

Takeovers Panel

**Annual Report
2003-2004**

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23 September, 2004

The Hon Peter Costello, MP
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer

ANNUAL REPORT 2003-04

I have the honour to submit to you, in accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, the 2003-04 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

A handwritten signature in black ink that reads 'Simon McKeon'.

Simon McKeon
President

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INTRODUCTION AND GUIDE TO THE REPORT

The Takeovers Panel was established in January 1991, with material changes to its structure and role in March 2000. 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, 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

2003-04 was a quieter year for the Panel than 2002-03, and the Panel took the opportunity to consolidate its policies and practices. The Panel received 30 applications in 2003-04 (on average, a new matter every fortnight), compared with 41 in 2002-03, and 26 in 2001-02. The volume of applications is consistent with the level in 2001-02 and with 2002-03, once the anomalously high level of activity concerned with Anaconda Nickel Ltd is excluded. As in the previous two years, about half of the applications related to small companies, and half to large companies.

There were two applications for review of the Australian Securities and Investments Commission (ASIC) decisions (one of which was varied) and two applications to review Panel decisions (again, one of which was varied).

Importantly, one-third of all applications ended without a full process being conducted. Several applications were withdrawn, after the parties resolved their differences to the Panel's satisfaction. In most of these cases, however, the Panel declined to conduct proceedings, because the application did not relate to unacceptable circumstances for the purposes of Part 6.10 of the Act. Three related to the actions of external administrators of companies, and others to elections of directors, none of which alleged acquisitions of shares or associations which would have had consequences under Chapter 6. The fact that they were made is evidence that the Panel is perceived as an attractive forum.

Less than half of the applications made during the year related to takeover bids. However, many of the others related to other transactions potentially affecting control, or to the disclosure of substantial interests in companies. Unlike previous years, there were several applications relating to changes in voting power resulting from rights issues, leading to the first consideration in many years of when it is appropriate to rely on the rights issue exception to section 606.

Issues covered by decisions

A number of matters involved (as a primary or a secondary focus) failures to disclose interests in voting shares, as required by the substantial holder provisions or the tracing notice provisions of Chapter 6C. Most of these involved technical deficiencies which were remedied at the Panel's request, but in one matter 10 per cent of the ordinary shares in *Village Roadshow Ltd*

were vested in and sold by ASIC, for \$40 million, when the beneficial owners declined to answer tracing notices.

This decision seems to have had an immediate effect. When an application was made later in the year concerning failure to disclose beneficial ownership of 42 per cent of the shares in *Gribbles Group Ltd*, the relevant substantial holder notices were lodged before proceedings were under way.

In the course of *Village Roadshow*, the Panel received a submission that it should take a similar approach to a large holding of non-voting preference shares, which it rejected as contrary to the letter and policy of Chapters 6 and 6C of the Act.

Several matters raised issues about whether bidders and other people acquiring substantial interests had adequately funded their acquisitions (including increases in bid prices) and adequately disclosed their bid funding arrangements. These issues were dealt with in accordance with the Panel's *Guidance Note 14*, which covered them adequately.

Several matters called for the application in novel situations of the truth in takeovers policy in ASIC's Policy Statement 25. The Panel has consistently supported this policy. In *BreakFree 04* and *BreakFree 04(R)*, the Panel declined to require shareholders in a target company to act consistently with a statement regarding their intentions which the target had made without their authority and which they were not in a position to correct. In *Prudential Investment Company of Australia*, the Panel held that where a bidder had (in compliance with a condition of an ASIC modification) said in its bidder's statement that a defeating condition in the relevant offer could not be waived, without another ASIC modification, the truth in takeovers policy did not prevent the bidder from applying for the other modification.

Several matters during the year clarified the disclosure requirements in relation to takeover bids and under the related prospectus provisions of the Act. The prospectus provisions are incorporated into Chapter 6 by paragraph 636(1)(g). They underpin other provisions of Chapter 6 (such as the underwriting, rights issue and prospectus exceptions in items 10-12 of section 611) and are based on very similar concepts to the various general disclosure tests in Chapter 6 and the informed decision and informed market policies of section 602.

