

Takeovers Panel

Annual Report

2006-2007

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27 September 2007

The Honourable Peter Costello MP
Treasurer
Parliament House
Canberra ACT 2600
Dear Treasurer

ANNUAL REPORT 2006-07

I have the honour to submit to you, in accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, the 2006-07 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 2001 (Cth)* (Corporations Act), Part 10 of the *Australian Securities and Investments Commission Act 2001 (Cth)* (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

2006-07 was a busy and significant year for the Panel. The two defining issues for the Panel in 2006-07 were:

- the commencement of the *Corporations Amendments (Takeovers) Act 2007*, which addressed a number of issues in the legislation under which we operate which had been thrown into some doubt following the Glencore¹ decisions; and
- the decision of the Full Federal Court in *Alinta*.² The *Alinta* decision had declared that the Panel's power under section 657A(2)(b) to make a declaration of unacceptable circumstances based on a contravention was unconstitutional.

However, despite the uncertainty generated by the *Glencore* and *Alinta* decisions, the Panel continued to receive a strong flow of applications throughout 2006-07 and the Panel dealt with a range of significant issues and takeovers. The Panel received 32 applications (on average, a new matter a little more frequently than every fortnight).

In terms of its internal operations, the most significant event was that the Panel lost the services of its long serving and very valuable Counsel, Mr George Durbridge, in 2007. The Panel is extremely grateful to have had the benefit of George's experience and guidance as its Counsel in its formative years. The Panel was also extremely fortunate to have had the services of Mr Bruce Dyer, on secondment from Blake Dawson Waldron, while George took a year's leave of absence, and to have appointed Mr Alan Shaw as senior Counsel when George formally left the Panel.

In terms of its members, in 2006-07 the Panel continued to recruit members of an extremely high quality, demonstrating a continued commitment of the Australian takeovers community to the principles and ideals of the Takeovers Panel.

2006-07 has been yet another interesting, productive and successful year for the Takeovers Panel.

1 *Glencore International AG & Anor v Takeovers Panel & Ors* [2005] FCA 1290 *Glencore International AG (ACN 114 271 055) v Takeovers Panel* [2006] FCA 274.

2 *Australian Pipeline Limited v Alinta Limited* [2007] FCAFC 55 *Australian Pipeline Limited v Alinta Limited* [2006] FCA 1378.

Legislation

The Panel considered that the *Glencore* decisions, if interpreted narrowly, had the potential to raise uncertainty as to the scope of the Panel's jurisdiction. The Panel therefore discussed with the Government the options which might be available to resolve these issues of uncertainty. The Panel decided that the most appropriate way forward was for legislative amendments to the Panel's provisions in the Corporations Act to remove any uncertainty which the *Glencore* decisions might have raised. The Government indicated its support for such an approach and commenced discussions with the Panel and Treasury about how best to implement such an approach.

The Panel is grateful to the Government for its support and expeditious introduction of legislation to address the jurisdictional issues raised by the *Glencore* decisions. The draft was put out for public consultation in early September 2006, came before the Parliament in February 2007 and commenced on 13 May 2007.³

The amending legislation affirmed the scope of the Panel's jurisdiction and ensured that the Panel has the flexibility to adapt to new and developing takeovers circumstances. The new legislation has three primary functions. It:

- ensures that the definition of substantial interest, one of the cornerstones of the Panel's jurisdiction and of the purposes of the takeovers provisions, is able to be given an expansive interpretation to allow for new and developing takeovers circumstances (section 602A);
- ensures that the Panel may look to the 'likely' effect of circumstances rather than needing to wait until circumstances have had an effect or harm on the takeovers market (section 657A(2)(a)); and
- allows the Panel to look directly at the purposes of the takeovers provisions, set out in section 602, in determining whether circumstances are unacceptable (new section 657A(2)(b)).

The amending legislation also addresses a number of other small issues which came to light in the *Glencore* litigation.

3 *Corporations Amendment (Takeovers) Act 2007.*

Litigation

In 2006-07 the Panel felt the last effects of the *Glencore* litigation and was involved in two other significant pieces of litigation, the *Alinta* decisions in the Federal Court and the Full Federal Court, and the Tower⁴ litigation in the Federal Court.

Glencore

As noted in the Legislation discussion above, the possibility of a narrow interpretation of the *Glencore* decisions had raised some uncertainty as to the scope of the Panel's jurisdiction, the nature of substantial interests and the ability of the Panel to look to the purposes of the takeovers provisions as a basis for a declaration of unacceptable circumstances. On 13 May 2007, the amending legislation removed this uncertainty.

Tower Software Engineering Pty Ltd

In late May 2006 the Panel received the first application in relation to Tower Software Engineering Pty Ltd. The Panel later received a second application, and was involved in proceedings seeking to enforce compliance with an undertaking to the Panel.⁵ The dispute in the Tower 01 proceedings related to a takeover bid and bidder's statement for Tower. The applicant in the Tower 01 proceedings, Mr Berend Hoff, was a director and major shareholder of Tower. He submitted that the bidder's statement had content deficiencies, but, more importantly, he submitted that in agreeing to immediate dispatch of the bidder's statement the target board had stifled competition for Tower.

In its Tower 01 proceedings, the Panel declined to commence proceedings on the basis of accepting undertakings from the bidder in relation to its dealing with the parcel of shares to which the Tower 01 proceedings related. The undertakings related in part to how the bidder would deal with the shares in the event of a superior bid. Following the Panel's decision a rival bidder for Tower emerged and made a bid for Tower at a higher price. The initial bidder and the Panel disagreed on whether, following the superior bid, the bidder had complied with its obligations under the undertakings. As a consequence, the Panel commenced proceedings⁶ to secure compliance.

4 McCann v Pendant Software Pty Limited [2006] FCA 1129 Tower Software Engineering Pty Limited; Pendant Software Pty Limited v Harwood [2006] FCA 717.

