

Takeovers Panel

Annual Report

2011-2012

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19 September 2012

The Honourable Wayne Swan MP
Deputy Prime Minister and Treasurer
Parliament House
Canberra ACT 2600

Dear Deputy Prime Minister

ANNUAL REPORT 2011-12

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, I submit the 2011-12 Annual Report of the Takeovers Panel for presentation to Parliament.

Yours sincerely

A handwritten signature in black ink, reading 'Kathleen Farrell'.

Kathleen Farrell
President

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SECTION 1 — INTRODUCTORY

Introduction

The Takeovers Panel was established in January 1991. Material changes to its structure and role were made in March 2000. Relevant legislation is:

- Part 6.10 of the *Corporations Act 2001* (Corporations Act);
- Part 10 of the *Australian Securities and Investment Commission Act 2001* (ASIC Act); and
- Part 3 of the *Australian Securities and Investments Commission Regulations 2001*.

Sources of information

The Panel publishes on its website (www.takeovers.gov.au) among other things:

- media releases;
- final decisions on matters;
- annual reports;
- Guidance Notes;
- consultation papers; and
- Procedural Rules.

Interested persons may subscribe to the Panel's RSS feed to be notified when new items are posted on the website.

How the Panel works

The Panel website contains a description of the Panel and its operations and a guide to the takeovers provisions in the Corporations Act.

Contact

Enquiries regarding this report may be directed to:

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Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
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Ms Kathleen Farrell
President of the Panel

Review by the President

The 2011-2012 year was marked by subdued activity in the mergers and acquisitions market in Australia and overseas. This is reflected in the Panel receiving the least number of applications since 2000 (16 compared to an average of 30).

The Panel did, however, consider some significant and complex applications involving truth in takeovers principles, association, bidder's statement disclosure and rights issues.

The amount of time the Panel took to determine applications this year was slightly better than average (14.5 calendar days compared to the average of 15 calendar days).

Of course, in order to operate effectively in such short time frames the Panel relies on parties and their advisors to be frank and accurate in the material they put to the Panel. The advisors involved in Panel proceedings assume a significant responsibility for ensuring that the Panel is not misled or lacking relevant information within the parties' knowledge. While most advisors meet this standard, we experienced one or two incidents which caused us concern. For example, one involved the failure of a party to advise the Panel that it had approached a court for an injunction in relation to essentially the same matter about which it had applied to the Panel for an interim order.

One reason the Panel does operate effectively is that it is a principles-based body, and the Panel's decisions reflect the particular facts of each case and commercial reality. Even slight changes in the facts can result in a different outcome. Thus, it would be incorrect to say, as some market participants did following the Panel's decisions in *Ludowici Limited*,¹ dealing with the principle of truth in takeovers, that

1 *Ludowici Limited* 01 [2012] ATP 3 and *Ludowici Limited* 01R [2012] ATP 4

the Panel would only ever order compensation. In an appropriate case, the Panel may indeed hold a bidder to the literal terms of a last and final statement.

If the 2011-12 year was a relatively restrained year in the number of takeover transactions, it is a year in which there has been active policy discussion in the takeovers area, which we welcome. Because the Panel is a principles-based body, market participants and ASIC can apply to the Panel to test market practices by reference to current standards. Under our regime the Panel may only act upon application by parties or ASIC.

The Panel members and I greatly appreciate the support of Allan Bulman, Alan Shaw and their small executive team. I also want to thank our secondees and the law firms who have generously offered secondees to the Panel. Given the reduced workload this year, for some period we have had only one secondee. While this has given those secondees a better experience of the Panel, it has from time to time stretched the resources of the executive team and we expect to revert to two secondees in the 2012-13 year.

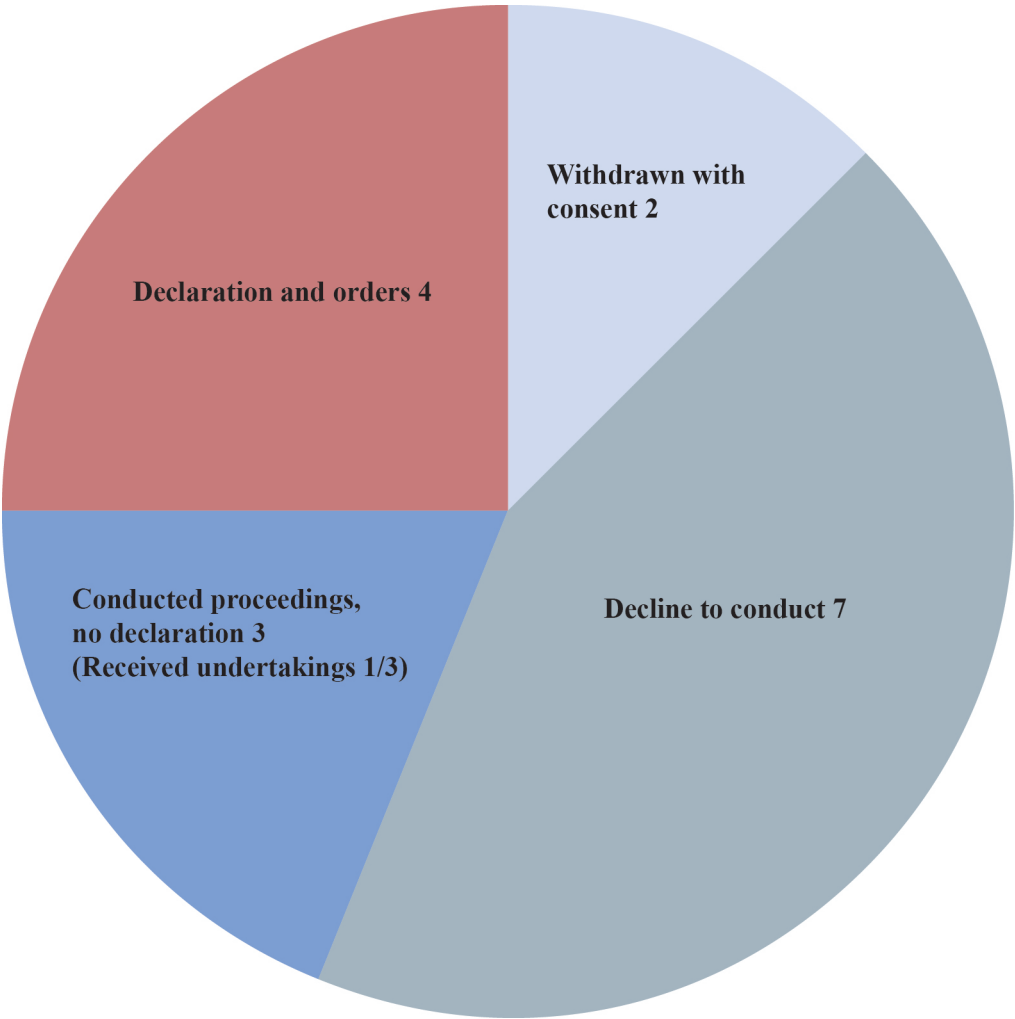
The executive continued their focus on ensuring that the Panel is understood by all sectors of the market and they expect to complete an index of the Panel's decisions for our website soon. They have made a number of presentations to law firms and professional associations and continue their practice of conducting roadshows around the time of Panel days around Australia. The executive are available by phone or in person to participants. The executive invites parties, after a matter has ended, to participate in a post matter review, usually in the presence of a Panel member who has not been involved in the matter. Five post matter reviews were conducted in this period.