Novus Petroleum also raised, though in a less drastic form than *AMP Shopping Centre Trust*, the need for listed entities to disclose arrangements which may impede takeover bids.

Finally, in *PowerTel 02* and *PowerTel 03*, the Panel decisively rejected strong submissions calling for it to adopt a restrictive reading of the provisions relating to equal participation in benefits by offeree shareholders and to require shareholder approval for a takeover bid, notwithstanding that the bid complied with the requirements of Chapter 6. Whatever the theoretical attractions of the submissions, in practice they called for a narrowing of the options that Chapter 6 allows to bidders, without any offsetting improvement in the treatment of offeree shareholders.

Policy development

The Panel has concluded several policy development projects in 2003-04, and has published the following new Guidance Notes:

GN 14 Funding Arrangements for Takeover Bids

This Guidance Note sets out what arrangements a bidder needs to make to establish a reasonable basis for believing that it will be able to pay for acceptances under a bid, including the interactions between funding arrangements and conditions of both the bid and the funding, waiver of conditions and price increases.

GN 15 Listed Trust and Managed Investment Scheme Mergers

This Guidance Note deals with takeovers of listed managed investment schemes by processes analogous to schemes of arrangement. When such a scheme came before the Panel in relation to the Colonial First State Property Trust, it was seriously debated whether the scheme was legally possible or unacceptable in principle, because the Corporations Act contained no specifically applicable process for such a scheme.

GN 16 Correction of Takeover Documents

This sets out principles to guide the processes and composition of documents to be used in cases where the Panel decides that further disclosure is required in relation to a takeover bid, which have otherwise been arranged *ad hoc* on each occasion.

Each new Guidance Note was examined by Panel members before being issued. Guidance Notes 14 and 15 were developed by committees comprising Panel members and people who are knowledgeable about the subject-matter of the Guidance Note, and who are not members of the Panel. We are grateful for the contributions of Rod Halstead, Jason Lee and

Greg Paramor, and of former members of the Panel, Maxine Rich and Trevor Rowe.

The Panel also undertook a revision of all of its Guidance Notes more than two years old, to ensure that they reflect current Panel thinking and make them easier to use.¹

Guidance Note 7 on break fees and other lock-up devices is being substantially revised, with a view to publishing an exposure draft for comment and then re-issuing the Guidance Note in final form later in 2004.

Other than the revision of Guidance Note 7, the Panel had no announced but unfinished policy projects as at the end of 2003-04.

The Panel's Procedural Rules make detailed provision for the conduct of Panel proceedings, such as the confidentiality obligations assumed by each party to each other party and the form and distribution of communications between parties and between them and the Panel during proceedings. Those rules were revised during 2003-04 to include more flexible procedures. For instance, the recurring difficulty of devising fair but effective procedures to handle new issues emerging in existing proceedings was addressed. The Panel has also made provision for an additional application to vary an existing application. The existing rules were also clarified.

Panel executive

During most of the year 2003-04, Nigel Morris, the Panel's permanent Director took extended leave. In his absence, George Durbridge acted as Director and Jeremy Kriewaldt, previously of Blake Dawson Waldron in Sydney, joined the Executive for a year to fill George's permanent role as Counsel.

George, as expected, handled the change in his role exceedingly well, and as a result, the Panel's Executive continued to deliver excellent results. We are very grateful to George for being willing to take on the new role for a year and we are very pleased, but far from surprised, with the performance of the Panel Executive under George's very capable direction.

¹ Revised versions of Guidance Notes 2-6, 8, 9 and 10 were issued on 20 July 2004.

The Panel is greatly in Jeremy's debt for the energy, application and clear perception of the Panel's function and needs that he brought to the role. Although the year was a moderately busy one, not only were matters dealt with, and reasons issued, on average more quickly than before, but time was found to revise the Panel's Rules and most of its policy documents and to improve the presentation of its previously published reasons. Much of the credit for those achievements is due to Jeremy, whose contribution has left the Panel's practices and policies more cohesive and systematic.