5 McCann v Pendant Software Pty Limited [2006] FCA 1129.

6 McCann v Pendant Software Pty Limited [2006] FCA 1129.

Finkelstein J found in these proceedings that the initial bidder had complied with the terms of its undertaking to the Panel. However, he also allowed the Panel to extend the period of its proceedings to enable it to review its decision not to make a declaration of unacceptable circumstances, on the basis that the undertaking did not bring about the intention of the Panel which was to create competitive bidding for the shares in Tower.

As well as the two Panel proceedings and the action to enforce compliance with the undertaking, there were two other pieces of litigation concerning Tower that related to the Panel. The first was an application for an interlocutory order to register a transfer of shares under the takeover bid. It was heard before Goldberg J on 11 May 2006. In the decision Goldberg J offered some useful dicta in relation to the interpretation of section 659B (the 'privative clause'). Following the initial interlocutory injunction, Mr Hoff sought to apply to the Panel. The bidder sought a further interlocutory injunction⁷ to prevent Mr Hoff, or the Panel, from proceeding with the application. Goldberg J dismissed the application saying:

'The consequence of the Panel's determination may be to remove the substratum of the basis for the registration of the transfer sought by Pendant Software, but this is not because the Panel is assuming the task of the Court or destroying the substratum of the matter before the Court. It is because there is a separate and independent basis for a challenge to the consequences of the carrying out and implementation of Pendant Software's takeover offer'.

The decisions of Goldberg J in *Tower* were significant for the Panel. In the latter decision, Goldberg J endorsed the view that the Panel proceedings are separate and based on different issues and principles to those of the Court.

Australian Pipeline Trust

The most significant judicial decision for the Panel in 2006-07 was the decision of the Full Federal Court in the Australian Pipeline Trust (APT) litigation. In this decision the Full Federal Court declared that the Panel's power to make a declaration of unacceptable circumstances under then section 657A(2)(b), based on a contravention of chapters 6, 6A, 6B or 6C of the Corporations Act, was invalid as an exercise of the judicial power of the Commonwealth. The Full Federal Court also raised doubts on the constitutional validity of section 657A(2)(a), without making a finding on the issue.

⁷ *Tower Software Engineering Pty Limited; Pendant Software Pty Limited v Harwood* [2006] FCA 717.

The Panel had made two decisions in relation to APT (APT 01⁸ and APT 01R⁹, which affirmed the APT 01 decision). The Panel found that the acquisition of 10 per cent of APT in August 2006 by Alinta Ltd gave rise to unacceptable circumstances. The Panel had also found that Alinta had already either acquired a relevant interest in the 30 per cent of APA held by AGL, or that it 'had its foot on them', through a Merger Implementation Agreement (**MIA**) with The Australian Gas Light Company (**AGL**) prior to schemes of arrangement to merge assets of the two companies (**schemes**). The Panel ordered Alinta to divest the 10 per cent of APA that it acquired in August 2006.

The Panel made its decision in the APT 01 proceedings solely on the basis of section 657A(2)(a). The Panel made a decision in the APT 01R proceedings based separately on each of section 657A(2)(a) and section 657A(2)(b) (in part because the review application asserted that not considering section 657A(2)(b) was an error).

In October 2006, Emmett J¹⁰ found that the Panel's decision in the APT 01R proceedings:

- (a) under section 657A(2)(a) was justifiable and upheld it; and
- (b) under section 657A(2)(b) was wrong in that Alinta had not breached section 606, in entering either the Heads of Agreement (HOA) or MIA relating to the schemes, because neither gave Alinta a relevant interest in the 30 per cent of APA that AGL held. Therefore, when Alinta acquired 10 per cent of APA in August 2006 there was also no breach of section 606.

Alinta appealed Emmett J's decision in relation to the section 657A(2)(a) decision of the Panel to the full bench of the Federal Court which heard the proceedings in November 2006.

APA cross appealed Emmett J's decision in relation to section 606 and in relation to the Panel's decision in relation to the section 657A(2)(b).

In the Full Federal Court¹¹ (*Alinta*), the majority (Gyles J and Lander J) made partially different findings to Finkelstein J.

8 Australian Pipeline Trust 01 [2006] ATP 27.

9 Australian Pipeline Trust 01R [2006] ATP 29.

10 Australian Pipeline Limited v Alinta Limited [2006] FCA 1378.

11 Australian Pipeline Limited v Alinta Limited [2007] FCAFC 55.

Finkelstein J found that:

- (a) Alinta had contravened section 606 when it bought a further 10 per cent of APA on-market in August 2006;
- (b) the Panel had made a sustainable decision under section 657A(2)(a);
- (c) the Panel had made a sustainable decision under section 657A(2)(b); and
- (d) the Panel's decision under either provision was not invalid because the legislation did not purport to give the Panel judicial powers.

Gyles and Lander JJ found that:

- (a) Alinta contravened section 606 when it bought a further 10 per cent of APA on-market in August 2006; and
- (b) the Panel's decision was invalid because it was based on section 657A(2)(b) which the majority found is invalid because it purports to bestow judicial powers of the Commonwealth on a body not formed as a court which is a breach of Chapter 3 of the Constitution.

Gyles and Lander JJ quashed the whole of the Panel's decision because they found that the decision to make a declaration by the Panel was a unitary one, founded on both of the two separate findings of unacceptable circumstances on the two limbs of section 657A(2). Because one limb was invalid the decision was invalid in whole. In dicta, Gyles and Lander JJ cast doubt over the constitutional validity of section 657A(2)(a) but refrained from making a finding on the issue.

Gyles and Lander JJ referred the contraventions they found to Emmett J for orders.

Following the decision of the Full Federal Court, the Attorney-General sought, and was granted, special leave to appeal the decision, as far as it relates to the constitutional validity of the Panel's powers, to the High Court. The appeal is yet to be heard.

Following the decision of the Full Federal Court, the Panel published a Media Release¹² on 30 April 2007 advising the market and potential applicants of the decision and setting out the process by which the Panel would operate prior to the decision of the High Court. The Panel advised that it would not accept applications which referred to contraventions of the

12 TP07/19 APL vs Alinta Ltd.

law as bases for a declaration of unacceptable circumstances or which sought declarations under then section 657A(2)(b).

