

Takeovers Panel

**Annual Report
2000-01**

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7 November, 2001

The Hon Joe Hockey MP
Minister for Financial Services and Regulation
Parliament House
Canberra ACT 2600

Dear Minister

ANNUAL REPORT 2000-01

I have the honour to submit to you, in accordance with section 183 of the Australian Securities and Investments Commission Act 1989, the 2000-01 Annual Report on the operations of the Takeovers Panel for presentation to the Parliament. The report has been prepared in accordance with section 70 of the *Public Service Act 1999*.

The Takeovers Panel was formerly known as the Corporations and Securities Panel. The Panel's name was changed under the Financial Services Reform Act 2001.

This report encompasses the Panel's role as the primary dispute resolution forum for takeover bids, as well as in developing policy and making rules.

Yours sincerely

Simon McKeon
President

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INTRODUCTION AND GUIDE TO THE REPORT

The Takeovers Panel (formerly Corporations and Securities Panel) was established in January 1991. Its role was materially expanded in March 2000 as a result of the Corporate Law and Economic Reform Program (CLERP) to become the primary forum for the resolution of takeovers disputes.

This report gives an overview of the Panel's operational program, membership, financial information and management.

Other sources of information

The Panel publishes all its public documents on its website. These include media releases, final decisions on disputes resolved by the Panel, its annual report, current policies and rules.

The Panel invites visitors to its website and to join its mailing list for notification when new items have been posted on the website.

The Panel's website address is: www.takeovers.gov.au

Enquiries

The contact officer to whom enquiries regarding this report may be directed is:

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REVIEW BY THE PRESIDENT

In March 2001, the Panel celebrated its first birthday since being re-launched. It has now completed its first full financial year of operation. This period has been characterised by consolidating on the establishment phase referred to in last year's Annual Report and inducting a further sizeable group of highly talented new members.

To all of the people who have contributed to such a successful first year for the Panel, I wish to say a very heartfelt, 'Thank you !!'

It is notable that most of the matters that came before the Panel were resolved without the need for a declaration or orders. Even in matters where a declaration was made, the parties to the matter have frequently voluntarily provided supplementary disclosure. I think this demonstrates that the Panel is, in an appropriate manner, focussed on remedying a problem which has been identified, rather than punishing offenders, particularly those who cooperate.

In terms of the Panel's approach to applications that have come before it, two other points are worth noting. The first is the Panel's reluctance to hold up takeovers for disclosure issues where shareholders are unlikely to be harmed by any deficiency being remedied by supplementary disclosure. The second is the Panel's preparedness to make declarations of unacceptable circumstances and to make orders that have material effects on takeovers. In one case this year, the Panel stopped a bid (because of concerns over the funding of the bid) and in another, the Panel ordered that shares inappropriately acquired by a bidder be vested in Australian Securities and Investments Commission (ASIC) and sold.

I am very pleased that the Panel thus far has enjoyed very good results in resolving disputes expeditiously and efficiently and maintaining excellent relationships with important stakeholders. We are very appreciative of the support we have received from the market, the media, the people who have participated in Panel matters, Panel members, fellow regulators, the Minister and the Government.

I believe we can genuinely say that the Panel has been a success beyond even the most optimistic expectations.

Relationships

The Panel is a body which operates in a necessarily complex legal and regulatory environment. Its success as an organisation and as a public regulator depends very much on the quality of its relations with regulators, market participants, the Courts and other stakeholders. It has continued its work to maintain good and positive relationships with other regulators in its area and with the market which it serves.

As part of this programme, the Panel has entered into a Memorandum of Understanding with ASIC.

Panel members

The Panel was very pleased by the appointment of a further eighteen members in March 2001. This took its membership from 25 to 43. Many of the new members are senior members of the Melbourne and Sydney takeovers communities. This means that the Panel now has critical mass and is well placed to deal with the most difficult of disputes and to manage the issues of conflict which will inevitably arise in a comparatively small business environment such as exists in Australia.

As President, I cannot thank my fellow members enough for their dedication and support. All of the members have substantial business and professional commitments outside of the Panel. Yet, often at short notice, they are prepared to be appointed to sitting Panels or otherwise devote significant time to ongoing skills and policy developments.

Looking ahead

The Panel will continue focusing on consolidation, integrating its new members into the existing complement and further improving its procedures.

The challenges that lie before us in 2001-02 include:

policy:

- We intend to continue our stance of being pro-active in providing guidance to the market on a range of difficult issues in takeovers through Panel Policy documents before they get to the Panel as applications. We

will continue to seek the market's views on which issues are currently important and are generating uncertainty or lack of confidence.