During the year, the Executive also included a succession of secondees from major law firms: Nick Ryan from Allens Arthur Robinson, Kristan Butler from McCullough Robertson, Lawrence Kim from Blake Dawson Waldron and Allon Ledder and Simon Reed from Freehills. In addition, Teresa Fels (formerly of Freehills) joined the Executive on a one-year contract as an economist and lawyer. We believe that the secondees (and their firms) gain from the secondments, but we know that we depend greatly on them. They have ably and energetically supported George, Jeremy and the Panel members, and we greatly appreciate their contributions and the willingness of their firms to provide them.

Since the establishment of a permanent Executive in 1999, the Panel's office has been managed with great efficiency by Silvia Hajas, who left the Panel shortly after the conclusion of the year 2003-04. Silvia has devoted a great deal of time, particularly over 2003-04, to obtaining and making available on the Panel's website a unique collection of source material on Australian corporate law, containing many items which are now hard to obtain from any other source. We thank Silvia for her contribution to the Panel.

Panel members

The terms of nearly half of the members of the Panel expired this year, and most of those members accepted re-appointment for a further three years. Several members did not seek re-appointment, allowing the Government to appoint several new members, some with skills and experience which balanced out the talents available on the Panel, without increasing the overall size of the Panel.

We thank the retiring members of the Panel, each of whom has valuable skills and experience and had contributed materially to the Panel.

The year ahead

As in previous years, the Panel will strive to give predictable decisions in 2004-05. Predictability assists market participants to arrange their affairs to avoid creating unacceptable circumstances, and prevents both unnecessary applications and regulation by ambush. The Panel assists this by providing consistent, clearly explained decisions and by supporting them with Guidance Notes.

In 2004-05, the scope for uncertainty will be further reduced due to the range of new issues addressed, and the refreshing of the Panel's policy documents in 2003-04. It will become increasingly possible for the market to explain or predict one Panel decision by reference to another, and increasingly necessary for the Panel to explain cases where differences in relevant facts have led to approaches which might appear different.

However, the precedents the Panel sets are limited to the issues raised by the matters brought before it. Even after dealing with some 130 matters since 2000, matters in 2004-05 will continue to raise issues on which the Panel has set no precedents. The market now has, however, a clearer understanding of the well tried processes the Panel will follow in dealing with those issues and a reasonable appreciation of its approach to their substance.

Although 2003-04 was a little quieter, closer to our long run average, the year 2004-05 has started fairly briskly. The Panel has already considered 12 applications this year (including two which were current on 1 July 2004), which approximates to a new application each week. In addition, the Panel has published its revised Guidance Notes on Unacceptable Circumstances (GN 01), Lock-Up Devices (GN 07) and Conflicts of Interest (GN 11).

Although the Panel has published decisions covering large areas of its jurisdiction, the scope of applications to the Panel continues to broaden and Panel members continue to be asked new and difficult questions. The performance of the Panel, its members and its staff, however, reassure me that the Panel will continue to deal with its new and difficult questions in the coming year in a manner which will assist the market and add to its confidence in the Panel and its decisions.

OVERVIEW

The Panel is the primary dispute resolution forum for takeovers. It has 43 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 on page 30.

Role and functions

The Panel is the main forum for resolving disputes about takeovers bids during the life of those bids (Section 659AA of the Act). In doing so, it may make declarations in relation to circumstances which frustrate the policies of, or contravene, the takeovers code in Chapters 6, 6A, 6B and 6C of the Act, and orders to remedy those circumstances.

In addition, the Panel may be asked to review decisions by the Australian Securities and Investments Commission (ASIC) in relation to applications for modifications of, or exemptions from, Chapter 6 of the Act.

The Panel also has a significant guidance development function, through its decisions and 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. The Panel must take into consideration the policy principles set out in section 602 of the Act (the four original Eggleston Principles and the fifth principle of an efficient, competitive and informed market) as well as the provisions of the takeovers code and 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 publishes Guidance Notes on factors that it will take into account when considering whether unacceptable circumstances have occurred. These are available on the Panel's web site <http://www.takeovers.gov.au>.