At 30 June 2012, the Panel was made up of 52 part time members, having continued to recruit members of an extremely high quality. I thank members for their work throughout the year, as participants in sitting panels, at Panel days and in working groups developing guidance. All give of their time generously. I in particular thank those whose terms ended in this reporting period for their service.

Summary statistics 11/12

The Panel received 16 applications for unacceptable circumstances in 2011-12 (14 initial applications and 2 reviews). Below is a summary of the outcomes of these applications:

Chart 1: Results from Panel applications



The applications dealt with the following issues:

Table 1: Issues dealt with by the Panel

Issue	2011 — 2012
Disclosure	1
Association	2
Bidder's statement — disclosure	2
Finance facilities	1
Options reducing the number of shareholders	1
Rights issue	4
Scheme implementation agreement	1
Share acquisition in contravention of a legislative provision	1
Truth in takeovers (Note 1)	3
Total	16

Note 1: All three of these related to Ludowici Limited

SECTION 2 — THE PANEL

Introduction

During a takeover bid, the Panel is the main forum for dealing with issues that arise.² Only ASIC and other public bodies can commence court proceedings during the bid period.³

Role

The Panel has two main roles:

- making declarations of unacceptable circumstances under section 657A, and orders under section 657D to remedy those circumstances; and
- reviewing decisions of ASIC under section 656A (modifications of, or exemptions from, Chapter 6) and, during a takeover bid, section 673 (modifications of, or exemptions from, Chapter 6C).

To support these roles the Panel issues Guidance Notes (available on its website under 'Guidance Notes'), and publishes its reasons (available on its website under 'Reasons for Decisions'). The Panel also has a rule making power.⁴

Unacceptable circumstances

The Panel's main work involves deciding applications for declarations of unacceptable circumstances. The Panel must consider the principles in section 602, the provisions of the takeovers chapter and the public interest.

In the current period there were 14 applications for a declaration at first instance.

If the Panel finds unacceptable circumstances, it may make orders to protect the rights of persons affected by the circumstances or to ensure, as far as possible, that the takeover proceeds as if the unacceptable circumstances had not occurred.

On an application for review by a party, the Panel reviews decisions of the Panel made at first instance (in relation to declarations of unacceptable circumstances).⁵ The review is a merits review. A review Panel comprises three different members

2 Section 659AA. References are to the *Corporations Act 2001* (Cth) unless otherwise indicated.

3 Section 659B.

4 Section 658C.

5 Section 657EA.

to the initial Panel. There may be only one review of a Panel decision. In the current period there were two applications for review, both related to the same matter.

Review of ASIC decisions

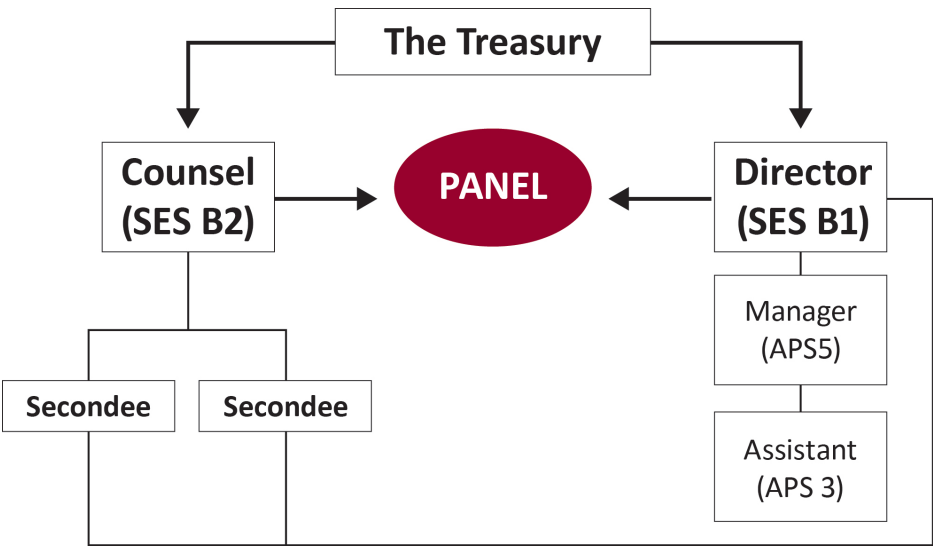
The Panel may review ASIC decisions under Chapter 6 (and during a takeover bid Chapter 6C).⁶ There were none in the current period.

Other reviews

The Panel has an additional review function if a matter is referred from the Court.⁷ There were none in the current period.

