

Takeovers Panel

Annual Report
2002-03

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10 October, 2003

The Honourable Ross Cameron, MP
Parliamentary Secretary to the Treasurer
Parliament House
Canberra ACT 2600

Dear Parliamentary Secretary

ANNUAL REPORT 2002-03

I have the honour to submit to you, in accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, the 2002-03 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*.

This report sets out the Panel's role as the primary dispute resolution forum for takeover bids, and gives an overview of the Panel's operational program, membership, financial information and management.

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 2001* (Act), Part 10 of the *Australian Securities and Investments Commission Act 2001* (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, annual reports, current Guidance Notes and rules.

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

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

Enquiries

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Review by the President

The year 2002-03 has been an exciting and challenging one for the Takeovers Panel. The Panel has had a significantly busier workload than in previous years, with 41 applications, compared to 26 in 2001-02, 33 in 2000-01 and six in 1999-2000. This is attributable in part to an overall increase in merger activity, and partly to a large number of applications in relation to one takeover bid.

The trend this year has been for applications to involve a relatively high number of large companies compared to previous years. This demonstrates the Panel's relevance to a broad part of the business community. For example, all but three applications in 2001-02 related to companies which ranked outside the largest 500 Australian Stock Exchange (ASX) listed companies and only one application related to a company in the top 100 ASX listed companies. This year, by contrast, most applications have related to companies inside the ASX 500 index, and four related to companies in the ASX 100 index.

More significantly, and as in previous years, applications have involved new and often complex issues, frequently requiring significant analysis and enquiry by the Panel. The majority of cases in previous years involved disclosure issues relating to bid documentation. By comparison this year relatively fewer applications have involved these issues. This may indicate that the Panel's previous decisions on bid documentation have provided useful guidance to the takeovers community on the level of disclosure that shareholders need to decide on whether to accept a bid.

In addition to disclosure, this year's applications have concerned such diverse themes as association, underwriting arrangements, bid finance conditions, break fees, alleged coercion, takeovers of managed investment schemes, poison pills and the relative treatment of rival bidders.

The Panel believes that it has met the high standard expected of it by business, government and the community generally. We take some particular pride in the outcome of the Anaconda and AMP Shopping Centre Trust applications. We believe that the Panel's decisions in these matters were timely and practical and, importantly, ensured that the decisions about whether or not the relevant takeovers succeeded were made by shareholders, who are the persons who should determine the ownership of a company.

The AMP Shopping Centre Trust and Colonial First State Property Trust decisions have focussed the property trust sector's attention to some adjustments that may still be required as a result of the substantial legislative adjustments affecting managed investment schemes introduced under CLERP reforms, including the Managed Investments Act. We believe the decisions have been beneficial to the sector, in that they have provided guidance to management, which will in turn promote investor confidence.

By contrast, the Anaconda decisions related to a very particular, and unusual, set of facts. Rather than creating new specific requirements, as some commentary has suggested, the decisions applied a range of familiar and pre-existing takeovers policy principles to the particular and unusual circumstances of the proceedings. While the Panel has noted some concern at the number of proceedings in relation to Anaconda, I am very pleased that the Panel met every challenge it faced in dealing with the large number of applications. It was, in its own way, a demonstration of the Panel's ability to process and consider issues in real time, and as fast as even the rapid pace of the shortened Anaconda takeover time frame.

A number of applications have involved difficult process issues. For example, the Online Advantage matter tested the Panel's investigative powers. Although we would not expect to conduct such investigations often, it was reassuring to see that the Panel has the ability, when required, to gain access to important information. Where necessary it will do this by requiring persons to appear before the Panel. Moreover, this decision, along with other applications regarding the difficult issue of association, demonstrates that the Panel is prepared to make decisions which actively promote the Eggleston principles.

Policy development

The Panel is pleased this year to have published Guidance Notes on frustrating action and broker handling fees. We believe that both take a sensible and practical approach to current issues for the market. We will monitor their practical operation in the market.

The Panel has also published a final Guidance Note on how the Panel deals with conflicts of interest. This is designed to provide takeovers practitioners with an understanding of the process the Panel follows when dealing with conflicts of interest.