Review of ASIC and Panel decisions

The Panel may review certain ASIC decisions under section 655A of the Act whether or not to exempt persons from, or modify, Chapter 6 of the Act. It may also review decisions by ASIC under section 673 of the Act whether or not 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 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 2003-04, the Panel received 30 applications, compared to 41 in the previous period (see page 32 for a listing of individual matters). The Panel considers that the difference between the two years is largely explained by 19 applications having been made in relation to one takeover bid during 2002-03.

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 workshops which all members are requested to attend. In 2003-04, the Panel held six internal workshop days throughout Australia, two in each of Sydney and Melbourne, and one in each of Brisbane and Perth. The purpose of these workshops is for Panel members to discuss the operation of the Panel. This includes amongst other things, current and past proceedings, matter reviews, published decisions, Guidance Notes and future projects. Panel members also discuss the general approach of the Panel in relation to particular issues and feedback from the market as to the Panel's effectiveness.

Matter reviews

As part of its commitment to learning, improvement, and maintaining positive relations with its major stakeholders, the Panel surveys the parties to each matter (via a questionnaire) and invites them to attend a matter review, once the matter is over (and usually once the takeover has finished).

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

Detailed feedback gathered from these surveys and sessions is made available to the relevant sitting Panels. Broader discussion of the issues raised in matter reviews takes place at Panel days. We thank the parties involved for participating in the matter review 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 2003-04 were:

- funding arrangements in takeovers;
- trust schemes; and
- correction of takeover documents.

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 the Treasury (Treasury) and ASIC. It also publishes drafts for public consultation prior to finalising them. The Panel actively seeks input from relevant industry bodies and interest groups.

The Panel has also commenced a review program for all its Guidance Notes after a period of market use. In 2003-04, it reviewed eight of its first 10 Guidance Notes, which it had published between 2000 and 2002.

The Panel also publishes 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 liaises with the major regulators in the takeovers area to ensure that we have effective working relations and that the Panel's regulatory role fits appropriately with theirs. The Panel has a Memorandum of Understanding with ASIC to promote co-operation between the two bodies, including holding regular discussions. The Panel also conducts discussions with the Australian Stock Exchange, as required, 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 <http://www.takeovers.gov.au> 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. It also includes a unique collection of source material on Australian corporate law since 1980.

Announcements and media releases

Panel decisions about listed companies and trusts are also first published to the Companies Announcements Platform of Australian Stock Exchange.

Other announcements, including decisions about unlisted companies, are made by media release.

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.

At 30 June 2004, the Panel had a membership of 43 (see page 30).

Six new members were appointed to the Panel in 2003-04. They were: Mr Mark Paganin, Partner, Clayton Utz, Perth; Mr Simon Withers, Private Investor, Perth; Mr Norman O'Bryan SC, Barrister, Melbourne; Mr Guy Alexander, Partner, Allens Arthur Robinson, Sydney; Mr Byron Koster, Partner, Blake Dawson Waldron, Sydney; and Mr Graham Bradley, Company Director, Sydney.

The following persons completed their membership with the Panel in 2003-04: Ms Luise Elsing; Mr Anthony Burgess; Ms Ilana Atlas; Mr Scott Reid; and Dr Tro Kortian. We thank them for their 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 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, Mr Simon Mordant and Professor Ian Ramsay, 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 2004, the members of the Executive team were:

- Mr George Durbridge, Director;
- Mr Jeremy Kriewaldt, Counsel;
- Mr Simon Reed, Lawyer (secondment from Freehills, Perth);
- Mr Lawrence Kim, Lawyer (secondment from Blake Dawson Waldron, Melbourne);
- Ms Silvia Hajas, Manager;
- Ms Rebecca Story, Office Coordinator; and
- Ms Rebecca Banhelyi, 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.

Finance committee

The Panel President has appointed a Finance Committee, made up of four members of the Panel, who receive copies of the monthly report and the Panel's budget and meet periodically with the President to review the reports and the Panel's finances.

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 2004.

The information has been compiled to assist the Panel with reporting under Section 183 of the ASIC Act, and has not been audited. The Panel is 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 2003-04, 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 contributes is Treasury Output 3.1.2: *Financial system and markets policy advice*.