- Currently the Panel is developing policies on the use of forecasts in takeovers, the use of 'break fees' and other lock-up devices, and frustrating actions by target directors.

consistency:

- The Panel's consistency in decision making and policy will be one of the main drivers for increased certainty and confidence for the market. We will continue to work diligently in 2001-02 to maintain our consistency, especially with the increased number of Panel members.

consolidation:

- Our main challenge will be to maintain the high standards which we have achieved in our first year. We will seek to consolidate and bed down the procedures that have been developed in our initial phase and ensure that we build on the excellent start that the Panel has enjoyed.

And finally ...

I expressed my gratitude earlier to various constituents who have contributed to the ongoing development of the Panel. In particular, however, I want to thank the tireless efforts of the Panel's Executive, under the leadership of Nigel Morris and George Durbridge. Anyone who has had anything significant to do with the Panel knows that, whilst it is the Panel members who must take responsibility for decisions and policy, this new dispute resolution regime simply would not function, and indeed function effectively, without the commitment of the Executive team.

OVERVIEW

The Panel is the primary dispute resolution forum for takeovers. It is made up of 43 part-time members and is supported by seven full-time executive staff members.

The members are appointed from the active members in Australia's takeovers and business communities. A full listing is set out on page 26.

Role and functions

Section 659AA of the Corporations Act ('Act') describes the Panel as the main forum for resolving disputes about takeover bids during the lifetime of those bids.

In addition, the Panel reviews certain decisions by ASIC in relation to takeover bids.

The Panel also has a significant policy development function. In part this is through rules it may make under section 658C of the Act, in part through its decisions and in part through policy documents it publishes on unacceptable circumstances and related matters.

Main dispute resolution forum

Under section 659B of the Act, private parties to a takeover may not commence civil litigation, or seek injunctive relief from the Courts in relation to a takeover, while the takeover is current. The majority of disputes which were previously resolved in the civil jurisdiction of the Courts are now resolved by the Panel.

Unacceptable circumstances

The Panel's main role is to consider whether or not circumstances in relation to a takeover bid are unacceptable. It is required to take into consideration the policy principles set out in section 602 of the Act (the four original Eggleston Principles and the new fifth Eggleston Principle of an efficient competitive and informed market) as well as the public interest. Where it finds that unacceptable circumstances exist, the Panel may make orders to protect the rights of persons affected by the circumstances and to ensure, as

far as possible, that the takeover proceeds as if the unacceptable circumstances had not occurred.

The Panel has published a policy on the issues it will take into account in considering whether unacceptable circumstances have occurred.

Review of some ASIC and Panel decisions

The Panel may review certain decisions of ASIC under section 655A of the Act to exempt from, or modify, Chapter 6 of the Act and decisions under section 673 of the Act to modify the substantial shareholding provisions (if those decisions are made in relation to a takeover target). The review powers are set out in section 656A of the Act. This function had previously been carried out by the Administrative Appeals Tribunal.

Under section 657EA of the Act, the Panel also has a function in reviewing its own, first instance, decisions. A Panel reviewing the first instance decision of another Panel is comprised of a fresh group of members. There may be only one review of an original Panel decision.

The Panel has an additional review function under section 657EB of the Act, if a matter is referred from the Court.

THE PANEL PROGRAM

Objective

The principal objective of the Panel is to improve the certainty, efficiency and fairness of Australia's takeovers market by resolving disputes in a timely, consistent and sound manner and by publishing clear, well developed policies to assist market participants.

Operations

In 2000-01, the Panel received 33 applications. The individual matters are described in Appendix A.

Development

Consistency of decision making is one of the Panel's primary criteria for success. It will always be a difficult goal to work towards where three individuals from a body of forty or more are selected to sit on a matter with different facts to previous decisions. However, it is a goal which the Panel members take very seriously and have committed significant time and resources to achieving.

In 2000-01, the Panel held various workshop days and induction days throughout Australia, two in Sydney, one in Adelaide, Brisbane, Canberra, Melbourne and Perth. These workshops were used to discuss policy and current proceedings and to induct new Panel members into their role and the legislative and policy framework they will be working within.

Post mortems

As part of its commitment to learning, improvement, and maintaining positive relations with its major stakeholders, the Panel conducts a post-mortem with parties to each matter once the application has been settled (and usually once the takeover has finished). The Panel believes that this feedback process is very important to it developing processes that can deliver fair and commercial proceedings within the very limited time frames that the Panel must work. It will also build the confidence of market participants in the Panel concept.