The Panel is currently developing draft Guidance Notes on what may constitute unacceptable circumstances in relation to adequate funding of takeover bids and mergers of managed investment schemes.

To ensure that the Panel's Guidance Notes incorporate views from a broad cross-section of market interests, our practice is to invite persons outside the Panel to join the specific sub-committees to assist with the development of its Guidance Notes. The Panel is most grateful to the external sub-committee members for their participation (see page 32 for the Panel's Guidance Note sub-committee members).

Assessment of Panel

The Panel's decisions and methods are subject to much comment, which is to be expected for a body that often makes decisions in relation to high profile takeovers. The Panel notes with satisfaction that the vast majority of the feedback is positive. Our success ultimately depends on having the support of the Australian takeovers and investment community.

The Panel is constantly seeking to improve its performance and welcomes market feedback. In this regard, we note that the 'post-mortem' sessions held after matters are decided have proven a very useful forum for frank discussion.

The Panel accepts that some people will disagree with its decisions and is fully prepared to receive robust comments from parties and commentators. After the conclusion of proceedings, parties are welcome to make their views known in any form they please, subject to the confidentiality undertakings they give to the Panel.

The Panel noted some media criticism of its decision in relation to the AMP Shopping Centre Trust proceedings, suggesting that the Panel erred in interfering with property rights that elements of the media saw as sacrosanct. The Panel did, deliberately, alter existing property rights, as it is expressly given power to do. It was not a new event, although the first time in the specific property trust circumstances. While it acknowledges the views expressed in the specific media commentary, the Panel considers its decisions in the two AMP Shopping Centre Trust proceedings were sensible and proper. The reasons for its two decisions set out the bases for its decisions, and, I believe, disprove the arguments that have been run publicly against the decisions. Interested persons should read the two detailed sets of reasons on the Panel's website.

Another particular criticism of the Panel relates to its policies on media canvassing and on confidentiality.

First, to comply with section 127 of the ASIC Act, the Panel requires parties to give undertakings accepting an ongoing duty not to use or publish confidential information which is given to them by the Panel or other parties in Panel proceedings. Parties would be subject to similar obligations in equity, even if they did not give the undertakings. We believe that this practice encourages parties to be open with one another and with the Panel, which in turn expedites the resolution of disputes.

Second, the Panel requires parties to proceedings to undertake not to canvass issues relating to proceedings in the press during those proceedings. This is a policy the Panel reviews regularly. This policy exists because parties regularly inform the Panel that it will receive more open, less polarised submissions in a quicker timeframe if parties are not responding to media reports in the heat of the moment, or worrying about how their submissions might be presented in the media.

We are always disappointed when a party who has signed confidentiality undertakings and taken the benefit of the Panel process to argue its case rejects both the spirit and letter of its obligations, either by leaking confidential material or by publishing inappropriate material.

Where confidential information provided by parties appears to be reflected in media articles, we will seek to ascertain the identity of the person responsible. Where the Panel finds evidence showing that the leak has come from a specific party it will treat the offence seriously. To do otherwise would be to disadvantage the vast majority of parties who comply with their confidentiality undertakings.

International developments

In October 2002, the Panel hosted the inaugural International Takeovers Regulators' conference. It was attended by some of the world's most experienced and influential takeovers regulators. This was followed by two half-day fora for Australian and New Zealand takeovers practitioners, jointly hosted by the Panel with the Securities Institute of Australia, the University of Sydney Law School and the Centre for Corporate Law and Securities Regulation of the University of Melbourne.

Increasingly, takeovers and mergers involve cross-border offerings and require cross-border approval or exemptions. An international perspective is now essential for Mergers and Acquisitions (M&A) practitioners and regulators.

The fora were a unique opportunity for Australian takeovers practitioners to hear, and speak to, senior regulators from the US Securities and Exchange Commission, the London Takeover Panel, and similar agencies from other countries. Mr Peter Cameron, of Credit Suisse First Boston and also a member of the Australian Takeovers Panel, gave an Australian perspective on cross-border M&A at the fora.