Chart 1: Outcome and output flowchart

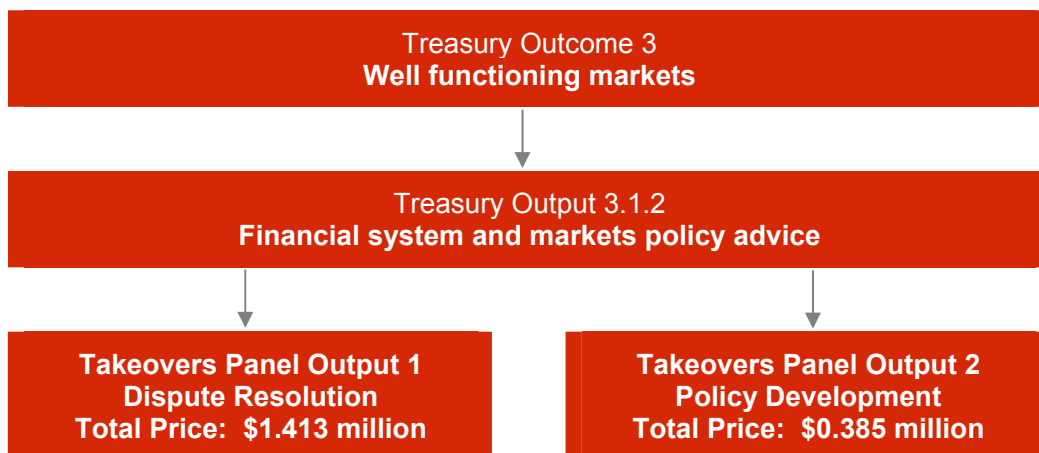


Table 1: Resources for outcomes, corporate governance and accounting

	Budget estimate 2003-04 (\$'000)	Actual 2003-04 (\$'000)	Budget estimate 2004-05 (\$'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	1,798	1,798	1,798
Total revenue from other sources	0	21	0
Total price of agency outputs	2,030	1,861	1,798
Total estimated resourcing for outcome 1	1,740	1,595	1,413
Total estimated resourcing for outcome 2	290	266	385
		2003-04	2004-05
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.

2003-04 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 invites each party to a matter to a matter review, after the relevant dispute has been resolved. Whether or not parties accept the invitation to a matter review meeting, the Panel provides participants with a pro-forma questionnaire designed to elicit feedback in the matter review on a range of issues which aim to cover all material aspects of its operations and functions. These reviews seek to ensure that the Panel receives frank, direct and timely feedback on the process and content of its proceedings and decisions.

Financial information

**Table 2: Schedule of revenues and expenditures unaudited —
for the year ended 30 June 2004**

	\$
Appropriated revenues	
Revenues from Government	1,798,000
Revenue — other	20,407
Total appropriated and other revenues	1,818,407
Employee expenses	
Salaries	792,904
Employer superannuation	105,666
Members' annual retainer and sitting fees	479,611
Total employee expenses	1,378,181
Operating expenses	
Printing	6,087
Travel	119,978
Official entertainment	6,262
Consultants	2,600
Advertising	3,043
Legal	55,937
Depreciation	22,223
Telephone charges	26,406
Rent	145,140
Other expenses	63,157
Total operating expenses	450,833
Total expenses incurred to 30 June 2004	1,829,014
Balance of allocation after operating expenditure	(10,607)

Notes to the schedule of revenue and expenditures for the year ended 30 June 2004

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 2004. 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 Commonwealth Budget (Budget Paper No. 2, Part 2 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 2003-2004 are also recorded in Treasury's audited financial statements for the period 01/07/2003 to 30/06/2004.

(d) Balance of allocation after operating expenditure

The balance of allocation after operating expenditure for the period 01/07/2003 to 30/06/2004 was a deficit of \$10,607. This deficit was 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 legal 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 2004.

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 2003-04, and did not refer any issues to the Court under section 659A of the Act.

Government scrutiny

The Panel was not subject to any reports by the ANAO or the Parliamentary Committees in 2003-04.

Ombudsman

The Panel was not subject to any reports by the Commonwealth Ombudsman in 2003-04.

