

Takeovers Panel

**Annual Report
2001-02**

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8 January, 2009

Senator The Hon Ian Campbell
Parliamentary Secretary to the Treasurer
Parliament House
Canberra ACT 2600

Dear Senator

ANNUAL REPORT 2001-02

I have the honour to submit to you, in accordance with section 183 of the Australian Securities and Investments Commission Act 2001, the 2001-02 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 guidance notes and making rules.

Yours sincerely

Simon McKeon
President

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INTRODUCTION AND GUIDE TO THE REPORT

The Takeovers Panel was established in January 1991. It is the primary forum for the resolution of takeovers disputes. Its relevant legislation is Part 6.10 of the Corporations Act ("Act"), Part 10 of the Australian Securities and Investments Commission Act (ASIC Act), and Part 3 of the ASIC Regulations.

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 guidance notes 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

The year 2001-02 has been a year of consolidation and development for the Takeovers Panel. It has seen a heavy workload in terms of disputes brought before it, a significant consolidation and development of its membership, and further assistance to the market in terms of guidance that the Panel has published. The Panel, with the assistance of its Executive, has continued to deliver high quality, commercial and timely decisions in relation to a wide range of takeovers large and small.

Two of the Panel's highlights during the year were the resolution of the disputes arising out of the bids for Normandy and the guidance provided to the market on break fees.

The Panel considered and decided seven applications in relation to the Normandy bids, including a review application, on a diverse range of issues over a period of less than eight weeks. The Normandy bids were some of the most complex and strongly contested bids that have been seen in Australia for some years. Notwithstanding the number of applications, neither the AngloGold nor the Newmont bids were halted or even delayed by the Panel's processes. The Panel's resolution of the issues was exceptional.

The Panel's work on break fees in 2001/02 started with its release in August of a draft Guidance Note on lock-up devices. After public consultation, the Guidance Note was finalised and released in early December. It was then considered in applications in relation to Normandy, Ballarat Goldfields and Ausdoc. The three applications tested, and proved the appropriateness of, the Panel's general policy on break fees in a diverse range of circumstances.

The Panel has spent considerable time this year talking to, and listening to, the market. We have gone to the people involved in proceedings to seek their feedback in our post-mortem process after every proceedings, we have met with and presented to market practitioners in seminars and we have taken the time to meet with small groups of individuals to listen to the market's views on the Panel's decisions and processes. We believe that this is important, and a significant factor in the Panel's success so far. It is one of our initiatives which we will continue to pursue in the coming year.

In 2001-02 the Panel has made more declarations and more orders than previously. The proportion of applications which are resolved by way of undertaking or by making declarations will vary from year to year.

Paradoxically, the Panel's growing confidence in the soundness of its model is likely to increase that variability. We will be both more prepared to make firm declarations and orders, and more prepared to resolve other matters by accepting undertakings.

We have received feedback that some practitioners and some parties before the Panel would prefer more face to face conferences. We listen to that feedback, and we ask the parties in each proceedings about whether there is a need for a conference. We have held more conferences this year than previously. However, the model which the legislation presents to us is one of deciding proceedings on the basis of written submissions, with conferences as an additional means for the Sitting Panels to finalise any issues in their minds. We will continue to listen to parties who request conferences and will continue to consider and make the call, on the basis of the information in each Panel proceedings, as to whether a conference is appropriate in each case.

Relationships

The Panel 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.

The Panel has presented papers at a range of fora, including ones hosted by the Business Law Section of the Law Council of Australia, Chartered Secretaries Australia, the Australian Institute of Company Directors and various commercial conferences.

The Panel maintains an ongoing relationship with ASIC under its Memorandum of Understanding with ASIC and via regular liaison meetings and policy consultation.

The Panel has looked to broaden its relationships with the market by asking a range of market participants to join the Panel's various sub-committees which develop guidance for the market.

Another key relationship of the Panel is with major Australian law firms. The Panel has had excellent service from the secondees that these firms have provided. The quality of the secondees has been uniformly excellent and the

preparedness of law firms to offer us their best staff provides strong endorsement to the underlying tenet of the Panel.

Panel members

The Panel welcomed the appointment of two new Panel members in 2001-02, taking the membership to 45. Since the membership significantly increased in 2001 the Panel has had 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.

The Panel was particularly pleased to welcome the appointment of Mr. John King, the President of the New Zealand Takeovers Panel. Mr. King's appointment reflects an agreement between the relevant Ministers in Australia and New Zealand to bring further harmonisation and understanding in securities and markets regulation between the two countries. Mr. Denis Byrne, one of the Australian Takeovers Panel members, has been appointed a member of the New Zealand Takeovers Panel.

