

# **TAKEOVERS PANEL**

**ANNUAL REPORT  
2012-2013**

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17 October 2013

Senator the Honourable Arthur Sinodinos AO  
Assistant Treasurer  
Parliament House  
Canberra ACT 2600

Dear Assistant Treasurer

**ANNUAL REPORT 2012-13**

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, I submit the 2012-13 Annual Report of the Takeovers Panel for presentation to Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Vickki McFadden'.

Vickki McFadden  
President



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## PART 1 — BACKGROUND

### Who we are

The Takeovers Panel is a peer review body<sup>1</sup> established as “*a specialist body largely comprised of takeover experts*”<sup>2</sup> that is the main forum for resolving disputes in takeovers.<sup>3</sup> It currently consists of 48 specialists in mergers and acquisitions; either as investment bankers, lawyers, company directors or other professionals.

The Panel, established in January 1991, underwent changes to its structure and role in March 2000. It operates under:

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

### Our website

The Panel’s website (<http://www.takeovers.gov.au>) includes:

- media releases;
- reasons for decision;
- a description of the Panel and its operations and a guide to the takeover provisions in the Corporations Act;
- Guidance Notes;
- consultation papers;
- Procedural Rules;
- annual reports and
- its Information Publication Scheme.

---

1 Section 172(4) of the ASIC Act.

2 Paragraph [7.16] of the Explanatory Memorandum for the CLERP Bill 1998.

3 Section 659AA of the Corporations Act.

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

## Who to contact

Enquiries regarding this report may be directed to:

Mr Allan Bulman  
Director, Takeovers Panel  
Level 10, 63 Exhibition Street  
Melbourne VIC 3000  
Telephone: +61 3 9655 3500  
Facsimile: +61 3 9655 3511  
Email: [allan.bulman@takeovers.gov.au](mailto:allan.bulman@takeovers.gov.au)



**Ms Vicki McFadden**  
**President of the Panel**

## Review by the President

It was an honour to be appointed the Panel's President on 8 March 2013. I would like to thank the Panel members and executive for their welcome to, and assistance in, this new role.

I would also like to pay tribute to my predecessor, now Justice Kathleen Farrell of the Federal Court, for her leadership as Panel President from 2010 to 2013 and as member from 2001. Together with Simon McKeon AO (Panel President from 1999 to 2010), Kathy has been a major contributor to the Panel's successful operation as a peer review body in mergers and acquisitions.

The Panel has now considered over 400 applications since it was revitalised on 13 March 2000. Mergers and acquisitions activity in the 2012-13 year continued to be subdued. This was reflected in the number of applications we received (20), which was more than the previous year (16), but less than the long-term average (30). During the year, the Panel considered complicated association matters, the treatment of franking credits in bids and the application of the takeovers principles to complex transactions.

The Panel aims to make commercial decisions in a timely manner, in accordance with its remit. This year the average time from application to decision was 15.8 calendar days which compares favourably with the overall average of 15.7 calendar days given the increasing complexity of some of the applications before us.

I agree with my predecessors that a key reason the Panel operates effectively is that it is a principles-based body. The Panel's decisions reflect the particular facts of each case and commercial reality. To assist market participants in understanding principles and policy issues the Panel will consider in deciding applications, the Panel has 17 Guidance Notes. In addition, the executive issued an index of the Panel's decisions from 2006 to 2012 and is aiming to complete the index with decisions prior to 2006. The creation of the index reflects that, with more than 400 applications, the Panel has its own specialised quasi-jurisprudence, and the index will assist practitioners in understanding how the Panel applies legislation and policy to the facts of each case.

If the 2012-13 year was relatively restrained in the number of takeover transactions, it was a year of active policy discussion in the takeovers area. While changes to the law on mergers and acquisitions or our legal framework are matters for government, we welcome the opportunity to contribute to discussion on the need for, and the implications of, regulatory reform. We are very pleased with the recent changes to the ASIC Regulations to improve our processes. One of these changes involves removing the requirement for the Panel to provide reasons at the time of notifying persons that the Panel has decided not to conduct proceedings. We will continue to publish reasons in these matters, but this amendment will mean that we will be able to communicate a decision not to conduct proceedings to the parties and the market faster. The other amendments facilitate the use of conferences, by removing the requirement for the Panel to make and retain a transcript of the proceedings of a conference and by allowing electronic conferencing to be used.