Organisational structure

Chart 2: The Panel's organisation structure



6 Section 655A.
7 Section 657EB.

President

Ms Kathleen Farrell is President of the Panel. Her responsibilities include:

- liaising with the Minister, Government, Treasury and stakeholders;
- appointing members to constitute sitting Panels;
- considering the interests of sitting Panel members for possible conflicts; and
- participating in reviewing the performance of the executive.

She is also a member of the Panel and regularly sits on matters.

The Minister has appointed⁸ the following members to act as President when the President is absent from office or unable to act:

- Mr Graham Bradley AM;
- Ms Vickki McFadden;
- Mr Hamish Douglass; and
- Mr Andrew Sisson.

8 Section 182(1)(a)&(b) of the ASIC Act.



Mr Allan Bulman, Director



Mr Alan Shaw, Counsel

Executive

The role of the executive is to assist the Panel in making consistent, timely and commercial decisions. It includes:

- administrative and legal support for Panel members;
- communication with parties in matters before a sitting Panel;
- liaison with market practitioners, ASIC's takeovers staff and ASX; and
- providing an interface to prospective parties (for example, discussing issues and providing a perspective on takeovers policy as it may apply to current takeovers).

The Panel's executive comprises:

- Director, Mr Allan Bulman;
- Counsel, Mr Alan Shaw;
- legal secondees. The Panel's normal process is to staff its office, in part, with secondees from major law firms or other professional firms around Australia. The secondees have ably assisted the executive. The Panel appreciates their contributions and the willing support of their firms.

During the year, the secondees included Mr Grant Lawler (Gilbert + Tobin, Sydney), Mr Stuart Dullard (Ashurst Australia, Sydney), Mr David Jewkes (Norton Rose, Perth) and Ms Nicole Graham (Corrs Chambers Westgarth, Sydney); and

- two administrative staff: Ms Karolina Danger as Office Manager and Ms Rebecca Banhelyi as Executive Assistant.



The President with the Executive: Back row (L to R) Alan Shaw, David Jewkes, Allan Bulman, Stuart Dullard; Front row (L to R) Karolina Danger, Kathleen Farrell and Rebecca Banhelyi.

Office

The Panel maintains an office in Melbourne at Level 10, 63 Exhibition Street. The Panel's current lease in Exhibition Street expires in January 2017.

During 2011-12, Treasury used the Panel's office when it required facilities in Melbourne.

Members

Appointment of members

At 30 June 2012, the Panel had 52 members. Members are appointed by the Governor-General on the nomination of the Minister.⁹ State Ministers may submit nominations to the Minister.

Members are nominated on the basis of their knowledge and experience in one or more of the following fields:

- business;
- administration of companies;
- financial markets;
- financial products and financial services;
- law;
- economics; and
- accounting.

A mix of expertise, geographical representation and gender representation is considered.

All members are appointed on a part-time basis, usually for three years. They may be re-appointed.

In the current period, eight members were re-appointed:

Mr Martin Alciaturi;
Mr John M Green;
Mr Peter Hay;
Mr Robert Johanson;
Mr John Keeves;
Ms Francesca Lee;
Ms Sophie Mitchell; and
Ms Heather Zampatti.

9 Section 172 of the ASIC Act.

In the current period, six new members were appointed:

Ms Elizabeth Bryan, Company Director — Sydney;
Mr Mark Darras, Special Counsel, Sparke Helmore — Melbourne;
Mr Justin Gleeson SC, Barrister — Sydney;
Mr Richard Hunt, Principal, Fort Street Advisers — Sydney;
Mr Andrew Low, Chairman, RedBridge Grant Samuel — Sydney; and
Mr Ron Malek, Co-Chief Executive, Greenhill Caliburn — Sydney.

In the current period, six members completed their terms:

Mr David Bennett AC QC;
Mr Mark Paganin;
Professor Ian Ramsay;
Ms Jennifer Seabrook;
Mr Simon Withers; and
Ms Karen Wood.

Members' biographies

Kathleen Farrell (President) — Consultant to Freehills (Member since 2001), previously partner with Freehill Hollingdale & Page.

Martin Alciaturi — General Manager, Finance & Corporate, Aquila Resources Limited (Member since 2006), a Chartered Accountant and a Senior Fellow of FINSIA, previously Head of Macquarie Capital (Perth).

Guy Alexander — Co-Head of M&A, Allens (Member since 2004), member of the Corporations Committee of the Business Law Section of the Law Council of Australia.

Garry Besson — Partner, Ashurst Australia (Member since 2007), formerly a partner at Clayton Utz (1983-1989), Freehills (1989-1996) and Gilbert + Tobin (1996-2012).

Robin Bishop — Executive Director, Macquarie Capital (Member since 2011), Head of Macquarie Capital Australia and New Zealand.

Graham Bradley AM (Acting President) — Chairman, Stockland Corporation, HSBC Bank Australia, Anglo American Australia and Director of TRUenergy Holdings Pty Limited (Member since 2004), formerly national managing partner of Blake Dawson and partner of McKinsey & Company.

Catherine Brenner – Company Director (Member since 2007), non executive director of listed companies AMP Ltd, Coca Cola Amatil Ltd and Boral Limited. Previously a senior investment banker.

Geoff Brunsdon – Company Director (Member since 2007), currently Chairman Sims Metal Management, previously Managing Director, Merrill Lynch (Australia) Limited, a Fellow of ICAA, a Fellow of FINSIA and a Fellow of AICD.

Elizabeth Bryan – Company Director (Member since 2012), currently Chairman of Caltex Australia Limited and a director of Westpac Banking Corporation.

Diana Chang – Partner, Clifford Chance (Member since 2008), founding Partner of Chang, Pistilli & Simmons Corporate Lawyers which merged with Clifford Chance and Cochrane Lishman Carson and Luscombe.

Stephen Creese – Executive General Manager – Corporate Affairs, Newcrest Mining Limited (Member since 2005), previously with Rio Tinto, independent chair of the National Employment Services Association.