The detailed feedback is made available to the sitting Panels and the broader comments to the entire Panel at Panel days. We thank the parties involved for participating in the post mortem process and assisting in the development of the Panel's processes.

Policy

A significant part of the Panel's role is to promote certainty for market participants in the operation of the takeovers provisions. In part this is done through the Panel's decision making and incorporated in its reasons. However, the Panel believes it should be more pro-active and state its policy views in a more general and widely usable form than case specific statements in its reasons for decisions.

The Panel released a series of policy documents this year aimed at giving guidance to market participants on the way the Panel proposed to approach a number of aspects of its work. They included policies on:

- Substantive unacceptability;
- Review of decisions;
- Making rules;
- Remedies and enforcement; and
- Restraining the dispatch of documents.

At the end of this year, the Panel has a number of more wide reaching policy projects underway for release and public comment in the early part of 2001-02. They include:

- Lock-up devices;
- Forecasts in Takeovers documents; and
- Frustrating actions.

The Panel's rationale in releasing policies is to give the market guidance in advance of it making decisions on individual transactions. This is in line with the Panel's mandate to provide greater certainty and efficiency in the market for control of Australian companies. It is also very helpful to individual Panel members, sitting as they do as groups of three, giving them

the benefit of the views and support of the wider Panel. We hope it will also be one of the ways we maintain consistency in Panel decisions.

The Panel consults with Treasury and ASIC in developing its policies, and puts all its policies out for public consultation prior to finalising them. The Panel actively seeks input from relevant industry bodies and interest groups.

Liaison

The Panel has commenced discussions with the major regulators in the takeovers area to ensure that its regulatory role fits appropriately with theirs. The Panel has entered into Memoranda of Understanding with Treasury and with ASIC to ensure that the Panel functions appropriately. The Panel also maintains ongoing discussions with ASIC and Australian Stock Exchange Ltd to work together in what are frequently overlapping circumstances.

This year, the Panel has continued its market liaison programme as part of its member meetings. The Panel invites members of the local takeovers community to its members' meetings in State capital cities to discuss the Panel's role and policies and to gain feedback from the market on current takeovers issues and the Panel's operations and policies. The Panel also maintains contact with organizations such as the Law Council of Australia.

The Panel President, Panel members and Panel Executive have attended and spoken at a range of industry meetings, education sessions and seminars.

Website

The Panel's website has been one of the major ways that the Panel has projected its policies and presence to the takeovers community. The Panel has used the website for contact, publishing its documents and consulting with the takeovers market on policy documents.

One of the Panel's recent initiatives has been a 'Resources' page designed to give market participants easy access to a wide range of current and historical source documents relating to the development of takeovers policy and legislation in Australia. The Panel has scanned a wide range of difficult to access documents for its page, including the original reports of the Eggleston Committee, seminal United Kingdom (UK) reports such as the Greene and Jenkins Committee reports and similar Australian Parliamentary reports, including the Rae, Lavarch, Cooney and Edwards Committee reports. The Panel plans to build a complete set of Acts, amending acts and explanatory

memoranda for Australian takeovers legislation for takeovers students, researchers and market practitioners.

Organisational structure

The Panel's funding is included in the Treasury budget, and the Panel Executive are currently employees of Treasury. Consequently, the Panel uses much of Treasury's administrative infrastructure and processes.

Panel members

Panel members are appointed by the Governor General, on the nomination of the Minister, under section 172 of the ASIC Act. The members are currently all part-time members. They are nominated by the Minister on the basis of their knowledge or experience in one or more of the following professions: business, the administration of companies, the financial markets, law, economics and accounting.

The relevant State Ministers may give the Federal Minister submissions on nominations to the Panel. The Panel is intended to have an appropriate mix of professions, business expertise, geographical and gender representation.

In March 2001, the Panel's membership was expanded by appointment of a further eighteen members, taking its membership from 25 to 43 (see page 26). Many of the new members are senior members of the Melbourne and Sydney takeovers communities. This means that the Panel now has critical mass and is well placed to deal with the most difficult of disputes and to manage the issues of conflict which will always be common in a comparatively small business environment such as exists in Australia.

Development

In the course of the year, the Panel Executive conducted a series of internal workshops for the existing Panel members to discuss developing policy, legislation, proceedings and post-mortems and to assist in maintaining consistency in Panel decisions.

The Panel Executive conducted two induction days (in Melbourne and Sydney) to introduce the new members to the Panel's role and functions, legislation and current proceedings. The new members have integrated very quickly with the existing Panel members.