Since the *Alinta* decision the Panel has continued to receive applications at the same rate as prior, despite the uncertainty that the *Alinta* decision has raised. Those applications have been based solely on section 657A(2)(a). In a number of proceedings parties have raised the *Alinta* decision in arguments as to why the Panel should not conduct proceedings. However, the Panel has not found the submissions persuasive so far and has not declined to hear any application because of those submissions.

2006-07 matters

In the 32 applications that it received this year, the Panel received two applications for review of ASIC decisions, Rinker Group Limited & Australian Pipeline Trust 01. The Panel varied the decision in the Rinker proceedings and affirmed the decision in the APT 01 proceedings. It also received two applications for review of a Panel decision. In both applications for review of a Panel decision the decision was affirmed.

Similarly to previous years, the Panel sought to resolve matters as quickly and informally as a proper consideration of the issues permitted. This meant that a good number of proceedings did not need to proceed to a formal decision on the application. A significant number of applications were resolved by way of undertaking by parties to the Panel, or the Panel declining to commence proceedings. Generally, the Panel will decline to commence proceedings if it does not consider that there is a real or arguable prospect that the Panel would find that the circumstances complained of give rise to unacceptable circumstances. As in recent years, the Panel has not accepted that it should commence proceedings merely because a person has made an application. The Panel considers that that would likely lead to an increase in tactical applications to the Panel for minor issues and infringements.

In 2006-07 the Panel continued to deliver its decisions in a timely manner. The Panel considers that timeliness of its decisions will remain as one of the key performance indicators for its processes.

Issues covered by decisions

The range of issues covered by the Panel each year continues to be varied, and each year appears to have its themes. Disclosure is always a common issue in applications before the Panel, and 2006-07 was no exception.

New issues

Like previous years, a number of new and significant applications and issues have come before the Panel this year including:

- Early dispatch of bidder's statement – *Tower Software Engineering 01*;
- Joint bids – *GasNet Australia Investments*;
- Section 609(7) – *APT 01* and *APT 01R*; and
- Late acceptance – *Qantas Airways 02* and *Qantas Airways 02R*.

Scope of matters

Other issues that the Panel was also asked to consider this year included:

- Industry experience of a bidder – *Qantas Airways 01*;
- Truth in takeovers policy – *Summit Resources, Rinker Group 02* and *Rinker Group 02R*;
- Collateral benefits – *Becker Group 01* and *Arrow Taxi Services 02*;
- Lock-up devices (especially no shop agreements) – *Queensland Cotton Holdings, Magna Pacific 01* and *Becker Group 01*;
- Forecasts – *Queensland Gas Corporation* and *Aztec Resources 01*;
- Expert's reports – *Queensland Gas Corporation* and *Becker Group 01*;
- Disclosure concerning potential rival bidders – *Aztec Resources 01*;
- Pre-bid agreements – *Sedimentary Holdings*; and
- Substantial holding notice – *Azumah Resources*.

Guidance development

The Panel publishes Guidance Notes on a range of issues to assist the market in its decisions and in considering making applications to the Panel. The Panel considers that its Guidance Notes give the market greater certainty, address significant issues in the market and assist Panel members make decisions in consistent and predictable manners.

During 2006-07, the Panel published one discussion paper and one draft Guidance Note for public comment, finalised two Guidance Notes and published one revised Guidance Note:

GN 19 Insider Participation

In late 2006, the Panel reviewed the possible effects of the rapid increase in private equity participation in takeover bids in Australia and decided that it should refer the issue to a policy sub-committee. The sub-committee, which included three external members from relevant areas of the market, considered that while private equity participation in takeovers had increased markedly, and may give rise to issues in other areas of regulation, it did not raise any unique issues which warranted Panel guidance. However, the sub-committee considered that private equity participation raised in higher relief the issue of insider participation in takeovers and that the market would benefit from Panel guidance on the issue.

The 'insider participation' that concerned the sub-committee involves situations where there is involvement or potential involvement by the managers, directors, or external advisers of a target company with the bidder in a takeover bid or potential bid for the target company.

Following the work of the sub-committee, the Panel published a discussion paper, and a draft Guidance Note on insider participation in control transactions, for comment. The Panel received a wide range of submissions on the discussion paper. Following the submissions, the Panel decided that publishing the draft Guidance Note was warranted. The Panel published the Guidance Note and a consultation response paper which discussed the submissions the Panel had received and the changes made to the Guidance Note as a consequence.

GN 16 Correction of Takeover Documents (revision)

The Panel revised Guidance Note 16 following the Panel's experience in recent matters. This Guidance Note provides takeovers market participants with guidance on circumstances that the Panel is likely to declare to be unacceptable in relation to deficiencies in takeovers documents and how the Panel may use corrective statements to remedy unacceptable circumstances.

GN 18 Bidder's Statements

This Guidance Note provides guidance in relation to 'wrap documents' and broker valuations in bidder's statements.

Guidance Note sub-committees

The Panel's Guidance Notes are developed by sub-committees comprising Panel members, and people who are knowledgeable about the

subject-matter of the Guidance Note who are not members of the Panel. Each Guidance Note is referred for comments to the wider Panel membership before being issued. We would like to thank the following people as external members of the sub-committees:

- John Curry (Australian Shareholders Association) and David Friedlander (Mallesons Stephen Jaques) for their contributions to the development of GN 18; and
- Laurie Cox (Macquarie Bank Ltd), David Jones (CHAMP Equity) and Andrew Sisson (Balanced Equity Management Pty Ltd) for their contributions to the development of GN 19.

We would also like to thank the Panel members who sat on the GN 18 sub-committee:

- Guy Alexander, Kathleen Farrell, Robert Johanson, Marie McDonald, Professor Ian Ramsay and Karen Wood

and the Panel members who sat on the GN 19 sub-committee:

- Elizabeth Alexander AM, Guy Alexander, Hamish Douglass, John Fast, John Keeves and Simon Mordant.

Guidance in 2007-08

The Panel has two major policy projects going forward into 2007-08 and a number of smaller ones. The two major projects are on collateral benefits and equity derivatives. The minor projects include revising the Panel's Guidance Notes on lock-up devices and Panel orders.