At 30 June 2013, the Panel had 48 part time members, whom I thank for their work throughout the year. In particular, I would also like to thank for their service those members whose terms ended in this reporting period. The Panel has a small executive team of Allan Bulman, Alan Shaw, professional and administrative staff and secondees. I wish to thank them for their professionalism and dedication. The model of involving secondees in the work of the Panel has been very successful and relies on the law firms who have generously offered their employees. Last financial year, the executive's average staffing was lower than usual (5.3 rather than 6) as a response to the reduced workload and to assist with achieving our budget. However, given the uneven nature of the Panel's work and the complexity of some applications, this put the executive under considerable pressure at times. At this stage, we have budgeted to return to our normal staffing levels in 2013-2014.

# Panel at a glance 2012-13

Applications (average 30.4 per year  
from 1 July 2000 to 30 June 2013)

20

Matters the Panel conducted  
proceedings in/Matters the Panel  
declined to conduct proceedings in

10/10

Matters where the Panel accepted  
undertakings

2

Matters where the Panel  
made declarations and orders

5

Average calendar days between  
application and decision  
(average 15.7 since 13 March 2000)

15.8

Average calendar days between  
decision and publication of  
reasons (average 36.4 since 13 March 2000)

7.7



## PART 2 — THE PANEL

The Panel improves the certainty, efficiency and fairness of Australia’s takeovers market by:

- Resolving disputes in a fair, timely, consistent, informal and sound manner; and
- Publishing clear, well-developed guidance.

The Panel’s two main dispute resolution functions are considering whether unacceptable circumstances exist<sup>4</sup> and reviewing certain decisions of ASIC.<sup>5</sup>

**Table 1: The Panel’s dispute resolution functions**

	Unacceptable circumstances	Review of ASIC decisions
<b>What</b>	Deciding applications for a declaration of unacceptable circumstances is the main work of the Panel	The Panel may review ASIC decisions under Chapter 6 and, during a takeover bid, Chapter 6C
<b>How</b>	The Panel considers the circumstances against the principles in section 602, the provisions and policy of Chapter 6 and the public interest	The Panel may exercise all the powers of ASIC under Chapters 6 and 6C <sup>6</sup>
<b>How often</b>	In the current period there were 17 applications for a declaration at first instance	In the current period there were no applications for review of an ASIC decision
<b>Tools</b>	Guidance Notes, Procedural Rules, legislative policy of Chapter 6, previous decisions	Regulatory Guides, ASIC policies, reasons for ASIC’s decision, Panel policy

4 Section 657A and, if made, orders under section 657D.

5 Under section 655A and, during a takeover bid, section 673 (see s656A).

6 Section 656A(3).

	Unacceptable circumstances	Review of ASIC decisions
<b>Outcomes</b>	If a declaration is made the Panel can make any orders to address the unacceptable circumstances, including a ‘remedial order’ <sup>7</sup>	Affirm, vary, set aside or stay the ASIC decision
<b>Review</b>	The Panel, on application, conducts a merits review of a decision of the initial Panel. <sup>8</sup> A review Panel comprises three different members to the initial Panel. There may be only one review of a Panel decision	As the Panel proceeding is the merits review, there is no review Panel
<b>How often</b>	In the current period there were 3 applications for review	NA

## Other features

The Panel has a rule making power.<sup>9</sup> It has not made any rules under this power.

The Panel has a power to make procedural rules.<sup>10</sup> It published revised Procedural Rules in 2010.

The Panel has a review function if a matter is referred from the Court.<sup>11</sup> There were none in the current period.

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7 Section 9. However, it cannot make an order directing a person to comply with a requirement of Chapters 6 – 6C

8 Only with consent of the President if the initial Panel did not make a declaration or orders. See generally section 657EA.

9 Section 658C.

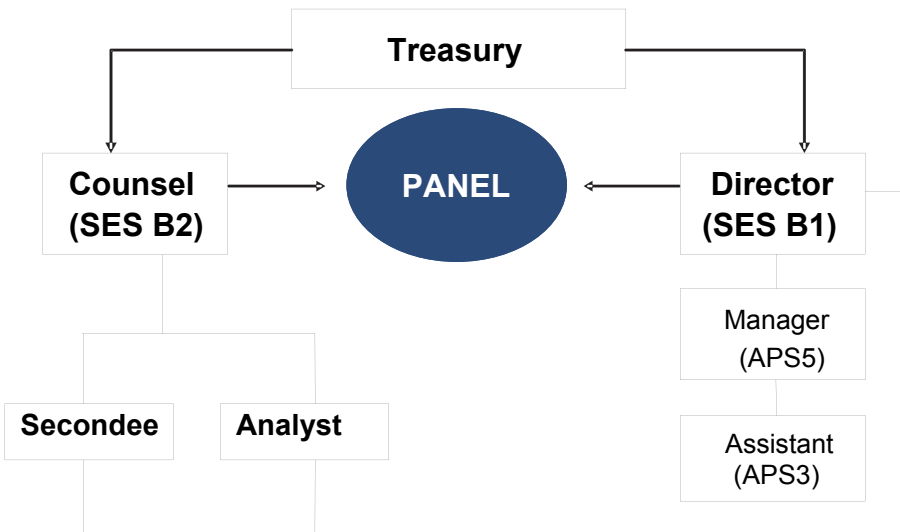
10 Section 195 of the ASIC Act.