Executive

The Panel Executive consists of seven staff based in Melbourne who assist and support the Panel members. This is an increase of three over last year, which reflects the greater workload this year.

A material role for the Executive is ongoing liaison with market practitioners discussing current takeovers matters and issues in order to provide a real time perspective on the Panel's policy and decisions as they may apply to current takeovers. The Executive also maintains active communications with ASIC's takeovers staff.

Corporate governance

Panel

The Panel itself is made up of part-time members appointed by the Governor-General. One of those members, Mr Simon McKeon, has been appointed to be President of the Panel. The President's responsibilities include:

- liaising with the minister, government, Treasury and stakeholders;
- reviewing the performance of the Panel Executive;
- making Panel rules;
- appointing members to constitute 'sitting Panels'; and
- considering the interests of sitting Panel members for possible conflicts.

The Minister has also appointed Mrs Nerolie Withnall and Mr Simon Mordant, under section 182(1)(b) of the ASIC Act, to act as President when the President is absent from office.

Executive team

At 30 June 2001, the members of the Executive team were:

- Mr Nigel Morris, Director;
- Mr George Durbridge, Counsel;

- Ms Heidi Mitchell, Lawyer (on secondment from Blake Dawson Waldron);
- Ms Katherine Abrat, Lawyer (secondment from Malleson Stephen Jaques);
- Mr Russell Newton (short term contract from the London Takeover Panel);
- Ms Silvia Hajas, Office Manager; and
- Ms Rebecca Story, Executive Assistant.

Treasury accountability

The Director provides monthly reports on the Executive's financial and operational issues to the Panel President and to the Executive Director, Markets Group in Treasury, Mr Gary Potts.

Planning and review

The Executive has regular policy and operational review meetings with the Panel President. The performance of Executive staff is reviewed as part of Treasury's performance appraisal program.

The Panel applies the Australian Public Service (APS) Values and Code of Conduct to the conduct of Panel members and Executive staff.

Audit

As the Panel's appropriation comes via the budget of the Department of Treasury, its operating result is consolidated into the Department's financial statements which are subject to audit by the Australian National Audit Office (ANAO). The Panel is also subject to Treasury's internal audit processes.

Executive remuneration

Senior staff are remunerated under Australian Workplace Agreements negotiated under Treasury's remuneration procedures.

Outcome and output information

Outcome and output structure

In 2000-01, the Panel's functions contributed to Treasury's Outcome 3:

'Well functioning markets.'

The Panel has characterised the outputs of its functions into two classes:

1. Dispute resolution (including review of decisions); and
2. Policy development.

The best fit for Treasury's output to which the Panel's output contribute is:

Treasury Output 3.1.2 *'Financial system and markets policy advice.'*

Chart 1: Outcome and output flowchart

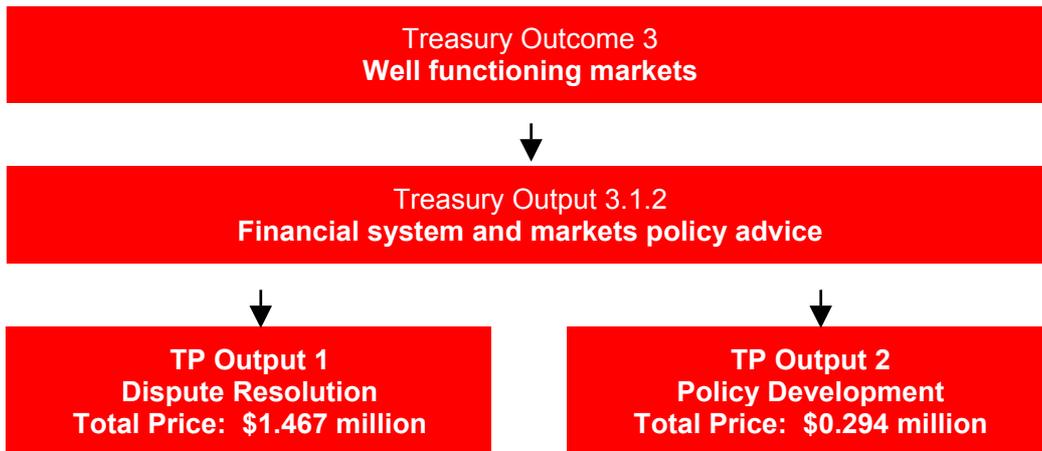


Table 1: Resources for outcomes corporate governance and accounting

	Budget estimate 2000-01 (\$,000)	Actual 2000-01 (\$'000)	Budget estimate 2001-02 (\$'000)
Administered appropriations			
Annual appropriations	0	0	0
Special appropriations			
Total administered appropriations	0	0	0
Output 1 – Dispute resolution — 5.5 ASL			
Output 2 – Policy development — 1.5 ASL			
Total revenue from Government (appropriations) contributing to price of agency outputs	1,761	1,761	1,779
Total revenue from other sources	0	0	0
Total price of agency outputs	2,282	1,464	2,224
Total estimated resourcing for outcome 1	1,902	1,220	1,853
Total estimated resourcing for outcome 2	380	244	370