I continue to be impressed and humbled by the contribution and sacrifice that the Panel members make to the success of this organisation. Each of the members has substantial business and professional commitments outside of the Panel. Yet, often at short notice, they remain prepared to be appointed to sitting Panels or otherwise devote significant time to ongoing skills, training and guidance developments.

Looking ahead

At the time of preparation, our principal short term focus is our hosting of the first ever International Takeovers Regulators Conference in Melbourne towards the end of October. As merger and takeovers activity is increasingly transcending national borders and takeovers panels continue to be established around the world, we felt it timely to bring together regulators from around the world who are focussed on takeovers. Whilst there are significant differences in the regulation of takeovers from nation to nation, there are numerous topics of mutual interest to all regulators. Furthermore, the very concept of these regulators being familiar with their counterparts from other countries is important, especially if a movement

were to develop to harmonise to some extent the regulation of takeovers either within regions or even the world, as is now the case with accounting standards. The enthusiasm of the committed delegates, who represent all continents, and their praise for our initiative in having organised this first conference leads us to believe that it will not only be successful but will also be the forerunner of regular conferences in the future.

More generally, many of the challenges that lie before us in 2002-03 remain similar to those that we have had in recent years. They include:

guidance:

- We intend to continue to be pro-active in providing guidance to the market on a range of difficult issues in takeovers through Panel Guidance Notes before they get to the Panel as applications. We will continue to seek the market's views on which issues are important and are generating uncertainty or lack of confidence.
- Currently the Panel is developing guidance on the use of funding in takeovers, the use of 'broker inducement fees', and mergers of Managed Investment Schemes other than under Chapter 6.

consistency:

- Our consistency in decision making is important for the market. We will continue to work with our large complement of Panel members, especially through our Panel training days, to ensure that the risks of one Sitting Panel diverging from the opinion of other Sitting Panels are minimised. Dealing with issues in advance by way of Guidance Notes is another important tool in this regard.

consolidation:

- Our main challenge will be to continue to maintain the high standards which we have achieved since the rejuvenation of the Panel. Success can lead to complacency. We continue to seek "reality checks" in all that we do, through mechanisms such as post-mortems following decisions and a programme of market interaction as outlined above.

And finally ...

I have noted in previous reports my gratitude to the tireless efforts of the Panel's Executive, under the leadership of Nigel Morris and George Durbridge. And this past year has been no exception.

As the Panel has become an accepted and well respected part of Australia's corporate landscape, it finds itself, through its Executive, in high demand to respond to numerous issues put to it by the market. Whilst ultimately decisions are made by Sitting Panels, the Executive performs an important role in providing information to the market which in many instances obviates the need for an application.

Added to this, of course, is a substantial case load, increasing commitment to guidance, the demands of servicing a large membership and preparations for our forthcoming international conference. All in all, it has been a very solid year and much of the Panel's success must be attributed to Nigel and George.

OVERVIEW

The Panel is the primary dispute resolution forum for takeovers. It has 45 part-time members and is supported by six 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 27.

Role and functions

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

In addition, the Panel may be asked to review certain decisions by ASIC in relation to takeover bids.

The Panel also has a significant guidance 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 guidance notes 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 Guidance Note 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.

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 guidance to assist market participants.

Operations

In 2001-02, the Panel received 26 applications, compared to 33 in the previous period. The individual matters are described in Appendix A. The Panel considers that the difference is more likely due to normal fluctuation rather than any longer term trend.

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 2001-02, the Panel held workshop days throughout Australia, three in Melbourne, two in Sydney, and one each in Adelaide and Brisbane. The purpose of these workshops is to discuss current and past proceedings, post mortems, guidance notes' development and future projects.

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 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.

Guidance

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 views in a more general and widely useable form than case specific statements in its reasons for decisions.

The Panel released a series of guidance notes this year aimed at giving direction to market participants on the way the Panel proposed to approach a number of aspects of its work. Guidance notes released in 2001-02 comprised:

- Lock-up devices;
- Costs orders;
- Matter procedures;
- Consultation procedures;
- Conflicts of interest (draft); and
- Frustrating action (draft).

At the end of this year, the Panel has a number of more wide reaching guidance projects underway for release and public comment in the early part of 2002-03. They include:

- A review of the Guidance Note on substantive unacceptability;
- A review of the legislation under which the Panel operates;
- Truth in takeovers;
- Funding arrangements for takeovers; and
- Forecasts in takeovers .