11 Section 657EB.



# Organisational structure

Chart 1: The Panel’s organisation structure



## Panel President

Ms Vickki McFadden, a member of the Panel, is its President.<sup>12</sup> 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 regularly sits on matters.

12 Section 173 of the ASIC Act.

## Acting Presidents

The following members have been appointed<sup>13</sup> to act as President when the President cannot do so:

- Mr Hamish Douglass;
- Mr Andrew Sisson;
- Mr Stephen Creese;
- Dr Nora Scheinkestel; and
- Ms Julie McPherson.

## Panel Executive

The executive assists Panel members to make consistent, timely and commercial decisions. It provides:

- 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
- 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;
- Analyst, Ms Tanya Smith;<sup>14</sup>
- legal secondees. The Panel's normal process is to staff its office, in part, with secondees from major law 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 Ms Nicole Graham (Corrs Chambers Westgarth, Sydney), Ms Ratha Nabanidham

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<sup>13</sup> Section 182(1)(a)&(b) of the ASIC Act.

<sup>14</sup> On a 12 month contract.

(Allen & Overy, Sydney) and Mr Jason Jordan (Herbert Smith Freehills, Melbourne).



**The Past President with the executive:** Back row (L to R) Alan Shaw, Ratha Nabanidham, Rebecca Banhelyi and Allan Bulman; Front row (L to R) Nicole Graham, Justice Kathleen Farrell and Karolina Danger.

## The Office

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

## Appointment of Panel members

**Table 2: Appointment of Panel members in 2012-13**

Reappointments (16)	New appointments (3)	Terms completed (7)
Mr Garry Besson; Mr Geoff Brunsdon; Mr Ewen Crouch AM; Mr Peter Day; Mr James Dickson; Ms Sarah Dulhunty; Mr David Friedlander; Mr Rod Halstead; Mr Rodd Levy; Ms Vicki McFadden; <sup>(1)</sup> Dr Nora Scheinkestel; Ms Jane Sheridan; Mr Laurie Shervington; Mr Robert Sultan; Mr Anthony Sweetman; and Ms Alison Watkins.	Ms Fiona Gardiner-Hill (Partner, Herbert Smith Freehills, Sydney);  Ms Elizabeth Hallett (Company Director, Sydney); and  Ms Denise McComish (Partner, KPMG, Perth).	Mr Guy Alexander; Mr Graham Bradley AM; Ms Catherine Brenner; Ms Kathleen Farrell; <sup>(2)</sup> Mr Justin Gleeson SC; <sup>(3)</sup> Mr Byron Koster; and Mr Norman O'Bryan AM SC.

Notes:

- (1) appointed President 8 March 2013
- (2) retired 4 December 2012
- (3) retired 14 February 2013

Members are appointed on a part-time basis, usually for three years, by the Governor-General on the nomination of the Minister.<sup>15</sup> They may be re-appointed. State Ministers may submit nominations to the Minister. Members are nominated on the basis of their knowledge and experience in one or more of business, administration of companies, financial markets, financial products and financial services, law, economics and accounting.<sup>16</sup> A mix of expertise, geographical representation and gender representation is also considered.

<sup>15</sup> Section 172 of the ASIC Act.

<sup>16</sup> Section 172(4A) of the ASIC Act.

## *Members' biographies*

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

**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).

**Garry Besson** — Partner, Ashurst Australia (Member since 2007).

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

**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 (Acting President)** — Consultant (Member since 2005), previously with Newcrest Mining and Rio Tinto, independent chair of the National Employment Services Association.

**Ewen Crouch AM** — Company Director (Member since 2010), Director of Westpac Banking Corporation and BlueScope Steel Limited, Chairman of Mission Australia, Director of Sydney Symphony Orchestra, Consultant at Allens, Member of the Corporations Committee of the Law Council of Australia and a Fellow of AICD.