Management of human resources

At 30 June 2004, 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 three secondees whose secondment periods finished: Mr Allon Ledder, Freehills, Melbourne; Mr Nick Ryan, Allens Arthur Robinson, Melbourne; and Ms Kristan Butler, McCullough Robertson, Brisbane. We thank them for their valuable contributions and their firms for their commitment of high quality staff.

Ms Teresa Fels also served the Panel as a senior economist and lawyer on a contract basis during the year. We would also like to thank her for her high quality advice and valuable contributions to the Panel.

Staffing information

The following table presents the number of permanent Panel staff, by classification and gender as at 30 June 2004. Permanent staff are employed under the *Public Service Act 1999*.

Table 3: Operative and paid inoperative staff by classification and gender as at 30 June 2004^(a)

Classification	Ongoing				Non-ongoing				Total
	Full-time		Part-time		Full-time		Part-time		
	Male	Female	Male	Female	Male	Female	Male	Female	
APS2	0	1	0	0	0	0	0	0	1
APS3	0	1	0	0	0	0	0	0	1
APS6	0	1	0	0	0	0	0	0	1
SEB1	1	0	0	0	0	0	0	0	1
SEB2	1	0	0	0	1	0	0	0	2
Total	2	3	0	0	1	0	0	0	6

(a) Includes one paid inoperative on long service leave.

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

During this period, Mr Nigel Morris, Director was on extended leave until July 2004. To ensure continuity Mr George Durbridge took the role of Director and Mr Jeremy Kriewaldt was employed on a 12 month contract as Counsel.

SES commencements

There were no SES on-going commencements.

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 2004, which is the annual performance appraisal cycle.

Remuneration for SES

Performance-based bonuses were paid to SES staff during 2003-04 in accordance with the Treasury Performance Management Program.

Table 4: Salary scales — SES

Classification	4 September 2002		4 September 2003	
	Maximum \$	Minimum \$	Maximum \$	Minimum \$
SES Band 1	126,188	98,278	133,760	104,175
SES Band 2	162,529	126,583	172,281	134,178

Remuneration for non-SES

Both APS2 and APS5 staff members were broadbanded during this performance appraisal cycle.

Table 5: Certified Agreement salary scales — non SES

Classification	4 September 2002		4 September 2003	
	Maximum \$	Minimum \$	Maximum \$	Minimum \$
APS2	35,214	32,942	37,327	34,919
APS3	39,757	37,485	42,143	39,735
APS6	56,796	53,672	60,204	56,893

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.

Workplace diversity

At 30 June 2004, the Panel Executive consisted of seven staff members, of which three were female and four male. One female staff member was of non-English speaking background.

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

Table 6: Operative and paid inoperative staff by EEO target group as at 30 June 3004

Classification	Female	Born overseas	ESL	AATSI	Disability
APS2	1	0	0	0	0
APS3	1	0	0	0	0
APS6	1	1	1	0	0
Total	3	1	1	0	0

Table 7: EEO in appointments to boards

	Total positions filled as at 30 June	Number from EEO target groups	Number of appointments made during the year	Number of appointments from EEO target groups
Takeovers Panel	43	17		
Takeovers Panel reappointments			13	7
Takeovers Panel new appointments			6	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 engaged Mr Dennis Rose QC to provide advice on some issues concerning the scope and exercise of the Panel's powers. Mr Rose was engaged on the basis that he was free from conflict of interest and possessed appropriate skills and knowledge that were not available at the Panel.

The Panel has also engaged KPMG to prepare the financial information for the Panel's annual report.

The aggregate amount spent on consultancy and legal services is \$28,945.

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 2003-04. The Panel sponsored the prize for the best student in the Mergers and Acquisitions subject in the Securities Institute of Australia Graduate Diploma program.

Ms Nicole Botsman 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 2003-04.

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;
- aluminium, 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 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.

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 also publishes material comments received from the public concerning its draft guidance documents, and the reasons for adopting or declining those comments.

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; and
- resources (that is, 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 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 (FOI) inquiries should 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 2003-04

The Panel did not receive any applications for access to documents under the *Freedom of Information Act 1982* in 2003-04.