Panel executive

In 2002-03 the Panel Executive has grown slightly to cater for the increased membership (even after the recent reduction in Panel member numbers, the Panel membership is higher than its original number), the international conference and the increased workload of proceedings before the Panel. The support team has settled at two full time staff and the professional team has increased to three lawyers (two secondees, one contract) as well as the Panel's Counsel and Director.

In our previous three Annual Reports, I have intentionally singled out the Panel's executive leadership team of Nigel Morris and George Durbridge for special mention. In thanking them, the emphasis has been on highlighting the special commitment made by each of them during the establishment phase of the rejuvenated Panel.

One could be forgiven for thinking that after three years, the workload may have settled down and the work of the leadership team become somewhat more routine. Nothing could be further from the truth.

As I have previously mentioned, the demands on the Panel for dispute resolution have been extremely high, especially during the latter half of 2002-03. But on top of that, we hosted the first ever International Takeovers Regulators' conference as well as committing ourselves to continue with an ambitious programme of guidance and ongoing member training. Whilst everyone involved with the Panel plays their part, by far the greatest weight falls on the shoulders of Nigel and George.

The 2003-04 year sees a different leadership team structure. George has assumed Nigel's position as the Panel's Director as Nigel takes a well

deserved 12 month leave of absence. Filling George's shoes as Panel Counsel will be Jeremy Kriewaldt from Blake Dawson Waldron, Sydney. Jeremy is a highly credentialled legal practitioner and I am confident he will continue the very high regard that the Panel's legal competency has enjoyed under George's stewardship.

Panel members

The decision of various Panel members not to seek reappointment, along with the expiry of various members' terms, provided the Government with an opportunity earlier this year to reassess the optimal size of the Panel. A key issue was whether Panel members had the opportunity to sit on a sufficient number of proceedings to maintain familiarity with the takeover provisions and Panel processes. Ultimately, the Government decided to reduce the size of the Panel from its peak of 49 members to a more appropriate level of 42. Having regard to the amount of dispute resolution and guidance work that we can normally expect to be asked of the Panel, this seems an appropriate level.

Looking ahead, it is likely that the Government will continue to encourage a certain amount of 'circulation' of the Panel membership. This will occur, in any event, as members resign or decide not to accept reappointment for a variety of reasons. In this context, I would like to reiterate the Panel's sincere appreciation for the contribution that those members who left the Panel during 2002-03 have made to the ongoing development of the Panel. They were each pioneers in the sense that they joined the Panel at a time when its new role was untried, untested and yet to be accepted by the Australian market.

The Panel's success depends on the skills and abilities of the senior professionals and business leaders who give so freely of their time to the Panel. I am extremely grateful for the commitment of all the Panel's members to make the Panel's peer review model work in the Australian corporate environment.

Panel comes of age

And so, in concluding, the year 2002-03 has seen the Panel move into a new phase. Most of the practitioners and business people who are familiar with the area are now comfortable with and indeed very supportive of the Panel's 'principles-based' regime. We believe that the market has accepted that this approach differs from other fora in style and substance.

The Panel does not, however, intend to rest on its laurels. The challenge is for the Panel to continue making fair, commercial decisions which raise standards of disclosure and conduct generally. The Panel will continue to work to deliver timely decisions and to ensure that the outcomes of takeovers are decided by shareholders, who have access to appropriate information.

The Panel's aims are to promote fairness and efficiency, thereby increasing investor confidence in a country with relatively high rates of direct shareholder participation. The Panel continues to focus strongly on ensuring consistency in its decisions, both in relation to its previous decisions and in relation to the fundamental principles on which it bases those decisions. On that basis, the Panel believes that while its decisions continue to break new ground, they are predictable in the sense that they consistently promote the Eggleston principles.

Overview

The Panel is the primary dispute resolution forum for takeovers. It has 42 part-time members and is supported by seven full-time executive staff members.

Members are appointed from Australia's takeovers, finance and business communities. A list of members is set out at page 31.

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 the Australian Securities and Investments Commission (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 on foot. Since that section was enacted, the Panel has resolved the majority of takeovers disputes; they were previously resolved in the civil jurisdiction of the Courts.

Unacceptable circumstances

The Panel's principal role is to decide whether 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 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 various Guidance Notes on the factors that it will take into account when considering whether unacceptable circumstances have occurred.