**Mark Darras** — Special Counsel at Sparke Helmore (Member since 2012), Chairman of the Telecommunications Universal Services Management Agency, Chairman of Amanie Advisors Australia 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** — Company Director (Member since 2010), non executive director of Ansell, Federation Centres and SAI Global, Chairman Orbital Corporation. 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)** — Co-Founder, 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, Deputy Chairman of Leighton Holdings Limited, director of ANZ Banking Group and Lion Group. Fellow of the Institute of Chartered Accountants, a Fellow of AICD and a Senior Fellow of Finsia.

**John Fast** — Company Director and Lawyer (Member since 2005), currently Joint Managing Director Dragoman Pty Ltd. Chairman Rotary Aboriginal & Torres Strait Islander Tertiary Scholarship, President of The Australia Russia Dialogue, 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 ASX Disciplinary Committee, the Corporations Committee of the Law Council of Australia and the Legal Committee of the AICD.

**Fiona Gardiner-Hill** — Partner, Herbert Smith Freehills (Member since 2013), member of the Corporations Committee of the Law Council of Australia and the Sydney Law School Foundation Council.

**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.

**Elizabeth Hallett** — Company Director (Member since 2013), former partner of Norton Rose Australia, graduate of the AICD.

**Rod Halstead** — Senior Partner, Mergers & Acquisitions and Corporate Advisory 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** — Executive Dean, Faculty of Law, Queensland University of Technology (Member since 2011), company director, former partner of King & Wood Mallesons.

**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), Deputy Chairman – Executive of the Business Law Section of the Law Council of Australia, Senior Fellow, Life Member and former Board member of Finsia, member of CALDB.

**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, Herbert Smith Freehills (Member since 2007), author of Takeovers Law & Strategy (4th Edition, 2012) 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** — Chairman Investment Banking, Goldman Sachs Australia (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, director of Research Australia.

**Ron Malek** — Vice Chairman and Managing Director of Greenhill and Co-Founder of Caliburn, which merged with Greenhill (Member since 2012), Director, Sydney Children's Hospital Foundation, and member of the UNSW Council's Investment Committee.

**Denise McComish** — Partner, KPMG (Member since 2013), a Chartered Accountant, member of the KPMG Australia Board, director of Australian Scholarships Foundation, Pro-Chancellor of Edith Cowan University, member of the Corporations and Markets Advisory Committee.

**Julie McPherson (Acting President)** — 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.

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

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

**Nora Scheinkestel (Acting President)** — Company Director and Associate Professor (Member since 2010). Non-executive director of Telstra Limited, Orica Limited and IAG 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 (Acting President)** — 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. Previously a partner with Corrs Chambers Westgarth.

**Robert Sultan** — Partner, Norton Rose Fulbright Australia (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 (Australia) (Member since 2007).

**Alison Watkins** — Chief Executive Officer, GrainCorp Limited (Member since 2010), non-executive director of Australia and New Zealand Banking Group and The Centre of Independent Studies.