Regulatory impact statements

The Panel did not submit any Regulatory Impact Statements in 2003-04.

PANEL MEMBERS

Members of the Panel on 1 July 2003 were:

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

New Members appointed to the Panel in 2003-04 were:

Mr Guy Alexander	Mr Norman O'Bryan SC
Mr Graham Bradley	Mr Mark Paganin
Mr Byron Koster	Mr Simon Withers

Members who ceased being on the Panel in 2003-04 were:

Ms Ilana Atlas	Dr Tro Kortian
Mr Anthony Burgess	Mr Scott Reid
Ms Luise Elsing	

GUIDANCE NOTE SUB-COMMITTEE MEMBERSHIPS

Table 8: Sub-committees

Guidance Note	Sub-committee members	
	Panel member	External member
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)
Lock-Up Devices	Peter Cameron Simon McKeon Simon Mordant Ian Ramsay	David Williamson (Blake Dawson Waldron)

PANEL APPLICATIONS

Table 9: Applications received by the Panel in 2003-04

Number	Section	Matter name	Decision	Decision date
04/12	657A&D	St Barbara Mines 02	Refuse to conduct proceedings	02/07/2004
04/11	657AD&E	Village Roadshow Limited 02	Refuse application with undertaking	01/07/2004
04/10	657A&D	Skywest 02	Consent to withdraw application	23/06/2004
04/09	657A&D	Novus Petroleum 02	Refuse to conduct proceedings	26/05/2004
04/08	657A&D	Kaefer Technologies	Refuse to conduct proceedings	21/05/2004
04/07	657AD&E	Skywest	Refuse application with undertaking	01/06/2004
04/06	657A&D	Data & Commerce	Refuse application	18/05/2004
04/05	657AD&E	InvestorInfo Limited	Refuse application with undertaking	22/04/2004
04/04	657AD&E	Mildura Cooperative	Declaration with undertaking	08/03/2004
04/03	657A&D	Village Roadshow Limited	Declaration and orders	17/02/2004
04/02	657AD&E	Novus Petroleum Limited	Refuse application with undertaking	16/01/2004
04/01	657AD&E	Forest Place Group	Refuse application	12/02/2004
03/47	657AD&E	Great Mines	Refuse application with undertaking	08/01/2004
03/46	657AD&E	Mbox.com	Withdrawn	
03/45	657AD&E	Richfield	Refuse to conduct proceedings	20/11/2003
03/44	657EA	BreakFree Limited 04(R)	Declaration and vary Panel orders	18/12/2003
03/43	657EA	National Can Industries 01(R)	Affirm Panel decision	17/11/2003
03/42	657A&D	QR Sciences Limited	Refuse application with undertaking	23/10/2003
03/41	657AD&E	BreakFree Limited 04	Declaration with undertaking	12/11/2003
03/40	656A	Prudential Investment	Vary ASIC decision	21/10/2003
03/39	657AD&E	Grand Hotel Group	Refuse to conduct proceedings	13/10/2003

Table 9: Applications received by the Panel in 2003-04 (continued)

Number	Section	Matter name	Decision	Decision date
03/38	656A & 657A	National Can Industries	Refuse application with undertaking	16/10/2003
03/37	657A&D	BreakFree Limited 03	Refuse to conduct proceedings	12/11/2003
03/36	657AD&E	Aulron Energy Limited	Refuse application	22/09/2003
03/35	657A&D	Selwyn Mines	Refuse to conduct proceedings	25/09/2003
03/34	656A	BreakFree Limited 02	Affirm ASIC decision	10/09/2003
03/33	657AD&E	SSH Medical Limited	Withdrawn	22/09/2003
03/32	657A&D	PowerTel Limited 03	Refuse application	08/08/2003
03/31	657A&D	BreakFree Limited	Refuse to conduct proceedings	14/08/2003
03/30	657A&D	PowerTel Limited 02	Refuse application with undertaking	25/07/2003

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 & Acquisitions
OH&S	Occupational Health and Safety
SEB	Senior Executive Band
SES	Senior Executive Service

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