takeovers Panel for presentation to Parliament.

Yours sincerely

A stylized, 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 body<sup>1</sup> established as ‘a specialist body largely comprised of takeover experts’<sup>2</sup> that is the main forum for resolving disputes in takeovers.<sup>3</sup> It consists at 30 June 2020 of 46 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](http://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;

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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 2019-2020**

- 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:

Mr Allan Bulman  
Director, Takeovers Panel  
Level 16, 530 Collins Street  
Melbourne VIC 3000  
Telephone: +61 3 9655 3500  
Email: [takeovers@takeovers.gov.au](mailto:takeovers@takeovers.gov.au)



**Mr Alex Cartel**  
**President of the Panel**

## Review by the President

On 13<sup>th</sup> March 2020 we celebrated the 20 year anniversary of the Panel's role as the main forum for resolving takeover disputes in Australia. Over that 20 year period, the Panel resolved 567 applications. I consider that the Panel has been a resounding Australian regulatory success story, particularly by substantially increasing efficiency and reducing the costs associated with takeovers dispute resolution. The respect that M&A practitioners, investors and other market participants have for the Panel speaks to this success.

Our 20<sup>th</sup> anniversary occurred during a remarkable time for the Panel. Last calendar year (2019) was the second busiest in the Panel's history, the Panel having received 38 applications. Last financial year (2019-2020) was the third busiest financial year on record, with the Panel receiving 35 applications. However when you dig a little deeper, last financial year was arguably the busiest financial year on record as the Panel made 17 declarations of unacceptable circumstances in response to those 35 applications, which is the highest number in the Panel's history and 5 more declarations than the previous record in 2018-2019. A number of these matters involved sitting Panels and the executive examining thousands of pages of material within a very short time frame. In particular, I would like to thank the executive and those Panel members who worked during the Christmas period to deal with a higher than usual number of applications.

Also the Panel's 20<sup>th</sup> year anniversary occurred just prior to the first lockdown in Melbourne as a result of the coronavirus pandemic. The executive had, as a part of their risk management plan, prepared for the risk of a pandemic and transitioned to working from home in early March. In what could be described as an extraordinary coincidence, 23 March 2020 was the date of the first lockdown and the Panel's office move from 63 Exhibition Street to 530 Collins Street. I would like to thank the facilities and IT staff from Treasury in Canberra who worked so hard to relocate us during a difficult period. Our new modern office shares a reception with the Melbourne office of Treasury and I know that the executive are keen to work there with their Treasury colleagues when it becomes feasible to do so.

In light of the above, I am pleased that the Panel was able to complete matters in 21.3 calendar days on average. The average in the Panel's history is 16.5 calendar days. However, when you break down the time it took for the Panel to make each type of

decision last financial year (ie. declining to conduct and conducting either making or not making a declaration of unacceptable circumstances), the average for each is around the average for the Panel's 20 year history. This is not surprising given the increase in matters where the Panel conducted proceedings and made declarations of unacceptable circumstances.

As I noted in the 2018-2019 annual report, I consider that digital technology and continued working on the business will be vital in ensuring that the Panel is able to fulfil its mandate in the future given the increase in workload. Stakeholders have given us positive feedback in relation to the Panel's use of M&A data rooms for the receipt of documents from parties. The executive is also trialling other cloud based platforms and is working with Treasury to launch a new Panel website, with greater search capability and the ability for stakeholders to submit their applications through a website portal.

The executive continues to make themselves available to parties who wish to give post matter feedback and to stakeholders generally. They are currently planning a series of presentations over video to assist stakeholders instead of face to face meetings. We are also about to conduct a stakeholder survey and currently plan to make the results of this public by the end of this financial year.

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 that the Panel will consider in deciding applications. In the 2019-2020 financial year, the Panel published the results of its consultation on the proposed replacement of Guidance Note 20 on equity derivatives. The Panel has settled on a revised Guidance Note 20 that is included in the public consultation response statement. However, given the market disruption caused by the pandemic, the Panel has decided that the current first edition of Guidance Note 20 will continue to apply until it gives market participants three months' notice of when the revised Guidance Note 20 will come into effect.

The Panel is in the process of revising its Procedural Rules. The Panel is also proposing a review of Guidance Note 19, Insider Participation in Control Transactions, in light of an increasing number of matters relating to this issue coming before the Panel.