**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.



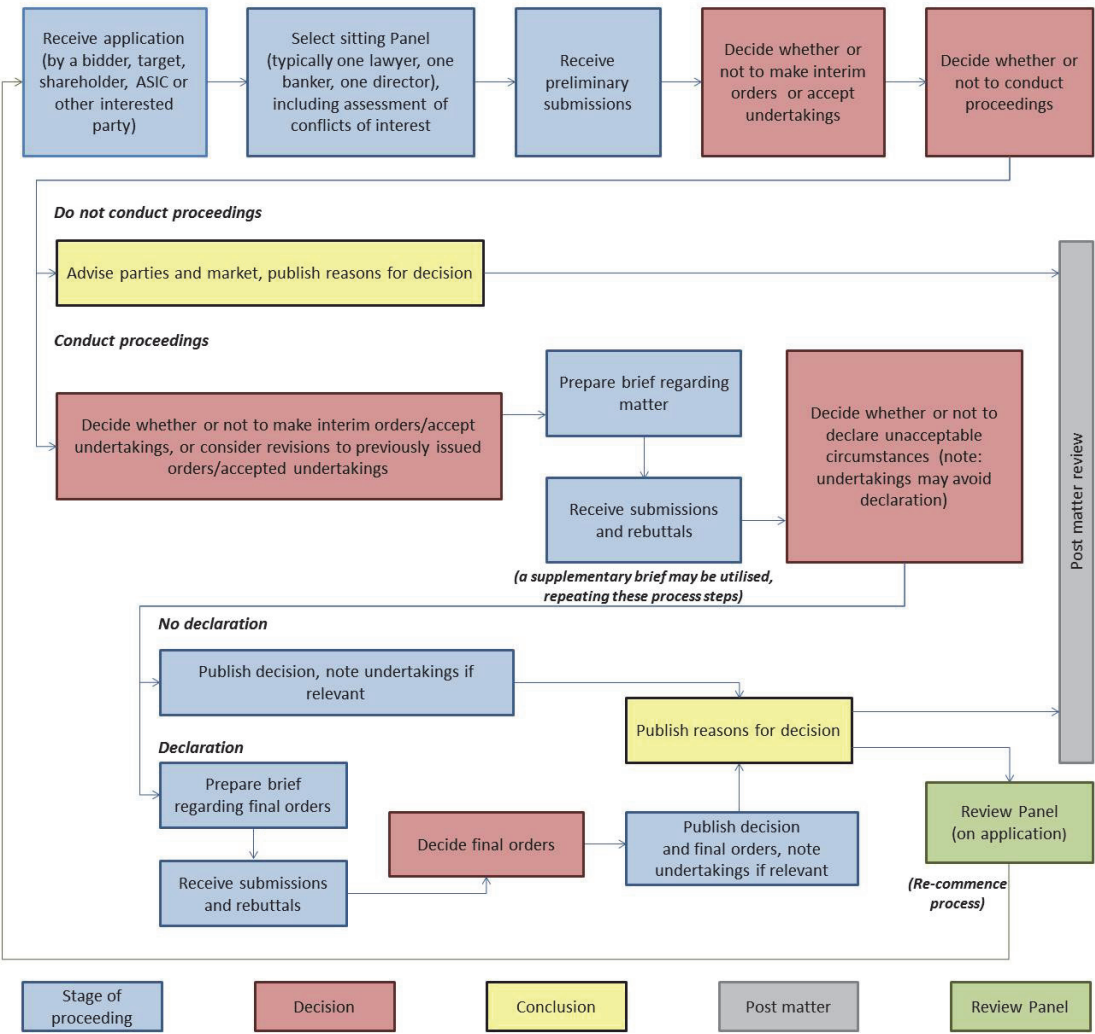
# PART 3 – THE WORK OF THE PANEL

## Matters

The Panel resolves matters as quickly and as informally as a proper consideration of the issues permits. Timeliness remains one of the key performance indicators for the Panel. Proceedings are generally conducted in private because of commercial sensitivity and time constraints. The Panel has power to invite or accept submissions from any person and to call for persons to make submissions.

The following chart maps the Panel’s process in relation to applications for declarations of unacceptable circumstances.

**Chart 2: The Panel’s process for applications for declarations of unacceptable circumstances**



Further description of the Panel's process can be found on its website. Appendix 3 lists the applications in the current period. There were 20.

**Table 3: Types of applications received by the Panel in 2012-13**

Form of resolution	Number of matters	Factors
Declaration and/or Orders	5	Circumstances are unacceptable and need to be remedied
Undertakings <sup>17</sup>	2	Potential substitute for orders
Conduct proceedings, no declaration or orders	3	Panel decides to conduct proceedings, but does not find any unacceptable circumstances
Declining to conduct proceedings	10	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
Proceedings withdrawn	0	Whether the resolution of the matter has also resolved the unacceptable circumstances (the Procedural Rules require the Panel to consent before a proceeding may be withdrawn)
Total	20	

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17 Section 201A of the ASIC Act.

## Issues in applications

The applications dealt with the following issues:

**Table 4: Issues in 2012-13**

Issue	Number of matters	Name of case
Disclosure (including franking credit issues)	6	Hastings Diversified Utilities Fund 02, Alesco Corporation Limited 01, 02 and 03, Minemakers Limited 02 & 02R
Association	3	World Oil Resources Limited, Touch Holdings Limited, Winpar Holdings Limited
Lock-up devices	3.5	Mission New Energy Limited 01 & 01R, LinQ Resources Limited, Austock Group Limited (in part)
Rights issues	2	Altius Mining Limited, Laneway Resources Limited
Interpretation of contract in the context of a bid	2	Careers Australia Group Limited 02 & 02R
Section 606 breach	1.5	Knights Capital Group Limited, Firestone Energy Limited (in part)
Other	2	Austock (partly break fee and other issues), IFS Construction Services Limited (company meeting), Firestone Energy (partly collateral benefits)
Total	20	

## Ensuring consistency

The Panel holds meetings of all its members two or three times each year. As Panel members reside in different cities, these sessions are a valuable opportunity for them to get together and discuss past proceedings, policy issues and market developments.

Panel members' firms host these meetings, as well as allowing their key people to put in the time, and the Panel appreciates this support.

