

# **TAKEOVERS PANEL**

**ANNUAL REPORT**  
**2013-2014**

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15 October 2014

Senator the Hon Mathias Cormann  
Minister for Finance  
Acting Assistant Treasurer  
Parliament House  
Canberra ACT 2600

Dear Acting Assistant Treasurer

**ANNUAL REPORT 2013-14**

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, I submit the 2013-14 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 consists at 30 June of 37 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 and an index of decisions;
- 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;
- privacy policy;
- annual reports; and
- its Information Publication Scheme.

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<sup>1</sup> Section 172(4) of the ASIC Act.

<sup>2</sup> Paragraph [7.16] of the Explanatory Memorandum for the CLERP Bill 1998.

<sup>3</sup> 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

In the 2013-2014 year the Panel considered 26 applications, which was an increase compared to 2012-2013 (20) and 2011-2012 (16) and was close to the long-term average (30).

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 19.2 calendar days (the overall average is 15.7 calendar days).

During the year, the Panel considered a number of complicated issues including the suitability of lock-up devices in complex financial restructures (Billabong International Limited), rights issues (Virgin Australia Holdings Limited), shareholder

statements in bids (Bullabulling Gold Limited and Ambassador Oil and Gas Limited 01), failure to comply with the beneficial ownership provisions (Northern Iron Limited) and the application of truth in takeovers to statements made about the payment of franked dividends (Warrnambool Cheese and Butter Factory Company Holdings Limited).

The Panel has 17 Guidance Notes to assist market participants understand principles and policy issues the Panel will consider in deciding applications. During the year the Panel consulted on proposed revisions to two of its guidance notes:

- guidance Note 18 — Takeover documents, providing guidance on the use of summaries, including what might be contained in a summary; and
- guidance Note 12 — Frustrating Action — to propose factors to take into account in considering if there has been a frustrating action, whether a bid condition had been triggered previously and the bidder had not disclosed whether it would rely on it or waive it within a reasonable time.<sup>4</sup>

Consultation was also undertaken on a possible new guidance note in relation to the treatment of franking credits in bids. However, given competing views and limited exposure to the issues, the Panel will keep the area under review and revisit the possibility of publishing guidance in future should it be warranted.

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<sup>4</sup> Changes to Guidance Notes 18 and 12 were finalised early in the 2014-2015 financial year.

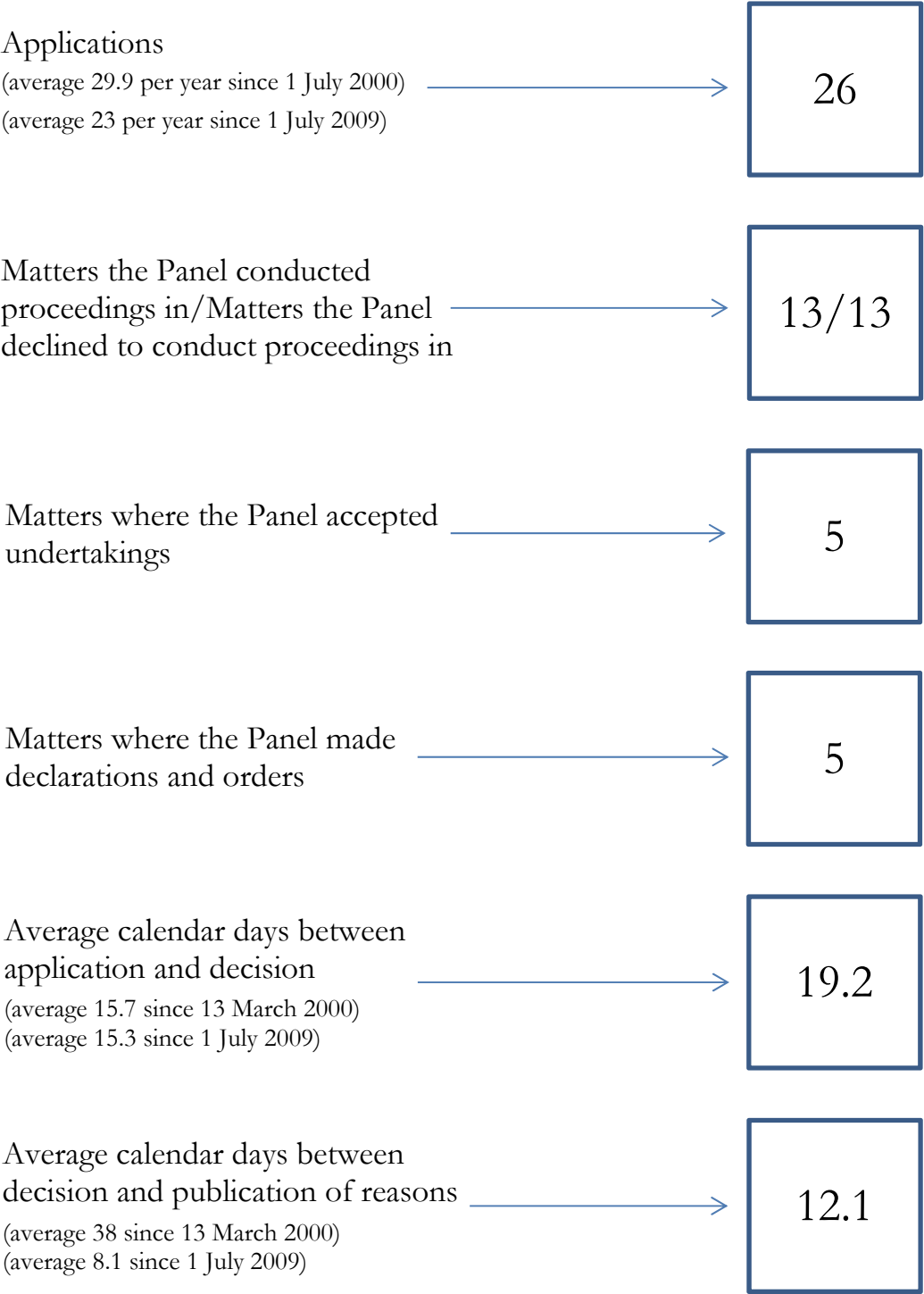
The Panel seeks to make its operations as transparent as possible and this year:

- The executive updated the Panel's index of decisions to cover 2004-2013. Feedback suggests that practitioners have found the index to be a particularly useful resource. The index also helps promote consideration of the regulation of mergers and acquisitions in Australia.
- The executive undertook a detailed reorganisation of the Panel's historical database and review of its statistics in relation to the 425 applications the Panel has received since 13 March 2000. The executive is considering ways in which some of this data can be published for research and comment.
- The Panel adopted the policy of making all submissions received in response to consultation papers public, rather than allowing confidential submission to be made.

At 30 June 2014, the Panel had 37 part time members, whom I thank for their work throughout the year. In particular, I would like to thank for their service those members whose terms ended in this reporting period. I note with sadness the passing of our Panel member Fiona Gardiner-Hill, a longstanding partner of Herbert Smith Freehills.

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.

Panel at a glance 2013-14





# 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>5</sup> and reviewing certain decisions of ASIC.<sup>6</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>7</sup>
<b>How often</b>	In the current period there were 26 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

5 Section 657A and, if made, orders under section 657D.  
6 Under section 655A and, during a takeover bid, section 673 (see s656A).  
7 Section 656A(3).

**Table 1: The Panel's dispute resolution functions (continued)**

	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>8</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>9</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 no applications for review	NA

## Other features

The Panel has a rule making power.<sup>10</sup> It has not made any rules under this power.

The Panel has a power to make procedural rules.<sup>11</sup> It published revised Procedural Rules in 2010.

The Panel has a review function if a matter is referred from the Court.<sup>12</sup> There were none in the current period.