	2000-01	2001-02
Average staffing levels (number)	7	7

Performance information

Treasury output 3.1.2 — Financial system and markets policy advice

- Dispute resolution decisions are timely, consistent, procedurally fair and based on sound policy considerations;
- Policy is timely, soundly based, developed in close consultation with stakeholders and meets market participants' needs.

2000-01 outcomes

The Panel's consideration of proceedings has contributed to well functioning markets by providing timely, clear, and well articulated decisions.

The Panel's published policies and rules have contributed to the certainty of market participants by providing guidance to supplement and clarify the operation of the Corporations Act and the ASIC Act.

Evaluations

The Panel conducts post-mortems with parties involved in its proceedings, after the takeover has been completed. It has a pro-forma questionnaire to elicit feedback on a range of issues designed to cover all material aspects of its, and its staff's, operations and functions. These reviews ensure that the Panel receives direct and timely feedback on the process and content of its proceedings.

The Panel also maintains an active liaison with market participants through regular Panel meetings in capital cities. These meetings allow feedback from key clients on a regular basis on the effectiveness of the Panel's policies and operations.

Financial information

**Table 2: Schedule of revenues and expenditures — unaudited —
for the period ended 30 June 2001**

Appropriated revenues	\$
Revenues from Government	1,761,000
Other revenue	-
Total appropriated and other revenues	1,761,000
Administration expenses	
Printing	11,020
Travel	103,986
Catering/entertainment	5,266
Postage	1,085
Consultants	65,179
Advertising	11,908
Legal	49,449
Other administration expenses	270,315
Total administration expenses	518,208
Employee expenses	
Salaries	469,273
Employer superannuation	54,116
Members' annual fees and sitting fees	290,986
Total employee expenses	814,375
Other operating expenses	
Depreciation	44,260
Set up costs	56,456
Low value assets expensed	27,881
Repairs and maintenance	3,029
Total other operating expenses	131,626
Total expenses incurred to 30 June 2001	1,464,209
Balance of allocation after operating expenditure	296,791
Expenditure capitalised during current year (refer note (f))	
Asset acquisition and lease improvement	80,783

NOTES TO THE SCHEDULE OF REVENUE AND EXPENDITURES FOR THE YEAR ENDED 30 JUNE 2001

1. STATEMENT OF ACCOUNTING POLICIES

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

1.1 Basis of preparation

The financial information is special purpose financial information, prepared for inclusion in the Corporations and Securities Panel Annual Report for the year ended 30 June 2001. The financial information has been prepared on an accruals basis and on the basis of historical costs.

1.2 Revenue recognition

Government appropriations

Revenues from Government appropriations are recognised when received or declared by the Treasurer in the Federal Budget (Budget Paper No.2, Part II Expense Measures, Treasury).

Revenue appropriated from Government includes \$1,355,000 classified as revenue and \$406,000 classified as capital funds in the underlying books and records of the Treasury.

1.3. Expenses

Expenses are recognised as they accrue.

The Panel's expenses for 2000-01 are also recorded in Treasury's audited financial statements for the period 01/07/2000 - 30/06/2001.

1.4 Salaries and Members Annual & Sitting Fees

Salaries and members sitting fees are recognised as they accrue.

Salaries for the current financial year include payments to firms for secondees' services who meet the definition of employees at law.

1.5 Acquisition of Assets

Assets

All assets greater than \$1,000 including property, plant and equipment are initially capitalised at their cost at the date of acquisition, being the fair value

of the consideration provided plus incidental costs directly attributable to the acquisition.

Low Value Assets

Expenditure relating to capital items that are less than \$1,000 in value is expensed as incurred.

Set Up Costs

Set up costs relate to low value assets associated with enhancing the current leasehold. Set up costs are expensed as incurred.

1.6 Depreciation

All capitalised assets have limited useful lives and are depreciated using the straight line method over their estimated useful lives. Assets are depreciated from the date of acquisition.