The Panel is progressing its work on guidance on **Collateral Benefits** following the discussion paper on the policy issues and the Panel's experiences with collateral benefits so far, which the Panel released for consultation in November 2005.

The Panel has re-commenced work on the guidance on **Equity Derivatives** which had been suspended following the Glencore litigation in 2005-06.

Review

In 2005-06, after five years of operation, the Panel commissioned ChantLink, a very experienced market research firm in the financial services and regulatory area, to undertake some detailed assessment of the Panel, its role, performance and future. In October 2006, the Panel published the

ChantLink report on its website under *Panel Documents*. 'A Report on Stakeholder Assessment of the Takeovers Panel'.

The results were very largely positive. The Panel was seen as being a positive influence on takeovers, delivering commercial, consistent and timely decisions. The report has provided the Panel with some very useful feedback on how it can adjust its procedures and proceedings to assist parties and to maintain the confidence of the market.

One of the significant issues which the report raised was that some of the areas of the market which the Panel had thought would be aware of the Panel and its decisions were not as fully engaged as the Panel had expected. Part of the Panel's response to the feedback has been a programme to reach out to the funds management area and other areas of the market to ensure that all of the Panel's key stakeholders are aware of the Panel and its decisions and provide the Panel with their views on issues before it.

Other Issues

In 2006-07 the Panel engaged with a number of other bodies interested in the regulation of takeovers in Australia.

FINSIA

The Panel provided a response to the Parliamentary Secretary to the Treasurer in regard to an issues paper published by FINSIA on a range of issues relating to the regulation of takeovers in Australia.

Senate Economics Committee

The Panel appeared before the Senate Economics Committee enquiry into Private Equity in Australia. The transcript is available on the Committee's webpage.¹³

Panel Executive

During the year, the Executive included a number of secondees from major Australian law firms: Jorja Mahoney (Arnold Bloch Leibler, Melbourne), Melissa Sutton (Baker & McKenzie, Melbourne), Judy Yeung (Deacons,

¹³ Parliament of Australia: Senate: Committees: Economics: Inquiry into the Private Equity Investment and its Effects on Capital Markets and the Australian Economy.

Sydney), and Jaclyn Backhouse (Freehills, Sydney). This is consistent with the Panel's normal process of staffing its office, in part, with secondees from major law firms around Australia. We believe that the secondees (and their firms) gain much from the secondments, but we also know that we depend greatly on them. They have ably and energetically supported the Panel, and we greatly appreciate the contributions of the secondees and the willingness of their firms to support us.

George Durbridge, the Panel's respected Counsel, retired from the Panel in April 2007. George leaves a lasting legacy with the Panel and was instrumental in its early success and acceptance into the Australian markets. The Panel remains very grateful that it had a lawyer of George's experience, respect and knowledge in its formative years. The Panel wishes him the very best in his new role as consultant at Freehills in Melbourne.

The Panel was very fortunate to secure the services of Mr Bruce Dyer to fill the position of Counsel in George's absence on long service leave from March 2006. Bruce has been Special Counsel in Blake Dawson Waldron's corporate group since 2001. Bruce has extensive experience in takeovers practice and litigation and has published widely in the areas of takeovers and administrative law. Bruce concluded his time with the Panel in April 2007. The Panel appreciates Bruce and Blake Dawson Waldron's commitment of a significant period of time to the Panel and would like to extend its sincerest thanks to Bruce for his work at the Panel.

Following George's resignation, the Panel advertised nationally and internationally for a suitable person to fill the key role of Counsel. The Panel is very pleased to have appointed Mr Alan Shaw. Alan has a very strong body of experience for the position. He has experience in takeovers and other corporate regulation having worked as a senior lawyer at the NCSC. He has extensive securities markets and risk management experience from his work with ASX and the Singapore Stock Exchange. He has litigation experience from his time at the Victorian Bar and has extensive international consulting experience.

The Panel has also been well served by Rebecca Whitehead and Rebecca Banhelyi who manage and run the Panel's Executive office and support the Panel.

The Panel's Director, Mr Nigel Morris has recently advised Treasury of his resignation and the Panel is in the process of securing his replacement. As it had been with George, the Panel has been extremely well served by Nigel.

Panel offices

The Panel maintains an office in the Melbourne CBD with space for conducting hearings in matters where needed. During 2006-07 the Panel provided the use of its offices and conference room to the Treasury, the Board of Taxation and other Federal agencies when they required facilities in Melbourne.

Panel members

Given that 30 plus matters come before the Panel per year, three members are required to sit per matter, and the Panel has 48 members, individual members are required on average to sit on two matters per year.

In addition to sitting on matters during the year, Panel members are asked to attend three, full day, round table sessions per year. These sessions are both education and discussion forums for Panel members. They allow Panel members to discuss market developments, to consider issues for guidance and other aspects of takeovers markets and regulation and to meet face to face (the face to face aspect of the forums is particularly valuable given their wide geographic distribution and the fact that most sitting Panels conduct their proceedings by written submissions and internal telephone conferences).

The terms of 16 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, consistent with its policy of periodic rotation of membership, to appoint eight new members, with skills and experience which further increase the resources available to the Panel. We thank the retiring members of the Panel, each of whose valuable skills and experience have contributed materially to the Panel.

The Panel particularly notes the retirement from the Panel of the two judges of the Supreme Court of New South Wales, Justice Kim Santow and Justice Robert Austin. The Panel is very appreciative of the time and advice that Justices Santow and Austin, two of the leading corporate judges in Australia, gave to the Panel out of their very busy court schedules. The Panel is also very appreciative of the Supreme Court of New South Wales in consenting to Justices Santow and Austin being members of the Panel for the time they were with us.

The Panel is heavily indebted to the firms of its members for their support of the Panel as a body and as a concept. The Panel appreciates the support of the firms in allowing their key people to devote time and resources as members of the Panel and the hospitality shown by the firms of our Panel members who host the Panel's roundtable days each year.

The year ahead

In the coming year, the Panel will have three major goals:

- support the Attorney-General's appeal in the High Court against the Alinta decision;
- develop a number of significant policy projects; and
- continue to deliver the timely, commercially sensible and predictable decisions which the Australian takeovers market expects from the Panel.