The executive has issued an index of Panel decisions from 2006-2012. They aim to complete this index to include all Panel decisions.

## Guidance

The Panel publishes Guidance Notes to assist the market in relation to takeovers matters and to assist Panel members make consistent decisions. No new Guidance Notes, or Amended Guidance Notes, were issued in 2012-2013.

Guidance Notes are generally developed by sub-committees of Panel and non-Panel members. Appendix 2 lists sub-committee members. The Panel thanks them for their contributions.

## Consultation

The Panel undertakes consultation:

- With parties in relation to individual matters after completion. As part of its commitment to continuous improvement and stakeholder relations, after each matter the Panel invites the parties to give feedback. The feedback is made available to the applicable sitting Panel and President, and matters of general interest are raised to the wider Panel; and
- Publicly in relation to policy or procedural issues. The Panel may approach interest groups if they are likely to be materially affected or may provide specialised input. The Panel publishes all submissions. The Panel also publishes a response to submissions addressing the main comments received and the reasons for adopting or rejecting them. For more information see the section 'How We Consult' under 'Consultation' on the Panel's website.

## Legislation

The Panel operates under the Corporations Act and ASIC Act.

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

## Judicial review

The Panel was subject to judicial review in *The President's Club Limited*. Proceedings were issued on 21 September 2012 and heard in the Federal Court of Australia in Brisbane on 30 and 31 July 2011. The decision is reserved.

## PART 4 — PERFORMANCE REPORTING

### *Matter reviews*

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

### *Industry 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 holds 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. The Panel executive contributes to an Asia Pacific Takeovers Regulators Forum.

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*

ASIC is involved in every application. Matters might be specifically referred to ASIC because:

- A Panel considers that ASIC should look into aspects of the application that might give rise to concerns under the Corporations Act generally. This occurred twice during the current period; and
- The Panel wants ASIC to consider whether to make an application.<sup>18</sup>

### *Website*

The Panel uses its website (<http://www.takeovers.gov.au>) to maintain a market presence, inform, invite contact, publish documents and undertake policy consultation. In the current period, 48,735 people visited the Panel's website.

### *Announcements and media releases*

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

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18 ASIC Regulation 18.

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 Australian market.

## Corporate accountability

### *Planning and review*

The executive holds regular operational review meetings with the President and monthly meetings with Treasury.

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 the executive.

### *Fraud control*

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

### *Risk management*

The Panel has a risk register, and a risk dashboard that is reviewed at weekly administration meetings of the executive.

## Outcome and output information

### *Organisational budget*

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

### *Treasury accountability*

The Director provides monthly reports on financial and operational issues to the President and to the Executive Director, Markets Group in Treasury.

### *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 5: Resources for outcomes corporate governance and accounting**

	<b>Budget Estimate</b>	<b>Actual</b>	<b>Variation</b>	<b>Budget Estimate</b>
	<b>2012-13 (\$'000)</b>	<b>2012-13 (\$'000)</b>		<b>2013-14 (\$'000)</b>
<b>Revenue for agency outputs</b>				
Revenue from Government (appropriations) contributing to price of agency outputs	1,967	1,878	89	1,990
s.31 relevant agency receipts	61	52	9	0
<b>Total revenue for agency outputs</b>	<b>2,028</b>	<b>1,930</b>	<b>98</b>	<b>1,990</b>
Price of agency outputs				
Resourcing for agency outputs	1,967	1,878	89	1,990
<b>Total price of agency outputs</b>	<b>1,967</b>	<b>1,878</b>	<b>89</b>	<b>1,990</b>
			<b>2012-13</b>	<b>2013-14</b>
Average staffing levels (number)			5.3	6.0

## Treasury outcome

The Panel contributes to Treasury's outcome by:

- 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 contributes 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 6: Comprehensive income statement (Showing Net Cost for Services) (unaudited) for the year ended 30 June 2013**

	\$
<b>EXPENSES</b>	
<b>Employee expenses</b>	
Salaries	1,170,818
Employer superannuation	142,759
Members' annual retainer and sitting fees	301,859
<b>Total employee expenses</b>	<b>1,615,436</b>
<b>Operating expenses</b>	
Printing	4,533
Travel	106,807
Official entertainment	7,868
Conferences and training	7,234
Legal	18,892
Publications and subscriptions	12,191
Property operating expenses	132,277
Other expenses	25,316
<b>Total operating expenses</b>	<b>315,118</b>
<b>Total expenses incurred to 30 June 2013</b>	<b>1,930,555</b>
<b>LESS:</b>	
<b>OWN-SOURCE INCOME</b>	
<b>Revenue</b>	
s.31 relevant agency receipts	52,141
<b>Total Revenue</b>	<b>52,141</b>
<b>Total own-source income</b>	<b>52,141</b>
<b>Net cost of (contribution by) services</b>	<b>1,878,414</b>
Appropriation Revenue	1,967,000
<b>Surplus (deficit) attributable to the Australian Government</b>	<b>88,586</b>

### *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:

#### **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 2013. 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.