MANAGEMENT AND ACCOUNTABILITY

External scrutiny

The Panel's decisions are subject to review by the Federal Court under the *Administrative Decisions (Judicial Review) Act* and by the High Court under section 75(v) of the Constitution. Its decisions are not reviewable by the Administrative Appeals Tribunal (see section 1317B(1) of the Act).

Much of the role for reviewing the Panel's decisions in relation to unacceptable circumstances and subsequent orders is taken by the Review Panel process. Under section 657EA of the Act, parties to a matter may apply for review of Panel decisions by a Review Panel, where those decisions relate to a declaration of unacceptable circumstances or consequent orders. However, the Panel's review of decisions by ASIC are not subject to review by a Review Panel.

In addition, the Panel may voluntarily refer questions of law to the Court and the Court may refer matters back to the Panel (see section 657EB of the Act).

Courts

The Panel was not subject to any judicial review during 2000-01.

The Panel was not subject to any reports by the ANAO or the Parliamentary Committees in 2000-01.

Ombudsman

The Panel was not subject to any reports by the Commonwealth Ombudsman in 2000-01.

Management of human resources

At 30 June 2001, the Panel Executive's staff consisted of three full-time permanent staff, one temporary staff member and three legal and corporate finance secondees.

Secondments

The small number of permanent staff on the Panel Executive is supplemented by secondees from law firms, and other types of professional firms.

The Panel considers that the interchange of experience and expertise with market participants by its use of the secondees will assist it provide timely and commercially sensible decisions.

During this period the Panel had two secondees whose secondment periods finished: Nicole Calleja, from Arthur Robinson and Hedderwicks and Darren MacKenzie, from Freehills. We thank them both for their valuable contributions and their firms for their commitment of high quality staff.

Staffing information

The following table presents the number of permanent Panel staff, by classification and gender. Permanent staff are employed under the *Public Service Act 1999*.

Table 3: Operative staff by classification and gender

Classification	Permanent full time		Total
	Male	Female	
APS5		1	1
SEB1	1		1
SEB2	1		1
Total	2	1	3

A description of each acronym used in the above table can be found in the Abbreviations and Acronyms. Details for permanent staff refer to substantive classifications and do not recognise those staff acting at a higher classification.

Senior executive staff changes

There were no senior staff changes during the period.

Australian Workplace Agreements

Treasury offers Australian Workplace Agreements (AWAs) to all Senior Executive Service (SES) and some non-SES staff. All SES staff on the Panel Executive are employed under AWAs. The Agreements and associated performance based bonuses for the Panel staff were dealt with in February 2001, which is the annual performance appraisal cycle.

Performance-based bonuses were paid to SES staff during 2000-01 in accordance with the Treasury Performance Management Programme.

Staff development

Staff attended various workshops and training sessions during this financial year predominantly in the areas of corporate law, e-commerce, negotiation skills and financial management.

The Panel takes an active approach to ensuring that staff continuously develop their core skills and keep up-to-date with changes in legislation and the financial sector.

Remuneration for non-SES

Remuneration payment was made to the permanent APS5 staff member at the completion of the Panel's first performance appraisal cycle in accordance with Treasury's Performance Management Programme.

Workplace diversity

At June 30 the Panel Executive consisted of 7 staff members, of which 4 were female and 3 male. Two female staff members are senior lawyers and one is of NES background.

The Panel adopts Treasury's policies and procedures in relation to Equal Employment Opportunity (EEO).

Table 4: Operative and paid inoperative staff by EEO target group

Classification	Female	NESB-1	NESB-2	AATSI	Disability
APS2	1				
APS5	1	1			
EL2	2				
Total	4*	1			

* As at 30 June 2001.

Table 5: EEO in appointments to boards

	Total positions filled as at 30 June	Number from EEO target groups	Number of appointments made during the year	Number of appointments from EEO target groups
Takeovers Panel	43	22	18	9

Industrial democracy

The Panel has adopted Treasury's Certified Agreement Performance Management System and Treasury Management Model.

Industrial democracy issues are dealt with by the Treasury's Workplace Relations Committee.

Occupational health and safety (OH&S)

As employees of Treasury, Panel staff and members have the benefit of Treasury's OH&S programs and functions.

The Panel has adopted the Employee Assistance Program, an external service organized by Treasury for employees and their families.