Ewen Crouch – Chairman of Partners at Allens (Member since 2010), Chairman of Mission Australia, Director of Sydney Symphony Orchestra, Member of the Corporations Committee of the Law Council of Australia, Fellow of AICD, Member of AICD's Law Committee and Member of AICD's Director Education Reference Committee.

Mark Darras – Special Counsel at Sparke Helmore (Member since 2012), Deputy Chairman of Australia Post, Deputy Chairman of John Holland Engineering Pty Ltd, Chairman of Amanie Advisors Australia Pty Ltd and a director of Forestry SA.

Stephanie Daveson – Partner and Head of the Brisbane Corporate Advisory practice, Corrs Chambers Westgarth (Member since 2011), Member of the Corporations Committee of the Law Council of Australia, Regional Councillor of FINSIA.

Peter Day – Non Executive Director of Ansell, Centro Retail Australia and SAI Global, Chairman Orbital Corporation (Member since 2010), previously Chief Financial Officer for Amcor and Deputy Chairman of ASIC.

James Dickson — Partner and Head of Corporate Division, Piper Alderman (Member since 2010).

Hamish Douglass (Acting President) — Chief Executive Officer, Magellan Financial Group (Member since 2005) and a member of FIRB and the Financial Literacy Board, previously Co-Head of Global Banking for Deutsche Bank AG in Australia and New Zealand.

Sarah Dulhunty — Partner, Ashurst Australia (Member since 2010), member of the Corporations Committee of the Law Council of Australia and AICD Law Committee.

Paula Dwyer — Company Director (Member since 2008), Chairman of Tabcorp Holdings, director of ANZ Banking Group, Leighton Holdings Limited and Lion Group. Fellow of the Institute of Chartered Accountants, a Fellow of AICD and a Fellow of FINSIA.

John Fast — Company Director and Lawyer (Member since 2005), currently Joint Managing Director Dragoman Pty Ltd, previously Chief Legal Counsel and Head of External Affairs at BHP Billiton Limited. Chairman Rotary Aboriginal & Torres Strait Islander Tertiary Scholarship, Director Medical Research Foundation for Women and Babies.

David Friedlander — Partner, King & Wood Mallesons (Member since 2010), member of the ASX Capital Markets Advisory Panel, the Corporations Committee of the Law Council of Australia and AICD.

Justin Gleeson SC — Barrister (Member since 2012), specialising in commercial and appellate law. Admitted to the NSW Bar in 1989, previously at Freehill, Hollingdale & Page.

John M Green — Company Director, Business Writer, Novelist and Publisher (Member since 2009), previously a Macquarie Bank Executive Director and Freehills partner. Life Member and Senior Fellow of FINSIA and a Fellow of AICD.

Rod Halstead — Partner and National Chair of Mergers and Acquisitions Group, Clayton Utz (Member since 2010), previously non executive director of Boral Limited and Amcor Limited, a Fellow of AICD.

Peter Hay — Chairman of the Advisory Board, Lazard (Member since 2009), company director, previously Chief Executive Officer of Freehills.

John Humphrey – Partner and Deputy Chairman, King & Wood Mallesons (Member since 2011), company director.

Richard Hunt – Principal of Fort Street Advisers (Member since 2012), previously held a number of senior roles at UBS Australia.

Robert Johanson – Director, Grant Samuel (Member since 2006), Chairman, Bendigo and Adelaide Bank and Deputy Chancellor of the University of Melbourne.

David Jones – Chairman, New Zealand Takeovers Panel (Member since 2007), a founding partner of Auckland law firm, Jones Young.

John Keeves – Partner, Head of Transactional and Advisory, Johnson Winter & Slattery (Member since 2006), past National Chairman of the Corporations Committee of the Law Council of Australia, Senior Fellow, Life Member and former Board member of FINSIA, member of CALDB.

Byron Koster – Partner, Corrs Chambers Westgarth (Member since 2004), member of the Corporations Committee of the Law Council of Australia, Adjunct Lecturer in takeovers law at the University of Sydney.

Francesca Lee – General Counsel & Company Secretary, OZ Minerals Ltd (Member since 2009), board member of Metropolitan Waste Management Group, previously senior roles at BHP Billiton, Rio Tinto Limited and Citibank Limited.

Rodd Levy – Partner, Freehills (Member since 2007), author of Takeovers Law and Strategy (3rd Edition, 2009) and a Senior Fellow of the Faculty of Law of the University of Melbourne.

Andrew Low – Chairman of RedBridge Grant Samuel (Member since 2012), previously Head of Asia for Macquarie Capital and chaired the Global Operating Committee for Macquarie Capital Advisers.

Alastair Lucas AM – Vice-Chairman and Managing Director of Goldman Sachs, (Member since 2005), Chairman of Cell Care Australia, Chairman of the Macfarlane Burnet Institute for Medical Research and Public Health, director of Fauna & Flora International.

Ron Malek – Co-Chief Executive of Greenhill Caliburn (Member since 2012) and member of the Greenhill Global Executive Committee.

Vicki McFadden (Acting President) – Company Director (Member since 2008), Chairman of Skilled Group, non executive director of Myer Family Company Holdings, previously an investment banker and a Managing Director of Merrill Lynch Australia.

Julie McPherson – Senior Vice President Legal, Group General Counsel and Company Secretary, Amcor (Member since 2011), previously senior role at Dresdner Kleinwort Wasserstein and partner of Corrs Chambers Westgarth.

Sophie Mitchell – Director of Corporate & Special Projects, RBS Morgans (Member since 2009), company director.

Norman O'Bryan AM SC – Barrister (Member since 2004), a member of the Law Council of Australia, the Australian Bar Association and the International Bar Association.

Tony Osmond – Head of Corporate and Investment Banking for Australia and New Zealand, Citigroup (Member since 2011), previously Head of Mergers & Acquisitions, Goldman Sachs.

Mike Roche – Managing Director and Head of Mergers & Acquisitions at Deutsche Bank AG, Sydney (Member since 2008).