Timeliness has become a hallmark of the Takeovers Panel and the regime under which it operates. Timeliness assists market participants plan their affairs and helps ensure that disputes, and dispute resolution, do not disrupt the market's consideration of bids and are not used as tactical devices.

Commerciality is also extremely important, and is one of the strengths of the Panel system, brought to it by the Panel's members. The Panel members' close relationship with, and participation in the market, enable the Panel to give decisions which are both understood by, and in tune with, the market.

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.

As in previous years, the scope of applications to the Panel will broaden and Panel members will be asked new and difficult questions. The performance of the Panel, its members and its staff, however, reassures me that the Panel will continue to deal with new and difficult questions in the coming year in a timely and commercial manner while still dealing with whatever developments the current constitutional questions bring.

The Panel and the takeovers industry generally remain very grateful to the Federal Government for its ongoing support and commitment to maintain a robust, principles based dispute resolution regime.

OVERVIEW

The Panel is the primary dispute resolution forum for takeovers. As at 30 June 2007 it had 48 part-time members. The Panel is supported by four full-time executive staff members and two secondees.

Members are appointed from Australia's takeovers, legal, finance and business communities. A list of members is set out on page 37.

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 provisions of Chapters 6, 6A, 6B or 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 under *Guidance*.

Review of ASIC and Panel decisions

The Panel may review 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 PROGRAMME

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 fair, timely, consistent, informal and sound manner and by publishing clear, well developed guidance to assist market participants.

Operations

In 2006-07, the Panel received 32 applications (see pages 39 & 40 for a listing of individual matters).

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 2006-07, the Panel held seven internal workshop days throughout Australia, three held in Sydney, two in Melbourne, and one in each of Brisbane and Adelaide. 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 invites the parties to each matter to provide the Panel with feedback on the proceedings and decision (via a questionnaire) and invites them to attend a matter review, once the matter is over.

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 than might be appropriate for the specific facts of individual proceedings.

The Panel released two new 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 2006-07 were in relation to bidder's statements and insider participation.

The Panel is currently in the process of developing guidance, or Guidance Notes, in one new area, collateral benefits and has re-commenced its work on the equity derivatives Guidance Note which was put on hold following the Glencore litigation in 2005-06.

The Panel's rationale in releasing Guidance Notes is to give the market direction in advance of it making decisions on significant issues, and 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, by 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 market, the Department of Treasury (Treasury) and ASIC. The Panel actively seeks input from relevant industry bodies and interest groups. It also publishes drafts for public consultation prior to finalising them.

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 good 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 Australian Stock Exchange Limited (ASX) and the Australian Consumer and Competition Commission (ACCC), as required, to work together in what are frequently overlapping circumstances.

The Panel has a range of market liaison initiatives including attending and speaking at 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 Financial Services Institute of Australasia.

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 of 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 first published to the Companies Announcements Platform of ASX. Other announcements, including decisions about unlisted companies, are made by media release on the Panel's website and through the Panel's mailing list.

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 appointed on a part-time basis, usually for an appointment term of three years. They are nominated by the Minister on the basis of their knowledge and experience in one or more of the following professions: business, administration of companies, financial markets, financial products and financial services, law, economics and accounting.

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

As at 30 June 2007 the Panel had a membership of 48 (see page 37).

Eight new members were appointed to the Panel in 2006-07. They were: Mr Thomas Bathurst QC, Sydney Bar, Sydney; Mr Garry Besson, Partner, Gilbert & Tobin, Sydney; Ms Catherine Brenner, Company Director, Sydney; Mr Geoff Brunson, Managing Director and Head of Investment Banking, Merrill Lynch International (Australia) Limited, Sydney; Mr David Jones, Chairman, New Zealand Takeovers Panel and Partner, Jones Young, New Zealand; Mr Rodd Levy, Partner, Freehills, Melbourne; Mr Robert Sultan, Partner, Deacons, Melbourne and Mr Anthony Sweetman, Managing Director, Head of Mergers & Acquisitions, Australia, UBS AG, Sydney.

The following persons completed their membership with the Panel in 2006-07: Justice Robert Austin, Ms Carol Buys, Mr Denis Byrne, Mr David Gonski AO, Mr John King, Ms Robyn Pak-Poy, Justice Kim Santow AO and Mr Gary Watts. We thank them for their contributions of their extensive experience, insight and time.

Executive

As at 30 June 2007, the Panel Executive consisted of three full-time staff and two secondees 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.

In 2007, the Panel accepted, with great regret, the resignation of its long-standing Counsel, Mr. George Durbridge. George was instrumental in the start-up of the Panel and much of its early success is due to his experienced advice and counsel.

The Panel welcomed Mr Bruce Dyer to the position of Panel Counsel whilst the Panel's Counsel George Durbridge was on long service leave. Mr Dyer has now returned to Blake Dawson Waldron where he was on a leave of absence from his position of Special Counsel. The Panel is very grateful to Bruce and Blake Dawson Waldron for the benefit of a lawyer of Bruce's skills and experience.

The Panel is pleased to announce that it has appointed Mr Alan Shaw as the Panel's Counsel. Alan has a long and distinguished experience in securities and related law in Australia. Alan has had experience at the bar, worked for the NCSC, ASX Ltd, Singapore Stock Exchange and consulted internationally on securities markets and regulation.

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;
- 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 of the Panel when the President is absent from office.

Executive team

At 30 June 2007, the members of the Executive team were:

- Mr Nigel Morris, Director;
- Mr Alan Shaw, Counsel;
- Ms Judy Yeung, Lawyer (seconded from Deacons, Sydney);
- Ms Jaclyn Backhouse, Lawyer (seconded from Freehills, Sydney);
- Mrs Rebecca Whitehead, Office Manager; and
- Mrs 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 programme.

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's operations also subject to review under Treasury's internal audit programme.

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 2007.

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.

Fraud control

The Panel participated in Treasury's fraud risk assessments and fraud control plans in 2006-07.