The Panel is grateful to the Federal Government and Treasury for their commitment to a robust, principles-based Panel regime and for its ongoing support. At 30 June 2020, the Panel had 46 part time members. I thank members for their work throughout the year, as participants in sitting Panels, at Panel days, on policy sub-committees and on post-matter reviews. I also thank our Acting Presidents who are often called upon to deal with urgent matters. They have all pitched in to help during this exceedingly busy and stressful period and their professionalism, work and commitment is appreciated.

The Panel members and I greatly appreciate the support of Allan Bulman, Tania Mattei, Katrina Fong and their small executive team. Tania has made an outstanding contribution to the Panel as Counsel, taking over from Bruce Dyer in early 2019. The executive has worked extremely hard and the team was one professional staff member down for most of the financial year until Katrina Fong was appointed as Deputy Counsel in February. Katrina is an experienced takeovers lawyer, having worked at PricewaterhouseCoopers, Gilbert + Tobin and Ashurst.

## Panel at a glance 2019-20

### Applications

(average 28.8 per year since 1 July 2000)  
(average 24.7 per year since 1 July 2010)

35

Matters the Panel conducted  
proceedings in/Matters the Panel  
declined to conduct proceedings in

\* plus four applications withdrawn

20/11\*

Matters where the Panel  
accepted undertakings

1

Matters where the Panel  
made declarations and orders

\* plus one declaration and undertakings

16\*

Average calendar days  
between application and  
decision

(average 16.5 since 13 March 2000)  
(average 17.8 since 1 July 2010)

21.3

Average calendar days between  
decision and publication of  
reasons

(average 33.7 since 13 March 2000)  
(average 17.4 since 1 July 2010)

33.4

## 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 exist<sup>4</sup> and reviewing certain decisions of ASIC.<sup>5</sup>

**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 <sup>6</sup>
Guidance	Guidance Notes, Procedural Rules, legislative policy of Chapter 6, previous decisions	Regulatory Guides, ASIC policies, reasons for ASIC's decision, Panel policy

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

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

6 Section 656A(3).

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

	Unacceptable circumstances	Review of ASIC decisions
<b>Outcomes</b>	If a declaration is made the Panel can make any orders to address the unacceptable circumstances, including a 'remedial order' <sup>7</sup>	Affirm, vary, set aside (and substitute/remit) the ASIC decision
<b>Review</b>	The Panel, on application, conducts a merits review of a decision of the initial Panel. <sup>8</sup> 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
<b>How often</b>	In the current period there were 26 applications for a declaration at first instance and nine applications for review	In the current period there were no 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.<sup>9</sup> It has not made any rules under this power.

The Panel has a power to make Procedural Rules.<sup>10</sup> It published revised Procedural Rules in 2010.

The Panel may decide a matter referred from the Court.<sup>11</sup> There were no referrals in the current period.

<sup>7</sup> Section 9. However, it cannot make an order directing a person to comply with a requirement of Chapters 6 — 6C.

<sup>8</sup> Only with consent of the President if the initial Panel did not make a declaration or orders. See generally section 657EA.

<sup>9</sup> Section 658C.

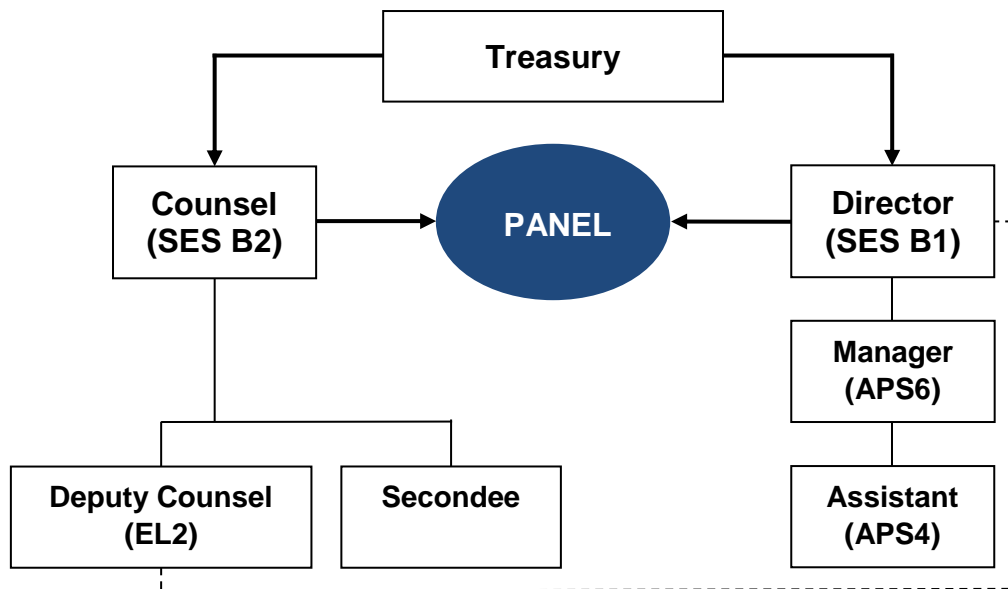
<sup>10</sup> Section 195 of the ASIC Act.