Nora Scheinkestel – Company Director and Associate Professor (Member since 2010). Non-executive director of AMP Limited, Telstra Limited, Orica Limited and Pacific Brands Limited.

Peter Scott – Vice Chairman, Investment Banking, UBS AG (Australia) and Chairman, Baker IDI Heart & Diabetes Institute (Member since 2002). Australia's representative on the New Zealand Takeovers Panel since 2008.

Jane Sheridan – Partner, Arnold Bloch Leibler (Member since 2010).

Laurie Shervington – Special Counsel, Squire Sanders (AU) and company director (Member since 2010).

Andrew Sisson – Managing Director, Balanced Equity Management (Member since 2008), member of the board of Save the Children Australia and a trustee of the National Gallery of Victoria.

John Story – Company Director (Member since 2011), Chancellor of the University of Queensland and Commissioner of the Public Service Commission (Queensland). Previously a partner with Corrs Chambers Westgarth.

Robert Sultan – Partner, Norton Rose, Melbourne (Member since 2007), a member of the Corporations Committee of the Business Law Section of the Law Council of Australia and a director of the Gourlay Charitable Trust.

Anthony Sweetman – Managing Director, Head of Corporate Advisory, UBS AG (Member since 2007).

Alison Watkins – Chief Executive Officer, GrainCorp Limited (Member since 2010), non-executive director of Australia and New Zealand Banking Group.

Heather Zampatti – National Head of Wealth Management, Bell Potter Securities (Member since 2006), company director and member of the University of WA, Senate Committee-Strategic Resources.

Work of members

When a party makes an application, a sitting Panel of three members is appointed by the President to consider the application. The average number of applications the Panel receives each year is 30. In the current period there were 16 applications. Where possible the work of the Panel is shared so that each member is called on to sit on one to three matters per year, subject to conflicts, workload and other factors affecting availability. Panel members also participate in the development of Guidance Notes, general Panel policy and meetings where parties provide feedback to the Panel.

The Panel also holds full day, roundtable sessions each year. Panel members value these meetings. As Panel members reside in different cities these sessions are an opportunity for them to get together and discuss past proceedings, policy issues and market developments.

The firms of the Panel members allow their key people to devote time and resources to the Panel and they host the Panel's roundtable days each year. The Panel appreciates this support.

Legislation

The Panel operates under the Corporations Act and ASIC Act.

There have been no amendments relevant to the Panel in the current period.

Litigation

The Panel was subject to judicial review in CMI Limited. Proceedings were issued on 5 April 2011 and heard in the Federal Court of Australia in Brisbane on 20 and 21 September 2011. The decision is reserved.

The Panel was subject to judicial review in Bentley Capital Limited 01R. The matter has been resolved.¹⁰

Matters

The Panel resolved matters as quickly and as informally as a proper consideration of the issues permitted. Timeliness remains one of the key performance indicators for the Panel.

Appendix 2 lists the applications in the current period.

Many applications did not result in a formal decision, but were resolved by:

- undertakings to the Panel,¹¹ in the current period there was one;
- the Panel declining to conduct proceedings, in the current period there were seven. Relevant factors in deciding whether to conduct proceedings include whether the circumstances complained of would give rise to a declaration of unacceptable circumstances if established, the strength of the evidence, and the remedies that might be available. The Panel does not conduct proceedings merely because an application has been made; or
- proceedings being withdrawn, in the current period there were two. The Procedural Rules require the Panel to consent before a proceeding may be withdrawn. Relevant factors include whether the resolution of the matter has also resolved the unacceptable circumstances.

10 See Panel media release TP12/027 'Bentley Capital Limited 01R – Withdrawal of Judicial Review Applications'.

11 Section 201A of the ASIC Act.

There were four matters where the Panel made a declaration and orders.

Issues covered by decisions

The Panel considered applications relating to a number of issues in the current period. These included:

- capital raising: Gladstone Pacific Nickel Limited 02; Real Estate Capital Partners USA Property Trust; MacarthurCook Property Securities Fund 01 and 02;
- disclosure: Fosters Group Limited; Hastings Diversified Utilities Fund; Minemakers Limited; and
- truth in takeovers: Ludowici Limited 01 and 01R.

Guidance

The Panel publishes Guidance Notes to assist the market in relation to takeovers matters and to assist Panel members make consistent decisions. In the current period the Panel completed its program to review its Guidance Notes with the publication of a revised version of Guidance Note 18 – Bidder's Statements (renamed Takeover Documents to reflect its broadened content).

Guidance Note sub-committees

Guidance Notes are generally developed by sub-committees of Panel and non-Panel members. There were no sub- committees in 2011-12.

Consultation

The Panel undertakes consultation about individual matters (with the parties, after completion) and general policy or procedural issues. It approaches interest groups if they are likely to be materially affected or may provide specialised input.

Commercial sensitivity and time pressures under the legislation mean that proceedings are generally conducted in private. However, the Panel has power to invite or accept submissions from any person, and to call for persons to make submissions.

Policy development is generally undertaken with full opportunity for public consultation. The Panel publishes a response to the submissions received during consultation, which addresses the main comments received on policy documents and the reasons for adopting or rejecting those comments. The Panel will, from now, publish all responses to public consultation. For more information in relation to how the Panel consults in relation to policy development, see the section 'How We Consult' under 'Consultation' on the Panel's website.

SECTION 3 — PERFORMANCE REPORTING

Objective

The principal objective of the Panel is to improve the certainty, efficiency and fairness of Australia's takeovers market. It does this by:

- resolving disputes in a fair, timely, consistent, informal and sound manner; and
- publishing clear, well-developed guidance to assist market participants.

Operations

In 2011-12, the Panel received 16 applications. See Appendix 2.

Development

To help maintain consistency of decision-making, the Panel holds regular full-day, roundtable sessions. In the current period, four were held: two in Melbourne, one in Sydney and one in Perth.

Matter reviews

As part of its commitment to continuous improvement and stakeholder relations, after each matter the Panel invites the parties to give feedback to the Panel. The feedback is made available to the applicable sitting Panel and President, and matters of general interest are raised to the wider Panel.