The Panel's rationale in releasing guidance notes is to give the market direction 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 guidance notes, then publishes them 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 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 organisations 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 guidance notes and presence to the takeovers community. The Panel has used the website for contact, publishing its documents and consulting with the takeovers market on Panel guidance notes.

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 2002, the Panel's membership expanded by the appointment of Mr. John King, Chairman of the New Zealand Takeovers Panel and Ms Celia Searle, Barrister in Perth, taking its membership to 45 (see page 26). Since the increases of the previous year, the Panel has had critical mass in terms of membership size 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 guidance notes, legislation, proceedings and post-mortems and to assist in maintaining consistency in Panel decisions.

Executive

The Panel Executive consists of six staff based in Melbourne who assist and support the Panel members.

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 Guidance Notes 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 2002, the members of the Executive team were:

- Mr. Nigel Morris, Director;
- Mr. George Durbridge, Counsel;
- Mr. David Noakes, Lawyer (secondment from Allens Arthur Robinson, Sydney);
- Ms. Kristen Jung, Lawyer (on secondment from Minter Ellison, Sydney);
- 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. Jim Murphy.

Planning and review

The Executive has regular guidance 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.

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 2001-02, 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

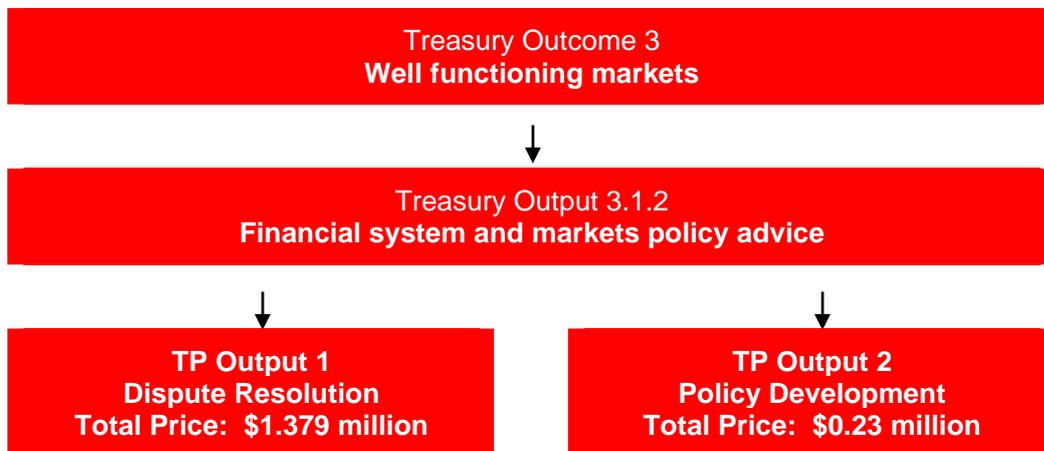


Table 1: Resources for outcomes corporate governance and accounting

	Budget estimate 2001-02 (\$,000)	Actual 2001-02 (\$'000)	Budget estimate 2002-03 (\$'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	1,779	1,754	1,778
Total revenue from other sources	0	0	0
Total price of agency outputs	2,224	1,609	1,813
Total estimated resourcing for outcome 1	1,853	1,379	1,511
Total estimated resourcing for outcome 2	370	230	302
		2001-02	2002-03
Average staffing levels (number)		7	6

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;
- Guidance is timely, soundly based, developed in close consultation with stakeholders and meets market participants' needs.

2001-02 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 guidance 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 has initiated a policy of inviting senior Panel members (who did not sit on the relevant matter) to attend the Post Mortems. This will reinforce to parties, and to Panel members that the Panel takes the post mortems seriously. It will also provide Panel members with better insight into the perceptions of parties as to the Panel's decisions and processes.

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 guidance notes and operations.