#### **Revenue recognition**

Revenues from Government appropriations are recognised when received or declared by the Treasurer in the Federal Budget. Revenue appropriated from Government, through Treasury, includes \$1,967,000 classified as revenue.

#### **Expenses**

Expenses are recognised as they occur. The Panel's expenses for 2012-2013 are also recorded in Treasury's audited financial statements for the period 1 July 2012 to 30 June 2013.

#### **Surplus attributable to the Australian Government**

The balance of allocation after operating expenditure for the period 1 July 2012 to 30 June 2013 was a surplus of \$88,586.

#### **Salaries and members' annual and sitting fees**

Salaries and member sitting fees are recognised as they occur.

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

#### **GST**

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



## PART 5 — MANAGEMENT AND ACCOUNTABILITY

### External scrutiny

Panel decisions in relation to unacceptable circumstances and orders are subject to internal review by another Panel.<sup>19</sup> Most reviews of Panel decisions end with the review Panel process. All Panel decisions are subject to judicial review.<sup>20</sup>

### Government scrutiny

The Panel was not subject to any reports by the ANAO in 2012-13.

The Panel attends hearings of the Senate Standing Committee on Economics Estimates and the Parliamentary Joint Committee on Corporations and Financial Services as required.<sup>21</sup>

### Ombudsman

The Panel was not subject to any reports by the Commonwealth Ombudsman in 2012-13.

## Management of human resources

### Staffing

At 30 June 2013, the executive consisted of four permanent full time staff, one non-ongoing full time employee and one legal secondee.<sup>22</sup> Permanent staff are employed under the *Public Service Act 1999*.

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19 Section 657EA.

20 Section 75(v) of the Constitution *Judiciary Act 1903* and *Administrative Decisions (Judicial Review) Act 1977*, see page 22 for details about current judicial reviews of Panel decisions.

21 The Parliamentary Joint Committee on Corporations and Financial Services in its 'Report on the 2011–12 annual reports of bodies established under the ASIC Act' (February 2013), referred to the Panel's annual report.

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

**Table 7: Operative staff by classification and gender**

Classification	Full time		Total
	Male	Female	
APS3		1	1
APS5		1	1
EL2		1	1
SEB1	1		1
SEB2	1		1
Total	2	3	5

Note: Acronyms in the table can be found in Appendix 4.

## Secondments

The small number of permanent staff on the executive is supplemented by secondees from law firms and other professional firms. 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.

## 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).

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**

The Panel did not engage any consultants in 2012-13.

## **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 the current period the Panel entered into contracts related to two secondment agreements and one legal representation agreement that exceeded \$10,000.

## **Discretionary grants**

During 2012-13, the Panel made a discretionary grant to the Australasian Legal Information Institute (AustLii) of \$2,500.

## **Advertising and market research**

The Panel did not undertake any advertising or market research during 2012-13.

## 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. The Panel undertakes energy saving and recycling.

## Freedom of information

### *Information Publication Scheme*

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*.<sup>23</sup>

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;

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<sup>23</sup> Repealed and replaced by the *Australian Securities and Investments Commission Act 2001*.



- 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 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 received one application for access to documents under the *Freedom of Information Act 1982* in 2012-13.

## Regulatory Impact Statements

The Panel did not submit any Regulatory Impact Statements in 2012-13.

## APPENDIX 1 — PANEL MEMBERS

### *Members of the Panel at 30 June 2013:*

Ms Vickki McFadden (President)	Mr Richard Hunt
Mr Martin Alciaturi	Mr Robert Johanson
Mr Garry Besson	Mr David Jones (New Zealand)
Mr Robin Bishop	Mr John Keeves
Mr Geoff Brunsdon	Ms Francesca Lee
Ms Elizabeth Bryan	Mr Rodd Levy
Ms Diana Chang	Mr Andrew Low
Mr Stephen Creese	Mr Alastair Lucas AM
Mr Ewen Crouch AM	Mr Ron Malek
Mr Mark Darras	Ms Denise McComish
Ms Stephanie Daveson	Ms Julie McPherson
Mr Peter Day	Ms Sophie Mitchell
Mr James Dickson	Mr Tony Osmond
Mr Hamish Douglass	Mr Mike Roche
Ms Sarah Dulhunty	Dr Nora Scheinkestel
Ms Paula Dwyer	Mr Peter Scott
Mr John Fast	Ms Jane Sheridan
Mr David Friedlander	Mr Laurie Shervington
Ms Fiona Gardiner-Hill	Mr Andrew Sisson
Mr John M Green	Mr John Story
Ms Elizabeth Hallett	Mr Robert Sultan
Mr Rod Halstead	Mr Anthony Sweetman
Mr Peter Hay	Ms Alison Watkins
Professor John Humphrey	Ms Heather Zampatti