<sup>11</sup> Section 657EB.



## Organisational structure

Chart 1: The Panel's organisation structure



### Panel President

Mr Alex Cartel, a member of the Panel, is its President.<sup>12</sup> 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.

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<sup>12</sup> Section 173 of the ASIC Act.

## Acting Presidents

The following members have been appointed<sup>13</sup> 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 executive comprises:

- Director, Mr Allan Bulman;
- Counsel, Ms Tania Mattei;
- Deputy Counsel, Ms Katrina Fong;
- 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

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<sup>13</sup> Section 182(1)(a)&(b) of the ASIC Act.

## Part 2 — The Panel

their firms. During the year, the secondees were Mr Jacob Carmody (Ashurst, Perth) and Mr Ben Depiazzi (Clayton Utz, Perth); and

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



**The President with the executive:** (L to R) Allan Bulman, Ben Depiazzi, Rebecca Andrewartha, Alex Cartel, Katrina Fong, Tania Mattei and Karolina Ksiezak.

## The Office

The Panel is co-located with the Department of the Treasury's Melbourne office at Level 16, 530 Collins Street.

## Appointment of Panel members

**Table 2: Appointment of Panel members in 2019-20**

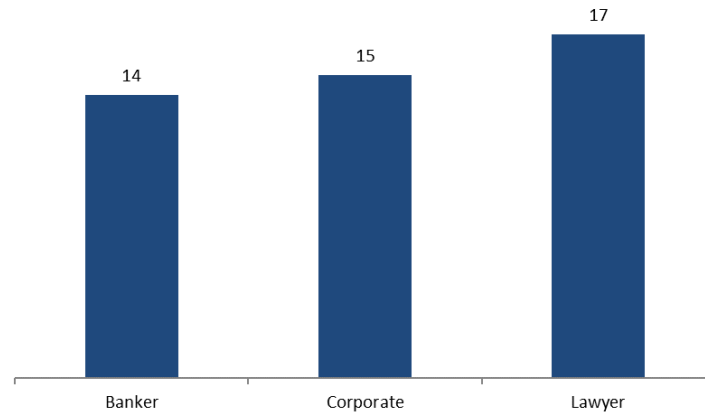
Reappointments (12)	Appointments (4)	Terms completed (1)
Ms Yasmin Allen; Ms Paula Dwyer; Ms Karen Evans-Cullen; Ms Michelle Jablko; Mr Ian Jackman SC; Mr Christian Johnston; Ms Rebecca Maslen-Stannage; Mr Robert McKenzie; Ms Diana Nicholson; Ms Tara Page; Mr Neil Pathak; and Mr David Williamson.	Mr Anthony Jarvis; Ms Kristen Jung; Mr Michael Lishman; and Mr James Stewart.	Mr John Sheahan QC

Members are appointed on a part-time basis, usually for three years, by the Governor-General on the nomination of the Minister.<sup>14</sup> 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.<sup>15</sup> A mix of expertise, geographical representation and gender representation is also considered.

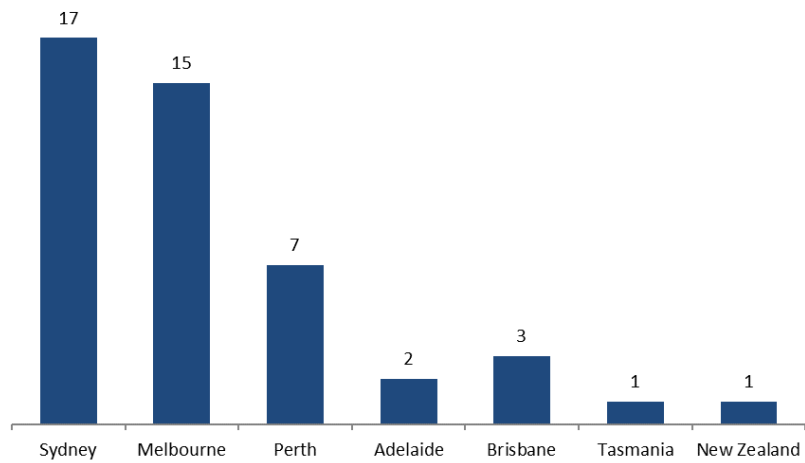
<sup>14</sup> Section 172 of the ASIC Act.