Financial information

**Table 2: Schedule of revenues and expenditures — unaudited —
for the period ended 30 June 2002**

Appropriated revenues	\$
Revenues from Government	1,748,919
Total appropriated and other revenues	<u>1,748,919</u>
Administration expenses	
Printing	11,135
Travel	111,243
Catering/Entertainment	8,288
Postage	1,819
Consultants	30,812
Advertising	9,509
Legal	39,222
Other administration expenses	227,089
Total administration expenses	<u>439,117</u>
Employee expenses	
Salaries	601,112
Employer superannuation	66,368
Members' annual fees & sitting fees	450,828
Total employee expenses	<u>1,118,308</u>
Other operating expenses	
Depreciation	48,663
Set up costs	1,172
Low value assets expensed	1,325
Repairs and maintenance	70
Total other operating expenses	<u>51,230</u>
Total expenses incurred to 30 June 2002	<u>1,608,655</u>
Balance of allocation after operating expenditure	<u>140,264</u>

NOTES TO THE SCHEDULE OF REVENUE AND EXPENDITURES FOR THE YEAR ENDED 30 JUNE 2002

STATEMENT OF ACCOUNTING POLICIES

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

(a) Basis of Preparation

The financial information is special purpose financial information, prepared for inclusion in the Takeovers Panel Annual Report for the year ended 30 June 2002. The financial information has been prepared on an accruals basis and are in accordance with historical cost.

(b) 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 \$1,753,749 classified as revenue.

(c) Expenses

Expenses are recognised as they accrue.

The Panel's expenses for 2001-2002 are also recorded in Treasury's audited financial statements for the period 01/07/2001 - 30/06/2002.

(d) 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.

(e) 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.

Low Value Assets

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

(f) Depreciation

Assets are written-off to their estimated residual values over their estimated useful lives to the Panel using, in all cases, the straight line method of depreciation.

MANAGEMENT AND ACCOUNTABILITY

External scrutiny

The Panel's decisions are subject to review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* 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 2001-02.

The Panel was not subject to any reports by the ANAO or the Parliamentary Committees in 2001-02.

Ombudsman

The Panel was not subject to any reports by the Commonwealth Ombudsman in 2001-02.

Management of human resources

At 30 June 2002, the Panel Executive's staff consisted of three full-time permanent staff, one non-ongoing staff member and two legal 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 interchange of experience and expertise with market participants by its use of the secondees assists the Panel provide timely and commercially sensible decisions.

During this period the Panel had three secondees whose secondment periods finished: Katherine Abrat, from Malleson Stephen Jaques in Melbourne, Heidi Mitchell, from Blake Dawson Waldron in Melbourne and Russell Newton, formerly with the London Takeover Panel, from the United Kingdom. We thank them all 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 2002, which is the annual performance appraisal cycle.

Performance-based bonuses were paid to SES staff during 2001-02 in accordance with the Treasury Performance Management Programme.

Staff development

Staff attended workshops and training sessions during this financial year in the areas of corporate law, administrative law, business writing skills, negotiation skills, presentation skills and management skills for administrators.

There was continuing market interest in the new Takeovers Panel and staff attended various fora conducted by legal firms and universities.

The Panel seeks to ensure 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 annual performance appraisal cycle in accordance with Treasury's Performance Management Programme.

Workplace diversity

At June 30 the Panel Executive consisted of 6 staff members, of which 3 were female and 3 male. One female staff member is a senior lawyer and two are 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	1	1			
Total	3*	2			

* As at 30 June 2002.

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	45	23	2	1

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 organised 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:

- Grant Samuel Corporate Finance — corporate finance advice on an application to the Panel;
- Allens Arthur Robinson — legal advice and services to the Panel; and
- Malleson Stephen Jaques - administrative law advice in relation to an application before the Panel.

The aggregate amount spent on consultancy and legal services is \$70,034.

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 made one discretionary grant in 2001-02. 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. Shannon Lindner 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 2001-02.

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 guidance development should generally be undertaken with full opportunity for public consultation and input. The Panel publishes all its guidance 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 specialised input to the Panel's guidance. 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;
- guidance development;
- administrative and financial documents relating to the Panel's operations;
- general correspondence.

The documents accessible to the public for viewing are the Panel's decisions, media releases, Guidance Notes 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 a.m. to 5.00 p.m. (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, Fax: 03-9655-3511

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

FOI activity in 2001-02

The Panel received one application for access to documents under the *Freedom of Information Act 1982* in 2001 - 2002 on 19 July 2001.

The application included five requests for documents in relation to the *Alpha Healthcare Limited* proceedings. Four of those requests sought access to documents that do not exist. The other request related to submissions received by the Panel from a party to the Alpha proceedings, a confidential valuation report provided to the Panel in the proceedings and to the Panel's brief to parties in those proceedings.

The Panel decided to grant access to the brief and to edited versions of the submissions and advised the applicants of its decision and reasons for decision on 20 September 2001. The Panel decided that the valuation report was exempt from disclosure under section 45 of the *Freedom of Information Act 1982*. The Panel also advised that it had assessed a charge of \$425 based on the *Freedom of Information (Fees and Charges) Regulations 1982* to be payable by the applicants.