Review of ASIC and Panel decisions

The Panel may review certain ASIC decisions under section 655A of the Act to exempt persons 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 Panel's 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 Panel decisions at first instance. A sitting Panel reviewing the decision of another Panel at first instance is comprised of a fresh group of members. There may be only one review of a Panel decision at first instance.

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 2002-03, the Panel received 41 applications, compared to 26 in the previous period (see page 33 for a listing of individual matters). The Panel considers that the difference between the two years is largely explained by:

- the number of applications in the previous year being low, owing to an economy-wide slowdown in merger activity that financial year; and
- a large number of applications in 2002-03 being made in relation to one takeover bid.

Development

Consistent decision making is a primary yardstick of the Panel's success. It is a goal which Panel members take very seriously and commit significant time and resources towards achieving.

One way in which consistency is maintained is by holding regular Panel workshop days which all members attend. In 2002-03, the Panel held seven internal workshop days throughout Australia, two in each of Sydney and Melbourne, and one in each of Brisbane, Adelaide and Perth. The purpose of these workshops is for Panel members to discuss, amongst other things, current and past proceedings, post-mortems, published decisions, Guidance Notes and future projects. They also discuss the general approach that the Panel tends to favour in relation to particular issues.

Post-mortems

As part of its commitment to learning, improvement, and maintaining positive relations with its major stakeholders, the Panel conducts post-mortem sessions with parties to each matter. They are held once the

relevant application has been settled (and usually once the takeover has finished).

The Panel believes that these sessions help it develop processes that deliver fair and commercial proceedings within the very limited time frames in which it must work. It also builds the confidence of market participants in the Panel as an institution.

Detailed feedback gathered from these sessions is made available to the relevant sitting Panels. Broader discussion of the issues raised in post-mortems takes place 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 on the operation of the takeover provisions in Chapter 6 of the Act. In part this is done through the Panel's decision making, reflected in its reasons. However, the Panel believes it should sometimes be more pro-active and state its views on particular issues in more general terms.

The Panel released several Guidance Notes this year to provide direction to market participants on the way the Panel proposes to approach aspects of its work. Guidance notes released in 2002-03 analysed the following issues:

- Broker handling fees;
- Frustrating action during a bid; and
- Conflicts of interest.

The Panel is currently developing several guidance projects, including in connection with the following issues:

- Funding arrangements for takeovers; and
- Mergers of managed investments schemes.

The Panel has also commenced internal consideration of additional issues, with a view to possible development of Guidance Notes.

The Panel's rationale in releasing Guidance Notes is, first, to give the market direction in advance of it making decisions on individual transactions and, second, to consolidate related decisions and set out the general issues which

can be drawn from the specific facts of those decisions. This is consistent with the Panel's mandate to provide greater certainty and efficiency in the market for control of Australian companies. It also helps individual Panel members, sitting as they do in groups of three, giving them the benefit of the views and support of the wider Panel. We believe it is also one of the ways we maintain consistency in Panel decisions.

The Panel seeks to develop its Guidance Notes in consultation with the Department of Treasury (Treasury) and ASIC. It also publishes them for public consultation prior to finalising them. The Panel actively seeks input from relevant industry bodies and interest groups

The Panel has recently adopted the practice of publishing on its website material comments received from the public consultation process, together with its response to these comments. This is consistent with best practice around the world on consultation procedures.

Liaison

The Panel regularly holds discussions with the major regulators in the takeovers area to ensure that the Panel's regulatory role fits appropriately with theirs. In August 2001 the Panel entered into a Memorandum of Understanding with ASIC to promote co-operation between the two bodies. The Panel also conducts regular discussions with the Australian Stock Exchange to work together in what are frequently overlapping circumstances.

This year, the Panel has continued its market liaison initiatives by attending and speaking at a wide range of industry meetings, education sessions and seminars. These meetings facilitate feedback from key stakeholders on a regular basis on the effectiveness of the Panel's Guidance Notes and its broader operations.

The Panel also maintains contact with organisations such as the Law Council of Australia, the Australian Institute of Company Directors and the Securities Institute of Australia.