<sup>15</sup> Section 172(4A) of the ASIC Act.

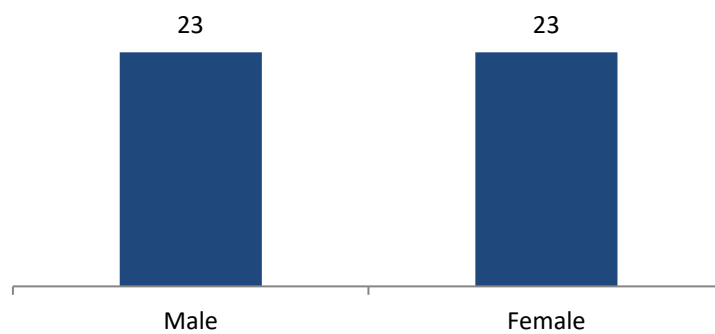
**Chart 2: Panel members by Profession at 30 June 2020**



**Chart 3: Panel members by Location at 30 June 2020**



**Chart 4: Panel members by Gender at 30 June 2020**



## *Members' biographies (as at 30 June 2020)*

**Alex Cartel (President)** — Managing Director and Head of Investment Banking Coverage at Deutsche Bank AG Australia<sup>16</sup>. Member since 2015.

**Yasmin Allen (Acting President)** — Chairman of Advance Global, Faethm.ai and Digital Skills Organisation, 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 and Television New Zealand, non-executive director of Gentrack Group, Briscoe Group, Kingfish, Barramundi and Marlin Global. Member since 2016.

**Bruce Cowley** — Trustee of QSuperBoard, 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 and Allianz Australia Limited, non-executive director of ANZ Banking Group and Lion Pty Limited. Member 2008-2014 and re-appointed 2017.

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

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<sup>16</sup> Head of Corporate Finance & Advisory at Citi Australia & New Zealand from 20 July 2020.

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

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

**Elizabeth Hallett** — Non-executive director of Sunsuper, Australian Registry Investments, NPP Australia and member of the advisory board of The John Sample Group. Member since 2013.

**Tracey Horton AO (Acting President)** — Non-executive director of The GPT Group, Nearmap Limited and non-executive national director of the AICD. Member since 2015.

**Richard Hunt (Acting President)** — Executive Chairman of E&P. Member since 2012.

**Shirley In't Veld** — 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.

**Anthony Jarvis** — Director, Opportuna Legal. Member since 2020.

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

**Kristen Jung** — Global Head of Legal and Executive Director at Macquarie Capital and Sydney University Master of Laws Lecturer in Takeovers and Reconstructions. Member since 2020.

**Bill Koeck** — Chairman of Coronado Global Resources Inc and non-executive director of Poulos Group. 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.

**Michael Lishman** — Partner at Jones Day, member of advisory board of Curtin University Law School. Member since 2020.

**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, executive member of the Business Law Section of the Law Council of Australia. Member since 2017.

**Denise McComish** — Chartered Accountant, non-executive director of Beyond Blue, Chief Executive Women and chair of the advisory board of the School of Business and Law at Edith Cowan University. Member since 2013.

**John McGlue** — Managing Director of Castle Gates Australia and Chairman of Alterra Limited. Member since 2019.

**Robert McKenzie** — Partner at Blackwall Legal, Chairman of Source Certain, non-executive director of Keystart Loans Limited and member of the International Insolvency Institute. 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, non-executive director of Tennis SA and Australian Geographic Society. 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 at Citi Australia & New Zealand, 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, and Chairman of Serendipity Capital Holdings Limited. 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, Omni Bridgeway and ARB Corporation. Member since 2015.

**Sarah Rennie** — Managing Director, Head of Equity Capital Markets at Jarden Australia. Member since 2015.



**James Stewart** — Partner at DLA Piper, non-executive director of The Splendid Gin. Member since 2020.

**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, MetLife Insurance Limited, MetLife General Insurance Limited, Australian Institute of Company Directors and GO (Goodes O’Loughlin) Foundation. Member since 2015.

**Sharon Warburton** — Non-executive director of Wesfarmers, Gold Road Resources and Worley. Director of Perth Children’s Hospital Foundation. 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.