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 2006-07, the Panel's functions contributed to Treasury's Outcome 4: *'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 outputs contribute is Treasury Output 4.1.2: *'Financial system and markets policy advice.'*

Chart 1: Outcome and output flowchart

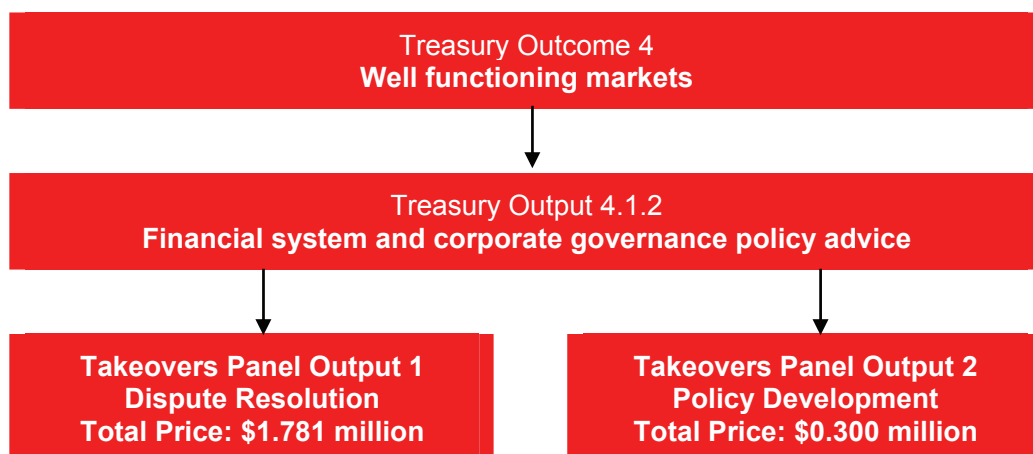


Table 1: Resources for outcomes corporate governance and accounting

	Budget Estimate 2006-07 (\$'000)	Actual 2006-07 (\$'000)	Variation	Budget Estimate 2007-08 (\$'000)
Administered appropriations				
Annual appropriations	0	0		0
Special appropriations				
Total administered appropriations	0	0		0
Output 1 — Dispute resolution — 5.0 ASL				
Output 2 — Policy development — 1.0 ASL				
Total revenue from Government (appropriations) contributing to price of agency outputs	\$1,800	\$1,800	0	\$2,050
Total revenue from other sources	0	0		0
Total price of agency outputs	1,800	2,081	281	2,050
Total estimated resourcing for outcome 1	1,500	1,781	281	1750
Total estimated resourcing for outcome 2	300	300	0	300

	2006-07	2007-08
Average staffing levels (number)	6	6

Performance information

Treasury output 4.1.2 — Financial system and corporate governance 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.

2006-07 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 provide feedback on the proceedings after the relevant dispute has been resolved. 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. The Panel also invited parties to meet with the Panel Executive to discuss the proceedings. 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 2007

	\$
Appropriated revenues	
Revenues from Government	1,800,000
Revenue - Other	652
Total revenues	1,800,652
Employee expenses	
Salaries	742,558
Employer superannuation	77,397
Members' annual retainer and sitting fees	453,386
Total employee expenses	1,273,341
Operating expenses	
Printing	5,980
Travel	138,626
Official entertainment	11,489
Advertising	26,421
Legal	410,266
Telephone charges	18,725
Rent	128,860
Grant expenses	2,500
Other expenses	65,396
Total operating expenses	808,263
Total expenses incurred for the year ended 30 June 2007	2,081,604
Balance of allocation after expenditure	(280,952)

Notes to the schedule of revenue and expenditures for the year ended 30 June 2006

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 ('the Panel') Annual Report for the year ended 30 June 2007. The financial information has been prepared on an accruals basis and on the basis of historical costs. The financial information consists of a Schedule of Revenues and Expenditures.

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 \$1,800,000 classified as revenue.

c) Expenses

Expenses are recognised as they accrue. The Panel's expenses for 2006-2007 are also recorded in Treasury's audited financial statements for the period 01/07/2006 – 30/06/2007.

d) Balance of allocation after operating expenditure

The balance of allocation after operating expenditure for the period 01/07/2006 – 30/06/2007 was a deficit of \$280,952.

This deficit was due to legal expenses associated with litigation in relation to the Australian Pipeline Trust and Alinta proceedings. Due to the infrequent and uncertain nature of litigation in which the Panel is involved, the Panel makes minimal provision in its budget for litigation costs, except where a known case was in progress at balance date, in which case a best estimate for provisions would be recorded. The Panel

advises the Department of Treasury as and when litigation costs appear to be pending.

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

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. No assets were purchase during the year ended 30 June 2007.

g) GST

Revenues and expenses are recognised net of the amount of goods and services tax (GST).

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 subject to the second judicial review of its decisions during 2006-07, with the first being the Glencore litigation in 2005-06.

In *Australian Pipeline Limited v Alinta Limited* [2006] FCA 1378, Emmett J heard a review application in relation to the decision of the Panel in *Australian Pipeline Trust 01R* [2006] ATP 29. The Court found that the Panel's declaration of unacceptable circumstances and final orders made under section 657A(2)(a) were not made in error and did not involve the exercise by the Panel of the judicial power of the Commonwealth. The Court decided in other proceedings that Alinta had not contravened section 606 in acquisitions of units in APT. Therefore, in its review of the Panel's decision it found that the Panel had erred in concluding that Alinta had contravened section 606 and the Court therefore quashed the Panel's declaration of unacceptable circumstances under section 657A(2)(b).¹⁴

14 The decision was made prior to the commencement of the *Corporations Amendment (Takeovers) Act 2007*. Section 657A(2)(b) then related to unacceptable circumstances arising because of a contravention of Chapter 6. The provision is now replicated in section 657A(2)(c).

Emmett J's decision was appealed to in the full court of the Federal Court of Australia. In *Australian Pipeline Limited v Alinta Limited* [2007] FCAFC 55. In its decision relating to the Panel's declaration of unacceptable circumstances, the Federal Court (Finkelstein J dissenting) declared that section 657A(2)(b) of the *Corporations Act 2001* is invalid. The Court discussed the operation of section 657A(2)(a) but did not find it to be invalid. The Federal Court found that section 657A(2)(b) seeks to confer on the Takeovers Panel the judicial power of the Commonwealth, in contravention of Chapter 3 of the Constitution of Australia.