Discussion of the issues raised in matters also takes place at Panel days.

Policy

Refer to Guidance on page 20.

Liaison

The Panel liaises with the major regulators in the takeovers area in Australia and overseas. Liaison with Australian regulators (ASIC, with which we have an MOU, ASX and ACCC) ensures that the Panel has effective working relations and its regulatory role fits appropriately with theirs. The Panel held regular liaison meetings with ASIC staff to discuss policy developments and recent issues. Liaison with overseas regulators helps keep practices in line with international practices. In the current period there was liaison with international regulators at

two conferences held for takeovers regulators, one in Vienna and one in Kuala Lumpur.

The Panel also maintains contact with organisations such as the Business Law Section of the Law Council of Australia, the AICD and FINSIA.

Panel members and the executive also attend and speak at industry meetings, education sessions and seminars.

Referrals to ASIC

There are two bases on which matters might be referred to ASIC. The first, where ASIC is involved in every application, involves recommending that ASIC look into aspects of the application that might give rise to concerns under the Corporations Act generally. The second is where the Panel refers a matter to ASIC for it to consider whether to make an application to the Panel.¹² During the period there was one referral of the former kind.

Website

The Panel's website is <http://www.takeovers.gov.au>.

The Panel uses its website for establishing its presence, inviting contact, publishing documents, and consulting on Panel policy. The website includes information about the Panel, its processes and a summary of the takeovers provisions in the Corporations Act. The website also includes a collection of source material on Australian corporate law.

In the current reporting period, 44,311 people visited the Panel's website. Of these, 50.67 per cent were returning visitors.

Announcements and media releases

Panel decisions are available through the Panel's website or RSS feed.

If the entity involved in a Panel matter is listed, the Panel's media releases in relation to that matter are also published on ASX or the relevant market.

Organisational budget

The Panel's funding is included in Treasury's budget. The Panel relies on Treasury's administrative infrastructure and processes.

¹² ASIC regulation 18.

Corporate governance

Treasury accountability

The Director provides monthly reports on financial and operational issues to the President and to the Executive Director, Markets Group in Treasury. The President and executive meet periodically with representatives of Treasury.

Planning and review

The executive holds regular operational review meetings with the President. It also holds meetings with Treasury approximately every quarter.

Executive staff performance is reviewed as part of Treasury's performance appraisal program.

The Panel applies the APS Values and Code of Conduct to Panel members and executive staff.

Fraud control

The Panel is covered by the Department of Treasury's Fraud Control Guidelines.

Risk management

The Panel completed a risk management assessment in the current period, and established a risk register and risk dashboard that is reviewed at weekly administration meetings of the executive. As a result of the exercise the Panel has assessed in more detail the various risks faced and implemented additional controls to manage them.

Outcome and output information

Outcome and output structure

In the current period, the Panel's functions contributed to Treasury's Outcome 1: *'Informed decisions on the development and implementation of policies to improve the wellbeing of the Australian people, including by achieving strong, sustainable economic growth, through the provision of advice to government and the efficient administration of federal financial relations'.*

The Panel's outputs contribute to Treasury Program 1.1: *'ensuring well functioning markets by providing advice on policies that promote competitive, efficient markets and that work to enhance consumer and investor wellbeing, a secure financial system and sound corporate practices, and foreign investment consistent with Australia's national interest'*.

Table 2: Resources for outcomes corporate governance and accounting

	Budget Estimate 2011-12 (\$'000)	Actual 2011-12 (\$'000)	Variation	Budget Estimate 2012-13 (\$'000)
Revenue for agency outputs				
Revenue from Government (appropriations) contributing to price of agency outputs	1,982	1,982	0	1,967
s.31 relevant agency receipts	0	0	0	0
Total revenue for agency outputs	1,982	1,982	0	1,967
Price of agency outputs				
Resourcing for agency outputs	1,982	2,001	(19)	1,967
Total price of agency outputs	1,982	2,001	(19)	1,967
			2011-12	2012-13
Average staffing levels (number)			5.7	5.7

Table 3: Agency Resource Statement

	Actual 2011-12 (\$'000)	Payments 2011-12 (\$'000)	Balance Remaining 2011-12 (\$'000)
Departmental appropriation			
Revenue from Government (appropriations)	1,982	2,001	(19)
s.31 relevant agency receipts	0	0	0
Total Resourcing and Payments	1,982	2,001	(19)

Performance information

Treasury outcome

The Panel contributed to Treasury's outcome by providing:

- timely, clear and consistent decisions in line with market practice;
- guidance to assist market participants regarding takeover aspects of the Corporations Act and ASIC Act; and
- procedural rules for fair, timely and cost-effective resolution of disputes.

Treasury output

The Panel contributed to 'support for markets and business' by basing its decisions on sound policy considerations and by meeting market participants' needs with its policy guidance.

Financial information

Schedule of Revenues and Expenditures

Table 4: Schedule of Revenues and Expenditures (unaudited) for the year ended 30 June 2012

	\$
Revenues	
Revenues from Government (appropriations)	1,982,000
Total revenues	1,982,000
Employee expenses	
Salaries	1,179,277
Employer superannuation	115,332
Members' annual retainer and sitting fees	219,893
Total employee expenses	1,514,502
Operating expenses	
Printing	3,060
Travel	141,776
Official entertainment	9,473
Conferences and training	6,997
Legal	172,742
Publications and subscriptions	10,142
Property operating expenses	123,915
Other expenses	18,780
Total operating expenses	486,885
Total expenses incurred to 30 June 2012	2,001,387
Balance of allocation after operating expenditure	(19,387)

Audit

As the Panel's appropriation comes from Treasury's budget, its operating result is consolidated into Treasury's financial statements, which are subject to audit by the ANAO.

The Panel's operations are also subject to review under Treasury's internal audit program.

The information has been compiled to assist the Panel with reporting under section 183 of the ASIC Act, and has not been audited.