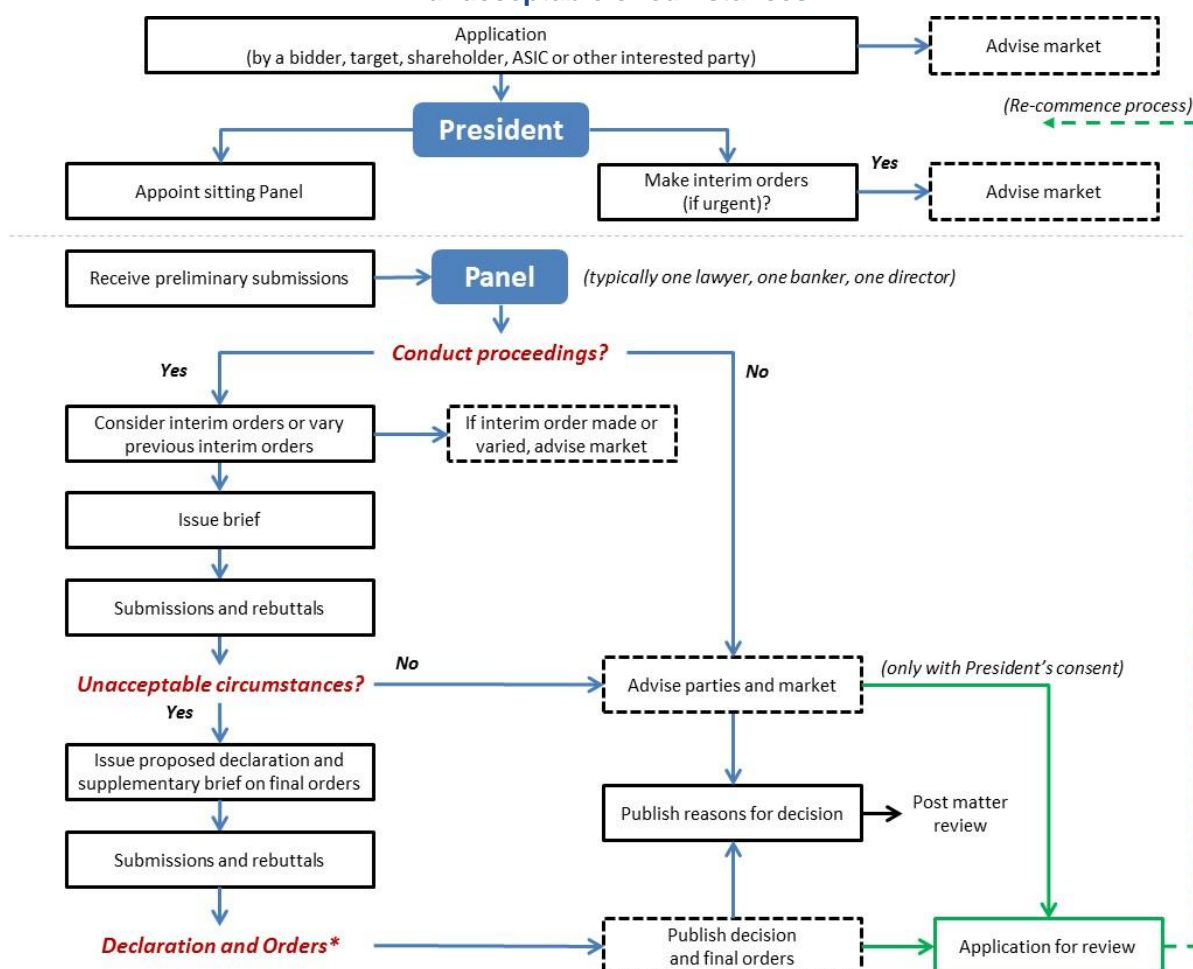
## PART 3 — THE WORK OF THE PANEL

### 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 the 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 (35 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 2019-20**

Form of resolution	Number of matters	Comments
Declaration and Orders	16	Circumstances are unacceptable and may be remedied with orders
Declaration and Undertakings <sup>17</sup>	1	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	0	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	11	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	4	Applicant withdraws (Panel consent is required)
<b>Total</b>	<b>35</b>	

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<sup>17</sup> Section 201A of the ASIC Act.