Website

The Panel's website is a major means by which the Panel communicates its decisions, Guidance Notes and general presence to the takeovers community. The Panel uses 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 (other than secondees) are employees of Treasury. Consequently, the Panel benefits from many 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. All members are currently part-time. They are nominated by the Minister on the basis of their knowledge or experience in one or more of the following professions: business, administration of companies, financial markets, law, institutional investors, 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 2002-03, there was a net contraction of three in the Panel's membership, taking its membership to 42 (see page 31).

Four new members were appointed to the Panel in 2002-03. They were: Michael Ashforth, Director, Gresham Partners, Perth; Andrew Knox, Partner, Allens Arthur Robison, Brisbane; Andrew Lumsden, Partner, Corrs Chambers Westgarth, Sydney; and Peter Scott, Managing Director, Investment Banking Division, UBS Warburg, Melbourne.

The following persons completed their membership with the Panel in 2002-03: Dr Annabelle Bennett SC; Mr Michael Burgess; Ms Maria Manning; Ms Maxine Rich; Ms Fiona Roche; Mr Trevor Rowe; and Mr Peter Young. We thank them for the extensive contributions of their experience, insight and time.

Executive

The Panel Executive consists of seven full-time staff based in Melbourne who assist and support the Panel members.

An important role for the Executive is to liaise with market practitioners. The Executive also maintains active communications with ASIC's takeovers staff. The Executive's work involves, amongst other things, 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.

Corporate governance

President

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

- liaising with the Parliamentary Secretary to 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 2003, the members of the Executive team were:

- Mr Nigel Morris, Director;
- Mr George Durbridge, Counsel;
- Mr Nick Ryan, Lawyer (secondment from Allens Arthur Robinson, Melbourne);
- Mr Allon Ledder, Lawyer (secondment from Freehills, Melbourne);
- Ms Teresa Fels, Lawyer;
- Ms Silvia Hajas, 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.

Planning and review

The Executive holds 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 Treasury, its operating result is consolidated into Treasury'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.

The financial information set out in this Annual Report has been compiled by KPMG in accordance with APS 'Statement on Compilation of Financial Reports'. The financial information constitutes a special purpose financial report, being the schedule of revenues and expenses of the Takeovers Panel for the financial year ended 30 June 2003.

The information has been compiled to assist the Panel with reporting under Section 183 of the ASIC Act, and has not been audited. The Directors of the Takeovers Panel are solely responsible for the information contained in the special purpose financial report.

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 2002-03, 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, being: dispute resolution (including review of decisions); and 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

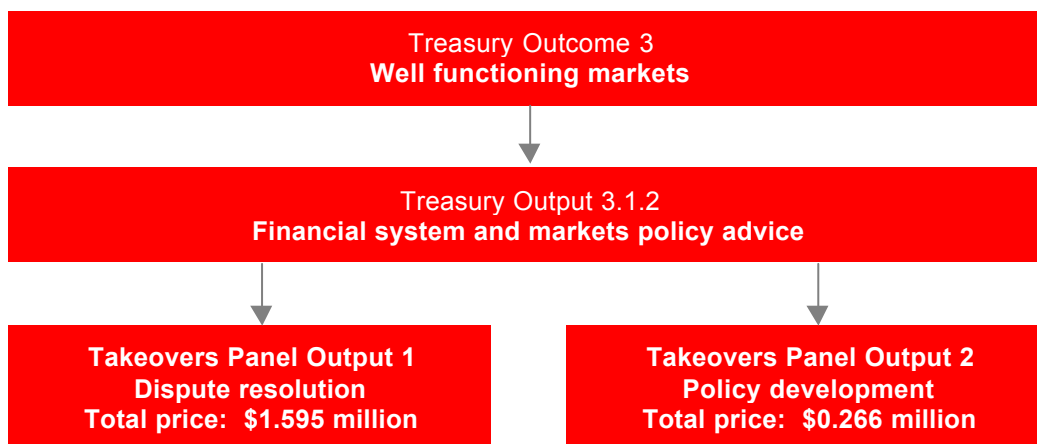


Table 1: Resources for outcomes corporate governance and accounting

	Budget Estimate	Actual	Budget Estimate
	2002-03 (\$'000)	2002-03 (\$'000)	2003-04 (\$'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	1,778	1,798	1,798
Total revenue from other sources	0	21	0
Total price of agency outputs	1,813	1,861	2,030
Total estimated resourcing for outcome 1	1,511	1,595	1,740
Total estimated resourcing for outcome 2	302	266	290
		2002-03	2003-04
Average staffing levels (number)		7	7

Performance information

Treasury output 3.1.2 ¾ 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.