The High Court has since granted the Attorney-General special leave to appeal the decision of the Full Federal Court. A date has not been set for the High Court to hear the appeal.

Alinta and APT have subsequently reached a settlement of the dispute between them concerning Alinta's acquisitions of units in APT. Under the settlement Alinta will distribute all of the units in APT that it acquired (including those to which the Panel's orders related) to its shareholders on a pro-rata basis. The Panel advised the Attorney that it considered that the settlement adequately addressed the regulatory concerns of the Panel in its APT 01R decision.

Government scrutiny

The Panel was not subject to any reports by the ANAO or the Parliamentary Committees in 2006-07. The Panel provided written submissions to the Parliamentary Joint Committee on Corporations and Financial Services in relation to the *Corporations Amendments (Takeovers) Act 2007* and attended the committee's hearing in relation to the legislation.

The Panel attended the Senate Economics Committee budget hearings.

Ombudsman

The Panel was not subject to any reports by the Commonwealth Ombudsman in 2006-07.

Management of human resources

At 30 June 2007, the Panel Executive's staff consisted of three ongoing permanent staff, one contracted 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 to provide timely and commercially sensible decisions.

During this period the Panel had two secondees whose secondment periods finished in 2006-07: Ms Jorja Mahoney, Arnold Bloch Leibler, Melbourne and Ms Melissa Sutton, Baker & McKenzie, Melbourne. We thank them both for their valuable contributions and their firms for their commitment of high quality staff to the Panel.

Staffing information

The following table presents the number of permanent Panel staff, by classification and gender as at 30 June 2007. 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
APS4		1	1
SEB1	1		1
SEB2	1		1
Total	2	2	4

Note: 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. The table above relates only to permanent Treasury APS staff, not secondees.

Mr George Durbridge, retired from his position as the Panel's Counsel in April 2007. George has been replaced by Mr Alan Shaw who took on the position of acting Counsel from April through to the end of July.

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 salary levels payable to the individual Panel staff members under the AWAs were reviewed in February 2006, as part of Treasury and the Panel's annual performance appraisal cycle are available in the Treasury's Annual Report. The Panel did not make any specific performance pay or bonus payments.

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 its staff continuously develop their core skills and keep up-to-date with changes in legislation and the financial sector.

Remuneration for SES

All SES staff employed at the Panel are employed under Treasury AWAs and are part of the Treasury Senior Executive Service (SES) salary model that determines pay levels within each SES level based on performance. Details and statistics on SES remuneration are included in the Treasury Annual Report, Part 3: Management and Accountability, Management of Human Resources.

Remuneration for non-SES

The Treasury Certified Agreement 2006-09 determines salary rates for the non-SES Takeovers Panel staff. Details and statistics on non-SES remuneration are included in the Treasury Annual Report, Part 3: Management and Accountability, Management of Human Resources.

There was no movement in APS levels during this period.

Workplace diversity

At 30 June 2007, the Panel Executive consisted of six staff members (including secondees), of which four were female and two male.

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

paid inoperative staff by EEO target group and EEO appointments to the Takeovers Panel are included in the Treasury Annual Report, Part 3: Management and Accountability, Workplace Diversity.

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 (OH&S)

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

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

Commonwealth Disability Strategy

The Panel adopts Treasury's policies and procedures in relation to the Commonwealth's disability strategy.

Consultants and competitive tendering and contracting

Consultants

In line with the Commonwealth Procurement Guidelines, the Panel engaged accounting firm KPMG to prepare the financial information for the Panel's annual report. The Panel also engaged Mr Alan Shaw of AJ Shaw Consulting Pty Ltd to act as Counsel for a period of two months whilst the Panel sought a permanent replacement for George Durbridge who retired as the Panel's Counsel in April. No ongoing consultancy contracts were active during the 2006-07 year.

The amount spent on consultancy contracts let in 2006-07 was \$60,560.

Competitive tendering and contracting

The Panel did not enter into any tenders or contracts during 2006-07.

Discretionary grants

The Panel made one discretionary grants in 2006-07 of \$2,500 to AustLII. AustLII is a legal research facility developed by the law section of the University of Technology, Sydney. It provides a search engine for Commonwealth and common law information.

Advertising and market research

The Panel did not enter into any market research during 2006-07.

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 inquiries should be directed to:

Nigel Morris
Director, Takeovers Panel
Level 47, 80 Collins Street
MELBOURNE VIC 3000

Phone: 03 9655 3501

Fax: 03 9655 3511

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

Freedom of information activity in 2006-07

The Panel did not receive any applications for access to documents under the *Freedom of Information Act 1982* in 2006-07

Regulatory impact statements

The Panel did not submit any Regulatory Impact Statements in 2006-07.

PANEL MEMBERS

Members of the Panel on 1 July 2006 were:

Mr Simon McKeon (President)	Ms Alison Lansley
Ms Robyn Ahern	Ms Irene Lee
Mr Martin Alciaturi	Mr Alastair Lucas
Ms Elizabeth Alexander AM	Mr Andrew Lumsden
Mr Guy Alexander	Mr Peter Mason AM
Mr Michael Ashforth	Mr Kevin McCann
Justice Robert Austin	Ms Marie McDonald
Mr Graham Bradley	Ms Alice McCleary
Ms Carol Buys	Ms Marian Micalizzi
Mr Denis Byrne	Mr Simon Mordant
Mr Stephen Creese	Mr Norman O'Bryan SC
Mr Hamish Douglass	Mr John O'Sullivan
Ms Susan Doyle	Mr Mark Paganin
Ms Kathleen Farrell	Ms Robyn Pak-Poy
Mr John Fast	Mr Chris Photakis
Mr David Gonski AO	Professor Ian Ramsay
Ms Teresa Handicott	Justice Kim Santow AO
Mr Brett Heading	Mr Peter Scott
Ms Meredith Hellicar	Ms Jennifer Seabrook
Mr Robert Johanson	Mr Gary Watts
Mr Braddon Jolley	Mrs Nerolie Withnall
Mr John Keeves	Mr Simon Withers
Mr John King (New Zealand)	Ms Karen Wood
Mr Byron Koster	Ms Heather Zampatti