## Issues in applications

**Table 4: Issues in 2019-20**

Issue	Number of matters	Name of case
Association/ breach of s606 and substantial holding provisions	10.5	Keybridge Capital Limited 02, Donaco International Limited 02, Donaco International Limited 03R, Cromwell Property Group, Aura Energy Limited, Mineral Commodities Limited, Keybridge Capital Limited 09R, Accelerate Resources Limited 02, Keybridge Capital Limited 03 (in part), MEC Resources Limited 02 (in part), Havilah Resources Limited (in part), Keybridge Capital Limited 05 (in part), Keybridge Capital Limited 06 (in part)
Deal Protection measures	7	GBST Holdings Limited, Benjamin Hornigold Limited 06, Benjamin Hornigold 08R, Pacific Energy Limited, Benjamin Hornigold Limited 09, Benjamin Hornigold Limited 10R, Benjamin Hornigold Limited 11R
Rights issues	3.5	Energy Resources of Australia Limited, Energy Resources of Australia Limited 02R, Strategic Minerals Corporation NL 06, MEC Resources Limited 02 (in part)
Bidder's statement disclosure	3	Yowie Group Limited 03, Keybridge Capital Limited 08R, Keybridge Capital Limited 04 (in part), Keybridge Capital Limited 10R (in part)
Item 7 disclosure	2.5	Smoke Alarms Holdings Limited, Smoke Alarms Holdings Limited 02R, Havilah Resources Limited (in part)
Target's statement disclosure	1.5	Benjamin Hornigold Limited 07, Keybridge Capital Limited 05 (in part)
Frustrating action	1.5	Accelerate Resources Limited 01, Keybridge Capital Limited 04 (in part)
Bidder conduct	1.5	Keybridge Capital Limited 03 (in part), Keybridge Capital Limited 06 (in part), Keybridge Capital Limited 10R (in part)
Other	4	Webster Limited (compulsory acquisition), Keybridge Capital Limited 07 (mistaken bid acceptance), CML Group Limited (standstills), Australian Unity Office Fund (trust scheme)
<b>Total</b>	<b>35</b>	

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) in the view of the Panel executive.

## 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 to 30 June 2019.

## 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 Guidance Note 20, however, as a result of the market disruption caused by the COVID-19 Pandemic, the Panel decided that the current edition of Guidance Note 20 will continue to apply and market participants will be given three months' notice of when the revised Guidance Note 20 will come into effect.

**Table 5: Guidance Notes issued or amended in 2019-20**

Guidance Note	GN Issue	Date
GN 20 Equity Derivatives	Second	To be advised

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 no consultation papers.

## 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 6 September 2019, the Panel was served with an interlocutory application seeking leave to re-open on the basis there was a reasonable apprehension of bias in relation to the sitting president of the Panel. The Federal Court heard the re-opening on 23 March 2020.

On 17 April 2020, the Federal Court dismissed the application.<sup>18</sup>

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<sup>18</sup> See *Aurora Funds Management Limited v Australian Government Takeovers Panel (Judicial Review)* [2020] FCA 496.





## 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 (six post matter reviews were held in 2019-2020).

### 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 the 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.<sup>19</sup>

There was one referral made during the current period.

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<sup>19</sup> ASIC Regulation 18.

## Website

The Panel uses its website ([www.takeovers.gov.au](http://www.takeovers.gov.au)) to maintain a market presence, inform, invite contact, publish documents and undertake policy consultation. In the current period, 65,367 people visited the Panel's website (up by 29% on last year) and there were 274,093 page views (up by 11% 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 2019-20 (\$'000)	Expenses 2019-20 (\$'000)	Balance remaining 2019-20 (\$'000)
<b>Revenue</b>			
Revenue (Department of the Treasury budget allocation and section 74 relevant agency receipts)	2,121	1,953	168
<b>Total resourcing</b>	<b>2,121</b>	<b>1,953</b>	<b>168</b>
		<b>2019-20</b>	<b>2020-21</b>
<b>Average staffing levels (number)</b>		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 2020**

	\$
<b>NET COST OF SERVICES</b>	
<b>Employee expenses</b>	
Salaries	908,625
Employer superannuation	130,397
Members' annual retainer and sitting fees	473,841
<b>Total employee expenses</b>	<b>1,512,863</b>
<b>Operating expenses</b>	
Property operating expenses	162,806
Legal	58,439
Travel	50,844
Consultants	42,596
General Office	41,998
Contractors	39,644
Publications and subscriptions	21,268
Conferences and training	10,038
Official entertainment	7,188
Grants	5,000
<b>Total operating expenses</b>	<b>439,821</b>
<b>Total expenses incurred to 30 June 2020</b>	<b>1,952,684</b>
<b>Other revenue</b>	<b>0</b>
<b>Total Revenue</b>	<b>0</b>
<b>Total own-source income</b>	<b>0</b>
<b>Net cost of/(contribution by) services</b>	<b>(1,952,684)</b>
<b>Revenue (Department of the Treasury budget allocation)</b>	<b>2,120,643</b>
<b>Surplus/(deficit)</b>	<b>167,959</b>

## **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 2019-20 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.<sup>20</sup> All Panel decisions are subject to judicial review.<sup>21</sup> 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 2019-20.