Notes to the Schedule of Revenues and Expenditures

Statement of accounting policies

The significant accounting policies that 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 2012. 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. Revenue appropriated from Government includes \$1,982,000 classified as revenue.

c) Expenses

Expenses are recognised as they accrue. The Panel's expenses for 2011-2012 are also recorded in Treasury's audited financial statements for the period 1 July 2011 to 30 June 2012.

d) Balance of allocation after operating expenditure

The balance of allocation after operating expenditure for the period 1 July 2011 to 30 June 2012 was a deficit of \$19,387.

e) Salaries and members annual and sitting fees

Salaries and member sitting fees are recognised as they accrue.

Salaries for the current financial year include payments to firms for secondees' services. The payments are treated as payments for employees, not consultants.

f) Acquisition of assets

All assets greater than \$2,000 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 purchases for leasehold improvements or other office equipment during the year ended 30 June 2012.

g) GST

Revenues and expenses are recognised net of goods and services tax.

SECTION 4 — MANAGEMENT AND ACCOUNTABILITY

External scrutiny

Panel decisions are subject to:

- internal review by another Panel¹³ in relation to unacceptable circumstances and orders. This is available to any party to the proceeding and ASIC. A small percentage of decisions are reviewed. Most of the reviews of Panel decisions end with the review Panel process; and
- judicial review.¹⁴

Panel decisions are not reviewable by the Administrative Appeals Tribunal.¹⁵ Reviews of ASIC decisions are not reviewable by a review Panel as they are themselves considered to constitute a review process.

In addition, the Panel may refer questions of law to the Court.¹⁶

Government scrutiny

The Panel was not subject to any reports by the ANAO in 2011-12.

On 21 March 2012, the Panel appeared before the Parliamentary Joint Committee on Corporations and Financial Services in relation to the committee's oversight under the ASIC Act. The Committee published a report in relation to the Panel's appearance before the Committee in May 2012.¹⁷

The Panel attends hearings of the Senate Standing Committee on Economics Estimates as required.

Ombudsman

The Panel was not subject to any reports by the Commonwealth Ombudsman in 2011-12.

13 Section 657EA.

14 Section 75(v) of the Constitution *Judiciary Act 1903* and *Administrative Decisions (Judicial Review) Act 1977*, see page 21 for details about current judicial reviews of Panel decisions.

15 Section 1317B(1).

16 Section 659A.

17 It has also come to our attention that in 2010-11, the Panel was included in the 'Report on the 2009-10 annual reports of bodies established under the ASIC Act' by the Parliamentary Joint Committee on Corporations and Financial Services.

Management of human resources

Staffing

At 30 June 2012, the executive consisted of four permanent full time staff and one legal secondee.¹⁸ Permanent staff are employed under the *Public Service Act 1999*.

Table 5: Operative staff by classification and gender

Classification	Permanent full time		Total
	Male	Female	
APS3		1	1
APS5		1	1
SEB1	1		1
SEB2	1		1
Total	2	2	4

Note: Acronyms in the table can be found in Appendix 3.

Secondments

The small number of permanent staff on the executive is supplemented by secondees from law firms and other professional firms. The interchange with market participants helps the Panel keep current with market practice and helps educate market practitioners about Panel practice.

During the current period, because of the lower number of applications, the Panel had only one secondee for a time instead of the normal two secondees.

Staff development

The Panel seeks to ensure that its staff develop their core skills and keep up-to-date with changes in legislation and the financial sector.

In the current period staff attended workshops and training sessions in the areas of corporate law, international mergers and acquisitions regulation and financial management.

Remuneration for SES

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

18 The Panel also engaged one senior lawyer as a casual employee for a short period.

The Panel did not make any specific performance payments or bonus payments.

Remuneration for non-SES

The Treasury Workplace Agreement 2011-14 determines salary rates for non-SES 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).

Workplace diversity

The Panel adopts Treasury's policies and procedures in relation to EEO. Details and statistics on operative and paid inoperative staff by EEO target group and EEO appointments to the Panel are included in the Treasury Annual Report (Part 3: Management and Accountability, Management of Human Resources).

Industrial democracy

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

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

OH&S

Panel staff and members have the benefit of Treasury's OH&S programs and functions. Services provided to the Panel for the year included flu injections for the Panel executive, which contributed to a low absentee rate in the office. There were no reported accidents or dangerous occurrences during the year.

The Panel has adopted Treasury's Employee Assistance Program, an external and confidential counselling service for Treasury staff and their families.

Commonwealth disability strategy

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

Consultants and competitive tendering and contracting

Consultants

The Panel did not engage any consultants in 2011-12.

Competitive tendering and contracting

The Panel follows Treasury's procurement framework to ensure that it undertakes competitive and non-discriminatory tendering and quoting processes which are designed to result in value for money.

All proposed procurements valued at \$10,000 or more were reviewed by Treasury's Procurement and Contracts Team.

During 2011-12 the Panel entered into contracts related to providing conference facilities for the Panel days, three secondment agreements and one legal representation agreement that exceeded \$10,000.

Discretionary grants

During 2011-12, the Panel made a discretionary grant to the Australasian Legal Information Institute (AustLii) of \$2,500.

Advertising and market research

The Panel did not enter into any advertising or market research during 2011-12.

Environmental performance

As a small office, the Panel executive's operations have a relatively small impact on the environment. The Panel seeks to minimise:

- the use of electricity, water, paper and other materials consumed; and
- the generation of waste.

The Panel undertakes energy saving and recycling.

Freedom of information

Information Publication Scheme (IPS)

The FOI Act gives individuals the right to view documents held by Australian Government ministers, departments and agencies. The Panel is an agency within the Treasury portfolio, and was established under section 171 of the *Australian Securities Commission Act 1989*.¹⁹

Agencies subject to the FOI Act are required to publish information as part of the IPS. Each agency is required to display on its website a plan showing what information it publishes in accordance with the IPS requirements. The Panel has published on its website its agency plan, under the IPS, as required by Part II of the FOI Act. The agency plan discusses:

- what information the Panel publishes currently and what it proposes to publish in the future and the means by which this information will be published (for example, on its website); and
- how the Panel otherwise proposes to comply with the requirements of the Information Publication Scheme.