2002-03 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 has contributed to the certainty of market participants by providing guidance to supplement and clarify the operation of the Corporations Act and the ASIC Act.

The Panel's procedural rules have contributed to the fair, timely, inexpensive and certain resolution of Panel proceedings.

Evaluations

The Panel conducts post-mortems with parties involved in its proceedings, after the relevant dispute has been resolved. Prior to each post-mortem meeting, the Panel provides participants with a pro-forma questionnaire designed to elicit feedback in the post-mortem on a range of issues which aim to cover all material aspects of its operations and functions. These reviews ensure that the Panel receives frank, direct and timely feedback on the process and content of its proceedings.

Financial information

**Table 2: Schedule of revenues and expenditures unaudited ^{3/4}
for the year ended 30 June 2003**

	\$
Appropriated revenues	
Revenues from Government	1,798,000
Revenue – other	20,920
Total appropriated and other revenues	1,818,920
Employee expenses	
Salaries	656,361
Employer superannuation	76,975
Members' annual retainer and sitting fees	471,818
Total employee expenses	1,205,154
Operating expenses	
Printing	7,162
Travel	158,235
Official entertainment	24,265
Consultants	15,751
Advertising	27,761
Legal	145,452
Depreciation	38,103
Telephone charges	39,288
Rent	109,488
Other expenses	89,909
Total operating expenses	655,414
Total expenses incurred to 30 June 2003	1,860,568
Balance of allocation after operating expenditure	(41,649)

Notes to the schedule of revenue and expenditures for the year ended 30 June 2003

1. 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 2003. The financial information has been prepared on an accruals basis and on the basis of historical costs.

(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 \$1,798,000 classified as revenue.

Other revenue

Other revenue includes application fees for panel hearings. Application fees are recognised when they are received.

(c) Expenses

Expenses are recognised as they accrue.

The Panel's expenses for 2002-2003 are also recorded in Treasury's audited financial statements for the period 01/07/2002 — 30/06/2003.

(d) Balance of allocation after operating expenditure

The balance of allocation after operating expenditure for the period 01/07/2002 — 30/06/2003 was a deficit of \$41,649. This was within the budgeted \$149,953 deficit approved by Treasury.

(e) Salaries and members annual and 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.

(f) 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. There were no assets with a value greater than \$1,000 acquired during the financial year ended 30 June 2003.

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.

(g) 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 1977* (ADJR) 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 of 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. The Panel's review of decisions by ASIC are not subject to review by a Review Panel, as they are themselves considered to constitute a review process.

In addition, the Panel may voluntarily refer questions of law to the Court and the Court may refer matters to the Panel (see sections 659A and 657EB of the Act).

Courts

The Panel was not subject to any judicial review during 2002-03.

The Panel referred one issue to Court under section 659A of the Act. This was in connection with the matter of Colonial First State Property Fund (No. 03). The application was made in the context of a takeover contest effectively between two parties seeking to acquire control of various managed investment schemes. One party applied to the Panel alleging that one of the bidders did not have the power to issue certain stapled securities which had been offered as consideration under its bid. The Panel decided that this issue was central to whether unacceptable circumstances existed. The Panel considered that the question was primarily one of trust law, which is outside the Panel's expertise and jurisdiction. It decided that the issue was best resolved by a court.

Government scrutiny

The Panel was not subject to any reports by the ANAO or the Parliamentary Committees in 2002-03.

Ombudsman

The Panel was not subject to any reports by the Commonwealth Ombudsman in 2002-03.

Management of human resources

At 30 June 2003, the Panel Executive's staff consisted of four 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 two secondees whose secondment periods finished: David Noakes, Allens Arthur Robinson and Kristen Jung, Minter Ellison, both from Sydney. 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	
APS2		1	1
APS5		1	1
SEB1	1		1
SEB2	1		1
Total	2	2	4

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 AWAs and associated performance based bonuses for the Panel staff were dealt with in February 2003, which is the annual performance appraisal cycle.