Consultants and competitive tendering and contracting

Consultants

In line with the Commonwealth Procurement Guidelines, the Panel has engaged a number of accounting and law firms to provide specialist advice and representation for various matters conducted. They are as follows:

- KPMG — corporate finance advice on the market value of debt involved in an application to the Panel;
- PricewaterhouseCoopers — accountancy advice on cash flows and financial statements of a company which was the subject of an application to the Panel;
- Arthur Robinson and Hedderwicks, Australian Government Solicitor and Allen Allen and Hemsley — attendance in court to represent the Panel on separate matters; and
- Norman O'Bryan, Barrister — counsel's advice on procedures in an application.

The aggregate amount spent on consultancy services is \$57,100 of which \$31,900 related to KPMG.

The firms were engaged on the basis that they were free from conflict of interest, possessed appropriate skills or knowledge that was not available at the Panel and available on the short notice required by the Panel's time requirements.

Competitive tendering and contracting

The Panel let no competitive tenders or contracts during this financial year.

Discretionary grants

The Panel granted one discretionary grant in 2000-01. The Panel sponsored the prize for the best student in the Mergers and Acquisitions subject in the Securities Institute of Australia Graduate Diploma program. Mr Gary Hui received the prize and a sum of \$500. The Panel has advised the Securities Institute of Australia that it would consider supporting the prize next year if asked.

Advertising and market research

The Panel did not undertake any advertising or marketing research campaigns in 2000-01.

Environmental performance

The Panel consciously undertakes energy saving and recycling on its premises by exercising the following:

- Power save mode features on all office equipment;
- Power on desktop computers turned off at the end of each business day;
- Lights switched off in unused areas during business hours;
- Paper and cardboard recycling; and
- The Panel does not operate any cars.

Freedom of information

Statement under Section 8 of the *Freedom of Information Act 1982*

The Takeovers Panel is an agency within the Treasury portfolio, and was established under section 171 of the ASIC Act.

Organisation, functions and powers

The Panel's organisation, functions and powers are set out in previous sections of this report.

Arrangements for outside participation

The Panel considers that its policy development should generally be undertaken with full opportunity for public consultation and input. The Panel publishes all its policy documents in draft form for public comment and consultation and approaches specific special interest groups where they are likely to be materially affected or may provide specialized input to the Panel's policy. The Panel publishes all its documents, including reasons for decision on its website and invites visitors to join its mailing list to be advised of all publications.

Given the commercially sensitive nature of matters being considered, and the time pressures imposed on the Panel by its legislation, proceedings are generally held in private. However, the Panel has the power to invite submissions from any person, to accept submissions made by interested persons who are not formally parties to specific proceedings, and to advertise for persons to make submissions in relation to specific proceedings.

Categories of documents held by the Panel

The Panel maintains the following categories of documents:

- lodged applications;
- correspondence and submissions relating to the application;
- independent expert advices;
- reasons for decisions;

- press releases;
- rules for proceedings;
- policy development;
- administrative and financial documents relating to the Panel's operations;
and
- general correspondence.

The documents accessible to the public for viewing are the Panel's decisions, media releases, policy developments and rules for proceedings.

Access to documents

The primary method of access to Panel documents is from the Panel's website. The Panel seeks to ensure that all publicly available documents are on its website.

Access to other documents, if available, may be obtained by visiting the Panel's premises by appointment at the address below. Office hours are 9.00 am to 5.00 pm (except public and public service holidays). The Panel's address and contact information are available on the Panel's website, and the Panel has taken active steps to have its internet address placed on all Government directories and other internet sites where interested persons are likely to search for it.

FOI applications and initial contact points

Freedom of Information inquiries are to be directed to:

Nigel Morris
Director
Takeovers Panel
Level 47, 80 Collins Street
MELBOURNE VIC 3000
Ph: 03-9655-3501
Fx: 03-9655-3511

The Panel follows the Treasury's guidelines in responding to FOI inquiries.

FOI activity in 2000-01

The Panel did not receive any applications for access to documents under the *Freedom of Information Act 1982* in 2000-01.

Regulatory impact statements

The Panel did not submit any Regulatory Impact Statements in 2000-01.