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;
- procedural rules;
- guidance notes and other policy development;
- administrative and financial documents relating to the Panel's operations;
- general correspondence; and

19 Repealed and replaced by the *Australian Securities and Investments Commission Act 2001*.

- 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 Panel's agency plan provides details of Panel documents that are accessible to the public.

FOI applications and initial contact

Freedom of information inquiries should be directed to:

Mr Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Ph: 03 9655 3500
Fax: 03 9655 3511

FOI activity

The Panel did not receive any applications for access to documents under the *Freedom of Information Act 1982* in 2011-12.

Regulatory Impact Statements

The Panel did not submit any Regulatory Impact Statements in 2011-12.

APPENDIX 1 — PANEL MEMBERS

MEMBERS OF THE PANEL AT 30 JUNE 2012:

Ms Kathleen Farrell (President)	Mr Richard Hunt
Mr Martin Alciaturi	Mr Robert Johanson
Mr Guy Alexander	Mr David Jones (New Zealand)
Mr Garry Besson	Mr John Keeves
Mr Robin Bishop	Mr Byron Koster
Mr Graham Bradley AM	Ms Francesca Lee
Ms Catherine Brenner	Mr Rodd Levy
Mr Geoff Brunsdon	Mr Andrew Low
Ms Elizabeth Bryan	Mr Alastair Lucas AM
Ms Diana Chang	Mr Ron Malek
Mr Stephen Creese	Ms Vickki McFadden
Mr Ewen Crouch	Ms Julie McPherson
Mr Mark Darras	Ms Sophie Mitchell
Ms Stephanie Daveson	Mr Norman O'Bryan AM SC
Mr Peter Day	Mr Tony Osmond
Mr James Dickson	Mr Mike Roche
Mr Hamish Douglass	Dr Nora Scheinkestel
Ms Sarah Dulhunty	Mr Peter Scott
Ms Paula Dwyer	Ms Jane Sheridan
Mr John Fast	Mr Laurie Shervington
Mr David Friedlander	Mr Andrew Sisson
Mr Justin Gleeson SC	Mr John Story
Mr John M Green	Mr Robert Sultan
Mr Rod Halstead	Mr Anthony Sweetman
Mr Peter Hay	Ms Alison Watkins
Mr John Humphrey	Ms Heather Zampatti

NEW MEMBERS APPOINTED TO THE PANEL IN 2011-12:

Ms Elizabeth Bryan

Mr Mark Darras

Mr Justin Gleeson SC

Mr Richard Hunt

Mr Andrew Low

Mr Ron Malek

MEMBERS WHO CEASED THEIR MEMBERSHIP OF THE PANEL IN 2011-12:

Mr David Bennett AC QC

Mr Mark Paganin

Professor Ian Ramsay

Ms Jennifer Seabrook

Mr Simon Withers

Ms Karen Wood

APPENDIX 2 — PANEL APPLICATIONS

Table 6: Applications received by the Panel in 2011-12

Matter No.	Section	Matter name	Decision	Application Date	Decision date
1	2011/13	657A,D&E Crescent Gold Limited 02	Declined to conduct proceedings	19/08/2011	26/08/2011
2	2011/14	657A,D&E Gladstone Pacific Nickel Limited 02	Conducted proceedings, no declaration	19/08/2011	14/09/2011
3	2011/15	657A,D&E Foster's Group Limited	Declined to conduct proceedings	01/09/2011	07/09/2011
4	2011/16	657A,D&E Hastings Diversified Utilities Fund	Conducted proceedings, no declaration	23/12/2011	05/01/2012
5	2012/01	657A,D&E RCL Group Limited	Declined to conduct proceedings	10/02/2012	17/02/2012
6	2012/02	657A,D&E Ludowici Limited	Declaration and Orders	13/02/2012	28/02/2012
7	2012/03	657A,D&E Careers Australia Group Limited	Conducted proceedings, undertaking	24/02/2012	15/03/2012
8	2012/04	657EA Ludowici Limited 01R (a)	Declined to conduct proceedings	29/02/2012	09/03/2012
9	2012/04	657EA Ludowici Limited 01R (b)	Declined to conduct proceedings	01/03/2012	09/03/2012
10	2012/05	657A,D&E Real Estate Capital Partners USA Property Trust	Declaration and Orders	09/03/2012	28/03/2012
11	2012/06	657A,D&E MacarthurCook Property Securities Fund 01	Withdrawn	18/04/2012	08/05/2012
12	2012/07	657A,D&E MacarthurCook Property Securities Fund 02	Declined to conduct proceedings	24/04/2012	08/05/2012
13	2012/08	657A,D&E Northwest Properties Limited	Withdrawn	30/05/2012	04/06/2012
14	2012/09	657A,D&E Minemakers Limited	Declaration and Orders	05/06/2012	25/06/2012
15	2012/10	657A,D&E Flinders Mines Limited	Declined to conduct proceedings	15/06/2012	29/06/2012
16	2012/11	657A,D&E The President's Club Limited	Declaration and Orders	26/06/2012	24/07/2012

APPENDIX 3 — ABBREVIATIONS AND ACRONYMS

ACCC	Australian Competition and Consumer Commission
AICD	Australian Institute of Company Directors
ANAO	Australian National Audit Office
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
CALDB	Companies Auditors and Liquidators Disciplinary Board
CAMAC	Corporations and Markets Advisory Committee
EEO	Equal Employment Opportunity
EL	Executive Level
FINSIA	Financial Services Institute of Australasia
FIRB	Foreign Investment Review Board
FOI Act	<i>Freedom of Information Act 1982</i>
ICAA	Institute of Chartered Accountants of Australia
IPS	Information Publication Scheme
MOU	Memorandum of Understanding
OH&S	Occupational Health and Safety
SEB	Senior Executive Band
SES	Senior Executive Service

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