New Members appointed to the Panel in 2006-07 were:

Mr Tom Bathurst QC	Mr David Jones (New Zealand)
Mr Garry Besson	Mr Rodd Levy
Ms Catherine Brenner	Mr Robert Sultan
Mr Geoff Brunson	Mr Anthony Sweetman

Members who ceased their membership of the Panel in 2006-07 were:

Justice Robert Austin	Mr John King (New Zealand)
Ms Carol Buys	Justice Kim Santow AO
Mr Denis Byrne	Ms Robyn Pak-Poy
Mr David Gonski AO	Mr Gary Watts

GUIDANCE NOTE SUB-COMMITTEE MEMBERSHIPS

Table 4: Sub-committees

Guidance Note	Sub-committee members	
	Panel member	External member
Bidder's Statements	Guy Alexander Kathleen Farrell Robert Johanson Marie McDonald Ian Ramsay Karen Wood	John Curry (Australian Shareholders Association) David Friedlander (Mallesons Stephen Jaques)
Equity Derivatives	Garry Besson Hamish Douglass Alastair Lucas Andrew Lumsden Chris Photakis	Susan Bray (ASX) Andrew Williams (UBS) Christopher Madden (UBS)
Collateral Benefits	Braddon Jolley Byron Koster Alison Lansley Simon Withers	Tim Bednall (Mallesons Stephen Jaques) John Green (Macquarie Bank)
Insider Participation	Elizabeth Alexander AM Guy Alexander Hamish Douglass John Fast John Keeves Simon Mordant	Laurie Cox (Macquarie Bank) David Jones (CHAMP Private Equity) Andrew Sisson (Balanced Equity Management Pty Ltd)

PANEL APPLICATIONS

Table 5: Applications received by the Panel in 2006-07

Number	Section	Matter name	Decision	Decision date
2007/17	657A,D&E	Accent Resources NL	Declined to commence proceedings	29/06/07
2007/16	657A&D	Becker Group Limited 02	Declined to commence proceedings because of undertakings	03/07/07
2007/15	657A&D	Rinker Group Limited 02	Declaration and Orders	13/07/07
2007/14	657A,D&E	Golden Circle Limited	Withdrawn	13/06/07
2007/13	657A&D	Becker Group Limited	Declaration and Orders	20/06/07
2007/12	657A,D&E	Magna Pacific (Holdings) Limited 04	Declined to commence proceedings	28/05/07
2007/11	657EA	Qantas Airways Limited 02R	Declined to commence proceedings	07/05/07
2007/10	657A&D	Qantas Airways Limited 02	Declined to commence proceedings	06/05/07
2007/09	657A&D	Summit Resources Limited	Declaration	21/05/07
2007/08	657A,D&E	Arrow Taxi Services Limited 02	Refused application	28/05/07
2007/07	657A,D&E	Queensland Cotton Holdings Limited	Declined to commence proceedings because of undertakings	04/05/07
2007/06	657A&D	Magna Pacific (Holdings) Limited 03	Withdrawn	08/05/07
2007/05	657A&D	Magna Pacific (Holdings) Limited 02	Declined to commence proceedings	17/04/07
2007/04	657A,D&E	Arrow Taxi Services Limited 01	Withdrawn	02/05/07
2007/03	657A&D	Qantas Airways Limited 01	Refused application because of undertakings	20/03/07
2007/02	657A,D&E	Magna Pacific (Holdings) Limited 01	Refused application because of undertakings	21/03/07
2007/01	657A&D	Queensland Gas Company Limited 02	Withdrawn	22/02/07

Table 5: Applications received by the Panel in 2006-07 (continued)

Number	Section	Matter name	Decision	Decision date
2006/36	657A&D	Queensland Gas Company Limited 01	Refused application	19/12/06
2006/35	656A, 657A&D	Rinker Group Limited	Refused application because of undertakings, set aside/vary ASIC decision	08/12/06
2006/34	657A,D&E	Vision Systems Limited 02	Declined to commence proceedings	06/10/06
2006/33	657A,D&E	Vision Systems Limited 01	Declined to commence proceedings	05/10/06
2006/32	657A,D&E	Azumah Resources Limited	Declaration and Orders	17/10/06
2006/31	657A&D	Marathon Resources Limited	Withdrawn	26/09/06
2006/30	657A&D	Aztec Resources Limited 02	Withdrawn	26/09/06
2006/29	657EA	Australian Pipeline Trust 01R	Declaration and Orders	20/09/06
2006/28	657A,D&E	Aztec Resources Limited 01	Refused application because of undertakings	12/09/06
2006/27	656A, 657A,D&E	Australian Pipeline Trust 01	Declaration and Orders, affirm ASIC decision	03/09/06
2006/26	657A,D&E	Sedimentary Holdings Ltd	Declined to commence proceedings	18/08/06
2006/25	657A,D&E	Tower Software Engineering Pty Limited 02	Withdrawn	01/09/06
2006/24	657A&D	Nexus Energy Limited 02	Refused application	22/08/06
2006/23	657A,D&E	GasNet Australia Investments Limited	Withdrawn	17/07/06
2006/22	657A&D	Orion Telecommunications Limited	Declaration and Orders	31/08/06

ABBREVIATIONS AND ACRONYMS

Act	Corporations Act
ACCC	Australian Consumer and Competition Commission
ADJR	<i>Administrative Decisions (Judicial Review) Act 1977</i>
ANAO	Australian National Audit Office
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ASX	Australian Stock Exchange Limited
AWA	Australian Workplace Agreement
CLERP	Corporate Law Economic Reform Program
EEO	Equal Employment Opportunity
FINSIA	Financial Services Institute of Australasia
M&A	Mergers & Acquisitions
OH&S	Occupational Health and Safety
SEB	Senior Executive Band
SES	Senior Executive Service

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