Performance-based bonuses were paid to SES staff during 2002-03 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 and presentation skills.

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

There were no performance loadings paid to non-SES staff.

Workplace diversity

At 30 June 2003, the Panel Executive consisted of 7 staff members, of which 3 were female and 4 male. One female staff member is a senior lawyer 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	1	1			
Total	3*	2			

* As at 30 June 2003.

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	42	19	4	0

Industrial democracy

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

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

Occupational health and safety

As employees of Treasury, Panel staff and members have the benefit of Treasury's occupational health and safety 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 law firms to provide specialist advice and representation for various matters conducted. They are as follows:

- Clayton Utz — legal advice on an application to the Panel;
- Barrister — legal advice on an application to the Panel;
- Henry Davis York — legal advice on an application to the Panel;
- Freehills — legal advice and services to the Panel; and
- Malleson Stephen Jaques — administrative law advice and representation in relation to an application before the Panel.

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.

The Panel has also engaged a number of external consultants and a contractor to provide services for specific operational activities, including:

- KPMG — prepare the financial information for the Panel's annual report;
- United KFPW — assist with the renewal of the lease of the Panel's premises;
- Campbell McComas — speaker for the International Takeovers Regulators Conference; and
- Hamilton James & Bruce — temporary replacement for permanent staff member on extended leave.

The aggregate amount spent on consultancy and legal services is \$169,900.

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 2002-03. 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 Jeremy Wickens 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 2002-03.

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 *Australian Securities Commission Act 1989*.

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 decisions on its website and invites members of the public to join its mailing list to be advised of its publications.

Given the commercially sensitive nature of matters being considered, and the time pressures imposed on the Panel by relevant legislation, proceedings are generally conducted in private. However, the Panel has the power to invite submissions from any person, to accept submissions made by interested persons who are not formal parties to specific proceedings, and to call 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, evidence and submissions relating to proceedings;
- 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;
- resources (i.e. internet links to: Australian legislation and regulations; relevant Parliamentary reports; international regulators; Australian corporate law websites and relevant law reform projects).

The documents accessible to the public for viewing are the Panel's decisions, press releases, Guidance Notes, rules for proceedings, takeover resources and annual reports.

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.

Freedom of information applications and initial contact points

Freedom of information inquiries should be directed to:

George Durbridge
Director, Takeovers Panel
Level 47, 80 Collins Street
MELBOURNE VIC 3000
Ph: 03-9655-3553, Fax: 03-9655-3511

The Panel follows the Treasury's guidelines in responding to freedom of information inquiries.

Freedom of information activity in 2002-03

The Panel did not receive any applications for access to documents under the *Freedom of Information Act 1982* in 2002-03.

Regulatory impact statements

The Panel did not submit any Regulatory Impact Statements in 2002-03.

Panel members

Members of the Panel on 1 July 2002 were:

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

Members appointed to the Panel in 2002-03 were:

Mr Michael Ashforth	Mr Andrew Lumden
Mr Andrew Knox	Mr Peter Scott

Members who ceased being on the Panel in 2002-03 were:

Dr Annabelle Bennett SC	Ms Maxine Rich
Mr Michael Burgess	Ms Fiona Roche
Ms Maria Manning	Mr Trevor Rowe
	Mr Peter Young

Guidance note sub-committee memberships

Table 6: Sub-committees

Guidance Note	Sub-Committee Members	
	Panel Member	External Member
Frustrating Action	Robyn Ahern Tony Burgess Kathleen Farrell Irene Lee Marian Micalizzi	Nil
Broker Handling Fees	Carol Buys Braddon Jolley Simon Mordant	Paul Masi (Merrill Lynch) Bruce Skelton (Ord Minnett Limited)
Conflicts of Interest	Alison Lansley Alice McCleary Ian Ramsay	Nil
Funding	Braddon Jolley Tro Kortian Kevin McCann	Trevor Rowe (Salomon Smith Barney) Rod Halstead (Clayton Utz) Jason Lee (JP Morgan)
Trust Schemes	Alison Lansley Simon Mordant Robyn Pak-Poy	Greg Paramor (James Fielding Group) Maxine Rich (Consultant)