On 19 October 2001 the applicants applied to the Department of Treasury for review of the Panel's decision:

- to grant access only to edited copies of the submissions to the applicants;
- not to grant access to the valuation report; and
- to impose a fee of \$425 in relation to the grant of access.

The review decision was made by Gary Potts, Executive Director, Markets Group, Treasury and notified to the applicants together with reasons for the decision on 19 November 2001.

Mr Potts determined to:

- grant access to unedited copies of the submissions to the applicants;
- grant access to an edited copy of the valuation report; and
- affirm the fee in relation to the grant of access.

Regulatory impact statements

The Panel did not submit any Regulatory Impact Statements in 2001-02.

Panel members

The members of the Panel on 1 July 2001 were:

Mr. Simon McKeon (President)	
Ms. Robyn Ahern	Ms. Marie McDonald
Ms. Elizabeth Alexander AM	Ms. Alice McCleary
Ms. Ilana Atlas	Ms. Maria Manning
Justice Robert Austin	Ms. Louise McBride
Dr. Annabelle Bennett SC	Ms. Marian Micalizzi
Mr. Michael Burgess	Mr. Simon Mordant
Mr. Tony Burgess	Ms. Robyn Pak-Poy
Ms. Carol Buys	Mr. Chris Photakis
Mr. Denis Byrne	Prof. Ian Ramsay
Mr. Peter Cameron	Mr. Scott Reid
Ms. Luise Elsing	Ms. Maxine Rich
Ms. Kathleen Farrell	Ms. Fiona Roche
Mr. David Gonski	Mr. Trevor Rowe
Ms. Teresa Handicott	Justice Kim Santow
Mr. Brett Heading	Mr. Jeremy Schultz
Ms. Meredith Hellicar	Ms. Jennifer Seabrook
Mr. Braddon Jolley	Mr. Leslie Taylor
Dr. Tro Kortian	Mr. Michael Tilley
Ms. Alison Lansley	Mrs. Nerolie Withnall
Ms. Irene Lee	Ms. Karen Wood
Mr. Kevin McCann	Mr. Peter Young

The members of the Panel appointed in 2001-02 were:

Mr. John King (New Zealand)	Ms. Celia Searle
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PANEL APPLICATIONS

Table 6: Applications - The table below sets out the applications received by the Panel in 2001-02.

Number			M a t t e r N a m e	Decision	Decision Date
039/01	657A&E	ALG		Interim order/s	17/07/2001
040/01	657A	Bigshop		Refuse application	27/09/2001
041/01	657A	Pinnacle09		Refuse application, with undertaking	05/10/2001
042/01	657A&D	Pinnacle10		Declaration and orders	04/10/2001
043/01	657EA	Bigshop02		Vary/set aside Panel decision	15/10/2001
044/01	657E	Bigshop03		Interim order/s	05/10/2001
045/01	657EA	Pinnacle11		Affirm Panel decision	16/10/2001
045(a)/01	657A&D	Pinnacle9(a)		Declaration and orders	16/10/2001
046/01	657E	Normandy01		Interim order/s	26/11/2001
047/01	657A&E	Normandy02		Refuse application	05/12/2001
048/01	657A&D	Normandy03		Refuse application	07/12/2001
049/01	657A&E	Normandy04		Interim order/s	12/12/2001
050/01	657A&E	Normandy05		Refuse application, with undertaking	06/12/2001
051/01	657EA	Normandy06		Affirm Panel decision	21/12/2001
052/01	657A&D	Broncos01&02		Declaration and Refuse application, with undertaking	03/01/2002
001/02	657EA	Broncos03		Refuse application, with undertaking	01/02/2002
002/02	657A&E	Normandy07		Refuse application, with undertaking	15/01/2002
003/02	657A	Focus Technology		Refuse application	18/02/2002

004/02	656A	Broncos04	Declaration	04/02/2002
005/02	656A	Pasminco	Vary/Set aside ASIC decision	28/03/2002
006/02	657A	Precious Metals	Refuse to conduct proceedings	21/03/2002
007/02	657A,D&E	Ballarat Goldfields	Declaration and orders	13/05/2002
008/02	657A	EPHS	Refuse application, with undertaking	09/08/2002
009/02	657A	Ausdoc	Refuse application, with undertaking	28/06/2002
010/02	657A	Ranger Minerals	Declaration and orders	03/07/2002
011/02	657A,D&E	ISIS Communications	Refuse application	08/07/2002

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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