### *New members appointed to the Panel in 2012-13:*

Ms Fiona Gardiner-Hill  
Ms Elizabeth Hallett

Ms Denise McComish

### *Members who ceased their membership of the Panel in 2012-13:*

Mr Guy Alexander  
Mr Graham Bradley AM  
Ms Catherine Brenner  
Ms Kathleen Farrell (retired)

Mr Justin Gleeson SC (retired)  
Mr Byron Koster  
Mr Norman O'Bryan AM SC

# APPENDIX 2 — SUB-COMMITTEE MEMBERS

Table 8: Sub-committees

Topic	Sub-committee members	
	Panel member	External member
Accessible Documents	James Dickson	Jane Eccleston*
	Sarah Dulhunty	Kevin Lewis
	Richard Hunt	Kevin Lindgren*
	Robert Johanson	Kate O'Rourke*
	Vicki McFadden	
	Robert Sultan	
Accessible Documents Sounding Group	Garry Besson	
	Ewen Crouch AM	
	Rod Halstead	
	John Keeves	
	Rodd Levy	
	Peter Scott	
	Jane Sheridan	
	Andrew Sisson	
Franking Credits	Stephen Creese	
	John Fast	
	Rodd Levy	
	Vicki McFadden	
	Andrew Sisson	
	Anthony Sweetman	

\* Observers

## APPENDIX 3 — PANEL APPLICATIONS

**Table 9: Applications received by the Panel in 2012-13**

Matter No.	Section	Matter name	Decision	Application Date	Decision date
1	657A,D&E	Austock Group Limited	Declaration and Orders	12/07/2012	10/08/2012
2	657A&D	Hastings Diversified Utilities Fund 02	Declined to conduct proceedings	19/07/2012	27/07/2012
3	657A,D&E	Alesco Corporation Limited 01	Conducted proceedings, no declaration	24/07/2012	16/08/2012
4	657A,D&E	Alesco Corporation Limited 02	Conducted proceedings, no declaration	01/08/2012	16/08/2012
5	657A&D	IFS Construction Services Limited	Declaration and Orders	27/07/2012	17/08/2012
6	657A&D	Minemakers Limited 02	Declined to conduct proceedings	03/08/2012	10/08/2012
7	657A&D	Altius Mining Limited	Conducted proceedings, no declaration	14/08/2012	31/08/2012
8	657EA	Minemakers Limited 02R	Conducted proceedings, no declaration	14/08/2012	29/08/2012
9	657A,D&E	Alesco Corporation Limited 03	Declined to conduct proceedings	29/08/2012	03/09/2012
10	657A,D&E	Mission NewEnergy Limited	Declined to conduct proceedings	19/09/2012	01/10/2012
11	657EA	Mission NewEnergy Limited 01R	Declined to conduct proceedings	02/10/2012	17/10/2012
12	657A,D&E	LinQ Resources Fund	Undertaking, declined to conduct proceedings	23/10/2012	29/10/2012
13	657A,D&E	Knights Capital Group Limited	Undertaking, declined to conduct proceedings	29/11/2012	11/12/2012
14	657A,D&E	World Oil Resources Limited	Declaration and Orders	14/03/2013	04/04/2012 & 12/04/2013
15	657A&D	Touch Holdings Limited	Declaration and Orders	05/04/2013	03/05/2013
16	657A,D&E	Winpar Holdings Limited	Declined to conduct proceedings	17/04/2013	29/04/2013
17	657A,D&E	Firestone Energy Limited	Declaration and Orders	18/04/2013	17/05/2013
18	657A,D&E	Careers Australia Group Limited 02	Declined to conduct proceedings	11/06/2013	20/06/2013
19	657A,D&E	Laneway Resources Limited	Conducted proceedings, no declaration	11/06/2013	05/07/2013
20	657EA	Careers Australia Group Limited 02R	Declined to conduct proceedings	24/06/2013	02/07/2013

## APPENDIX 4 — 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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