Panel applications

Table 7: Applications received by the Panel in 2002-03

Number	Section	Matter Name	Decision	Decision Date
29/03	657A&D	PowerTel Limited	Declined to conduct proceedings, disclosures made	29/06/2003
28/03	657A	Trysoft Limited	Declaration and final orders	03/07/2003
27/03	657AD&E	Cobra Resources	Declaration and orders	23/05/2003
26/03	657EA	AMP Shopping Centre Trust 02	Declined to vary orders	26/05/2003
25/03	657AD&E	Aliquot	Decline to conduct proceedings	02/05/2003
24/03	657AD&E	Sirtex Medical	Declined application	14/05/2003
23/03	657EA	Anaconda 19	Declaration and orders	12/04/2003
22/03	657A&D, 657EB	AMP Shopping Centre Trust	Declaration and orders	13/05/2003
21/03	657EA	Anaconda 18	Declaration and orders	10/04/2003
20/03	657A	Austar	Declined application	18/03/2003
19/03	657A	AHC Limited	Withdrawn	
18/03	657AD&E	Anaconda 16/17	Declaration and orders	12/03/2003
17/03	657E	Anaconda 15	Declined application	09/04/2003
16/03	657A&D	Goodman 03	Declined to conduct proceedings	20/02/2003
15/03	657E	Anaconda 14	Withdrawn	
14/03	Variation of previous undertaking	Anaconda 13	Grant extension of time	13/02/2003
13/03	656A	Anaconda 12	Affirmed ASIC decision	13/02/2003
12/03	657E	Anaconda 11	Declined	
11/03	657E	Anaconda 10	Declined application	12/02/2003
10/03	657EA	Anaconda 09	Affirmed Panel decision	12/02/2003
09/03	657A,D&E	Anaconda 08	Declined application	11/02/2003
08/03	657EA	Anaconda 07	Declined to conduct proceedings	07/02/2003

Table 7: Applications received by the Panel in 2002-03 (continued)

Number	Section	Matter Name	Decision	Decision Date
08/03	657EA	Anaconda 06	Affirmed Panel decision	07/02/2003
07/03	657A,D&E	Anaconda 05	Declined application	06/02/2003
06/03	657AD&E	Anaconda 04	Set aside ASIC decision	06/02/2003
05/03	657A,D&E	Anaconda 03	Declined application	06/02/2003
04/03	657A&D	Anaconda 02	Declined application	06/02/2003
03/03	657E	Anaconda 01	Withdrawn	31/01/2003
02/03	657A,D&E	Goodman 02	Declined application, with undertaking	06/02/2003
01/03	657A,D&E	Phosphate	Declined application, with undertaking	03/02/2003
22/02	657AD&E	Goodman 01	Declined application, with undertaking	10/01/2003
21/02	657AD&E	SALD	Declined application, with undertaking	23/12/2002
20/02	657A&D	Equity_1	Declined to conduct proceedings	11/12/2002
19/02	657EA	Anzoil 02	Varied Panel decision	19/12/2002
18/02	657D	Anzoil 01	Declaration and orders with variation	21/11/2002
17/02	657AD&E	Winepros	Declined application	29/10/2002
16/02	657AD&E	Colonial 03	Interim orders	25/09/2002
15/02	657E	Colonial 02	Declined application	23/09/2002
14/02	657AD&E	Colonial 01	Declined application, with undertaking	12/09/2002
12/02	657AD&E	Online Advantage	Declined application, with undertaking	10/09/2002
13/02	657E&D	AurionGold	Declined to conduct proceedings on basis of undertaking	06/08/2002

Abbreviations and acronyms

Act	Corporations Act
ADJR	<i>Administrative Decisions (Judicial Review) Act 1977</i>
ANAO	Australian National Audit Office
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
AWA	Australian Workplace Agreement
CLERP	Corporate Law Economic Reform Program
EEO	Equal Employment Opportunity
M&A	Mergers and Acquisitions
OH&S	Occupational Health and Safety
SEB	Senior Executive Band
SES	Senior Executive Service
UK	United Kingdom

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