The Panel attends hearings of the Senate Standing Committee on Economics Estimates and the Parliamentary Joint Committee on Corporations and Financial Services as required.

### Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2019-20 in relation to the Panel.

## Management of human resources

### Staffing

At 30 June 2020, the executive consisted of five permanent staff and one legal secondee.<sup>22</sup> Permanent staff are employed under the *Public Service Act 1999* (Cth).

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20 Section 657EA. A decision that is not a decision to make a declaration, an interim order or a final order can only be reviewed under this section with the President's consent.

21 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.

22 The Panel also engaged two senior lawyers as contractors for a period.

**Table 9: Operative staff by classification and gender<sup>23</sup>**

Classification	Full time		Total
	Male	Female	
APS4		1	1
APS6		1	1
EL2		1	1
SEB1	1		1
SEB2		1	1
<b>Total</b>	<b>1</b>	<b>4</b>	<b>5</b>

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).

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<sup>23</sup> No employees identified themselves as Indigenous at 30 June 2020.



### **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**

#### **Disability reporting mechanism**

The *National Disability Strategy 2010–2020* is Australia's overarching framework for disability reform. It acts to ensure the principles underpinning the United Nations *Convention on the Rights of Persons with Disabilities* are incorporated into Australia's policies and programs that affect people with disability, their families and carers.

All levels of government will continue to be held accountable for the implementation of the strategy through biennial progress reporting to the Council of Australian Governments. Progress reports can be found at [dss.gov.au](https://dss.gov.au).

Disability reporting is included the Australian Public Service Commission's State of the Service reports and the *APS Statistical Bulletin*. These reports are available at [apsc.gov.au](https://apsc.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 eight contracts that each exceeded \$10,000, these related to two secondment agreements, two contractors, one market research consultant, one recruitment services consultant and two legal representation agreements.

## **Consultants**

During 2019-20, the Panel contracted a recruitment services firm to assist with a market search and a market research firm to deliver the Panel's stakeholder survey in the second half of 2020.

## **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](http://www.finance.gov.au).

## **Discretionary grants**

During 2019-20, the Panel made a discretionary grant to the Australasian Legal Information Institute (AustLii) of \$5,000 (reported by Treasury on GrantConnect – [www.grants.gov.au](http://www.grants.gov.au)).

## **Advertising and market research**

The Panel did not undertake any advertising or market research during 2019-20. A market research firm was engaged to deliver the Panel's stakeholder survey in the second half of 2020.

## **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 2019-20.



## APPENDIX 1 — PANEL MEMBERS

**Table 10: Members of the Panel at 30 June 2020**

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

**Table 11: Members appointed to the Panel in 2019-20**

Mr Anthony Jarvis	Mr Michael Lishman
Ms Kristen Jung	Mr James Stewart

**Table 12: Members who ceased their membership of the Panel in 2019-20**

Mr John Sheahan QC
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## APPENDIX 2 — SUB-COMMITTEE MEMBERS

Table 13: Sub-committees

Topic	Sub-committee members	
	Panel member	External member
GN 20 Equity Derivatives	Mr Alex Cartel (President)	
	Mr Kelvin Barry	
	Ms Stephanie Charles	
	Mr Richard Hunt	
	Mr Rodd Levy	
	Mr Neil Pathak	
Procedural Rules	Ms Sarah Rennie	
	Mr Alex Cartel (President)	
	Ms Elizabeth Hallett	
	Ms Rebecca Maslen-Stannage	
	Mr John McGlue	
	Ms Kerry Morrow	





## APPENDIX 3 — PANEL APPLICATIONS

**Table 14: Applications received by the Panel in 2019-20<sup>24</sup>**

	Matter No.	Section	Matter name	Decision	Application Date	Decision date
1	2019/18	657A,D,E	GBST Holdings Limited	Declined to conduct proceedings	08/07/2019	15/07/2019
2	2019/19	657A,D,E	Yowie Group Ltd 03	Withdrawn	16/07/2019	26/07/2019
3	2019/20	657A,D	Benjamin Hornigold Limited 06	Declaration and orders	08/08/2019	06/09/2019
4	2019/21	657A,D,E	Benjamin Hornigold Limited 07	Declaration and orders	08/08/2019	06/09/2019
5	2019/22	657A,D	Havilah Resources Limited	Declined to conduct proceedings	21/08/2019	03/09/2019
6	2019/23	657A,D,E	Mineral Commodities Limited	Declined to conduct proceedings	22/08/2019	27/08/2019
7	2019/24	657EA,D	Benjamin Hornigold Limited 08R	Declaration and orders	10/09/2019	08/10/2019
8	2019/25	657A,D,E	Keybridge Capital Limited 02	Declined to conduct proceedings	11/09/2019	19/09/2019
9	2019/26	657A,D,E	Pacific Energy Limited	Conducted proceedings, no declaration	13/09/2019	24/09/2019
10	2019/27	657A,D	Benjamin Hornigold Limited 09	Declined to conduct proceedings	13/09/2019	26/09/2019