Panel members

The members of the Panel on 1 July 2000 were:

Mr Simon McKeon (President)

Ms Robyn Ahern

Ms Elizabeth Alexander AM

Dr Annabelle Bennett SC

Mr Michael Burgess

Mr Denis Byrne

Mr Peter Cameron

Mr Brett Heading

Ms Meredith Hellicar

Ms Alice McCleary

Ms Maria Manning

Ms Louise McBride

Ms Marian Micalizzi

Mr Simon Mordant

Mr John O'Neill

Prof. Ian Ramsay

Ms Maxine Rich

Ms Fiona Roche

Mr Trevor Rowe

Mr Jeremy Schultz

Ms Jennifer Seabrook

Mr Valentine Smith

Mr Leslie Taylor

Mr Michael Tilley

Ms Nerolie Withnall

Ms Karen Wood

Mr Peter Young

The members of the Panel appointed in 2000-01 were:

Ms Ilana Atlas

Justice Robert Austin

Mr Tony Burgess

Ms Carol Buys

Ms Luise Elsing

Ms Kathleen Farrell

Mr David Gonski

Ms Teresa Handicott

Mr Braddon Jolley

Dr Tro Kortian

Ms Alison Lansley

Ms Irene Lee

Mr Kevin McCann

Ms Marie McDonald

Ms Robyn Pak-Poy

Mr Chris Photakis

Mr Scott Reid

Justice Kim Santow

Resignations

Mr Valentine Smith and Mr John O'Neill resigned in 2000. We thank them for their time and contribution.

PANEL APPLICATIONS

The table below sets out the applications received by the Panel in 2000-01.

Table 6: Applications

Number	Application Section	Matter Name	Decision	Decision Date
006/00	s657C	IAMA	Withdrawn	04/08/00
007/00	s657C	Pinnacle	Withdrawn	01/08/00
008/00	s657C	Brickworks	Refuse application with clarifying statement by Panel to market	24/08/00
009/00	s657C	Brickworks02	Refuse application with advice to parties	28/09/00
010/00	s657C	QCT	Withdrawn after further disclosure	11/09/00
011/00	s657C	St Barbara	Refuse application	18/09/00
012/00	s657C	Advance	Refuse application	28/09/00
013/00	s657C	Ashton	Refuse application, undertaking for further disclosure	03/10/00
014/00	s657C	Taipan	Refuse application	12/10/00
015/00	s657C	Pinnacle02	Refuse application, undertaking for further disclosure	06/11/00
016/00	s657C	Taipan02	Refuse to conduct proceedings	16/11/00
017/00	s657C	Taipan03	Refuse application	19/12/00
018/00	s657C	Realestate	Declaration of unacceptable circumstances	13/12/00
019/00	s657C	Taipan04	Refuse application with advice for parties	23/01/01
020/00	s656A	Taipan05	Affirm ASIC decision	06/12/00
021/00	s656A	Taipan06	Affirm ASIC decision	12/12/00

Table 6: Applications (continued)

Number	Application Section	Matter Name	Decision	Decision Date
022/00	s657C	Taipan07	Refuse application	21/12/00
023/01	s656A	Pinnacle03	Vary ASIC decision	07/02/01
024/01	s657C	Taipan08	Refuse application	14/02/01
025/01	s657C	Taipan09	Declaration of unacceptable circumstances and orders	09/03/01
026/01	s657C	Taipan10	Refuse application	16/03/01
027/01	s657C	Vincorp	Refuse application, undertaking for further disclosure	36/03/01
028/01	s657C	Pinnacle04	Declaration of unacceptable circumstances and orders	09/04/01
029/01	s657C	Namakwa	Refuse application	27/04/01
030/01	s657C	Pinnacle05	Refuse application, undertaking to hold shareholder meeting	04/05/01
031/01	s656EA	Taipan11	Refuse application, undertaking to pay costs	01/05/01
032/01	s657C	Namakwa02	Declaration of unacceptable circumstances, undertaking for further disclosure	26/04/01
033/01	s656EA	Pinnacle06	Declaration of unacceptable circumstances affirming Pinnacle04 decision	01/05/01
034/01	s657C	Pinnacle07	Refuse to conduct proceedings	03/05/01
035/01	s657C	Alpha	Refuse application, undertaking for further disclosure	21/05/01
036/01	s656EA	Namakwa03	Refuse to conduct proceedings	11/05/01
037/01	s656EA	Namakwa04	Refuse to conduct proceedings, affirming Namakwa03 decision	27/05/01
038/01	s657C	Pinnacle08	Refuse application, affirming Pinnacle 5 decision, with further undertakings concerning holding shareholder meeting	16/06/01

ABBREVIATIONS AND ACRONYMS

ACT	<i>Corporations Act</i>
ANAO	Australian National Audit Office
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
AWA	Australian Workplace Agreement
CLERP	Corporate Law and Economic Reform Program
EEO	Equal Employment Opportunity
OH&S	Occupational Health and Safety
SEB	Senior Executive Band
SES	Senior Executive Service
UK	United Kingdom

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