<sup>24</sup> Under ss 657C and 657EA. The Panel also received one application to vary the final orders in Benjamin Hornigold Limited 08R, 10R & 11R and one application to make additional orders in Keybridge Capital Limited 04, 05 & 06.

**Table 14: Applications received by the Panel in 2019-20 (continued)**

	Matter No.	Section	Matter name	Decision	Application Date	Decision date
11	2019/28	657EA,D	Benjamin Hornigold Limited 10R	Declaration and orders	26/09/2019	08/10/2019
12	2019/29	657EA,D	Benjamin Hornigold Limited 11R	Declaration and orders	26/09/2019	08/10/2019
13	2019/30	657A,D,E	Donaco International Limited 02	Declined to conduct proceedings	04/11/2019	12/11/2019
14	2019/31	657A,D,E	Australian Unity Office Fund	Withdrawn	13/11/2019	19/11/2019
15	2019/32	657EA,D	Donaco International Limited 03R	Declined to conduct proceedings	14/11/2019	26/11/2019
16	2019/33	657A,D,E	Energy Resources of Australia Limited	Declaration and orders	18/11/2019	11/12/2019
17	2019/34	657A,D,E	MEC Resources Limited 02	Conducted proceedings, no declaration	21/11/2019	13/12/2019
18	2019/35	657A,D,E	Smoke Alarms Holdings Limited	Declaration and orders	03/12/2019	02/01/2020
19	2019/36	657A,D,E	Keybridge Capital Limited 03	Declined to conduct proceedings	06/12/2019	17/12/2019
20	2019/37	657A,D	Cromwell Property Group	Declined to conduct proceedings	11/12/2019	02/01/2020
21	2019/38	657EA	Energy Resources of Australia Limited 02R	Declaration and orders	13/12/2019	20/01/2020
22	2020/01	657EA	Smoke Alarms Holdings Limited 02R	Declaration and undertaking	06/01/2020	30/01/2020
23	2020/02	657A,D,E	Keybridge Capital Limited 04	Declaration and orders	18/02/2020	07/04/2020
24	2020/03	657A,E	Keybridge Capital Limited 05	Declaration and orders	28/02/2020	07/04/2020
25	2020/04	657A,D,E	Accelerate Resources Limited	Declaration and orders	04/03/2020	16/04/2020

**Table 14: Applications received by the Panel in 2019-20 (continued)**

	Matter No.	Section	Matter name	Decision	Application Date	Decision date
26	2020/05	657A,D,E	CML Group Limited	Withdrawn	09/03/2020	02/04/2020
27	2020/06	657A,D,E	Keybridge Capital Limited 06	Declaration and orders	11/03/2020	07/04/2020
28	2020/07	657A,D,E	Keybridge Capital Limited 07	Withdrawn <sup>25</sup>	16/03/2020	29/05/2020
29	2020/08	657A,D,E	Accelerate Resources Limited 02	Declaration and orders	17/03/2020	16/04/2020
30	2020/09	657EA,E	Keybridge Capital Limited 08R	Declaration and orders	09/04/2020	07/05/2020
31	2020/10	657EA,E	Keybridge Capital Limited 09R	Declaration and orders	15/04/2020	07/05/2020
32	2020/11	657EA,D	Keybridge Capital Limited 10R	Declaration and orders	15/04/2020	07/05/2020
33	2020/12	657A,D,E	Strategic Minerals Corporation NL 06	Declined to conduct proceedings	20/04/2020	27/04/2020
34	2020/13	657A,D,E	Aura Energy Limited	Declined to conduct proceedings	19/05/2020	29/05/2020
35	2020/14	657A,D,E	Webster Limited	Conducted proceedings, no declaration	28/06/2020	14/07/2020

<sup>25</sup> The Keybridge Capital Limited 07 proceedings were suspended from 30 April 2020 to 20 May 2020 until the determination of the Keybridge Capital Limited 8R, 09R and 10R proceedings.



## 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
Treasury	Commonwealth Department of the Treasury

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