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

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

10 Section 658C.

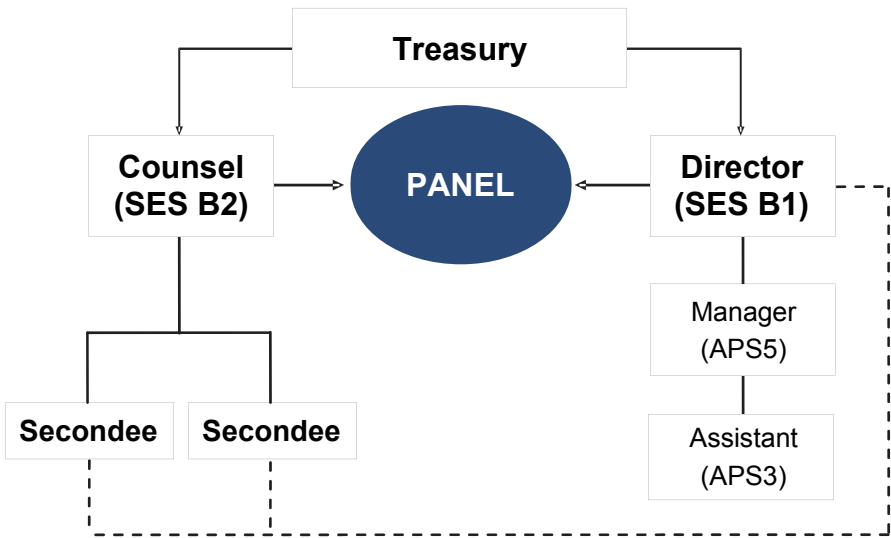
11 Section 195 of the ASIC Act.

12 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>13</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.

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13 Section 173 of the ASIC Act.

## Acting Presidents

The following members have been appointed<sup>14</sup> to act as President when the President cannot do so:

- Dr Nora Scheinkestel;
- Mr Ewen Crouch AM;
- Ms Sarah Dulhunty;
- Mr Richard Hunt; and
- Ms Heather Zampatti.

## Panel Executive

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

- administrative and legal support for Panel members;
- communication with parties in proceedings 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 (until March 2014);<sup>15</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 were Mr Jason Jordan (Herbert Smith Freehills, Melbourne) and Mr Andrew Knibb (Minter Ellison, Sydney); and

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<sup>14</sup> Section 182(1)(a)&(b) of the ASIC Act.

<sup>15</sup> On a 12 month contract.

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



**The President with the executive:** Back row (L to R) Alan Shaw, Rebecca Banhelyi, Karolina Ksiezak, Jason Jordan and Tanya Smith; Front row (L to R) Allan Bulman, Vicki McFadden and Andrew Knibb.

## 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 2013-14**

Reappointments (1)	New appointments (5)	Terms completed (16)
Mr David Jones MNZM	Ms Karen Evans-Cullen; Ms Michelle Jablko; Mr Ian Jackman SC; Mr Christian Johnston; and Mr John Sheahan QC.	Mr Robin Bishop; Ms Diana Chang; Mr Stephen Creese; Ms Stephanie Daveson; Mr Hamish Douglass; Ms Paula Dwyer; Mr John Fast; Ms Fiona Gardiner-Hill;* Professor John Humphrey; Mr Alastair Lucas AM; Ms Julie McPherson; Mr Tony Osmond; Mr Mike Roche; Mr Peter Scott; Mr Andrew Sisson; and Mr John Story.

\* Passed away during the year.

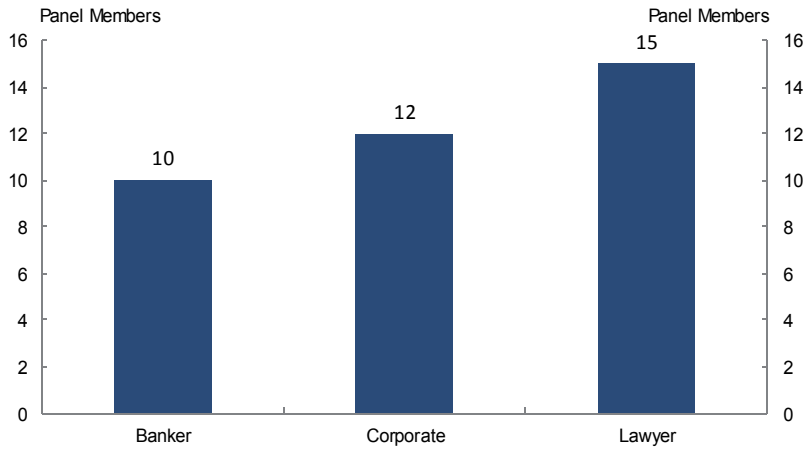
Members are appointed on a part-time basis, usually for three years, by the Governor-General on the nomination of the Minister.<sup>16</sup> State Ministers may submit nominations to the Minister. Members are nominated on the basis of their knowledge and experience in one or more of the fields of business, administration of companies, financial markets, financial products and financial services, law, economics and accounting.<sup>17</sup> A mix of expertise, geographical representation and gender representation is also considered.

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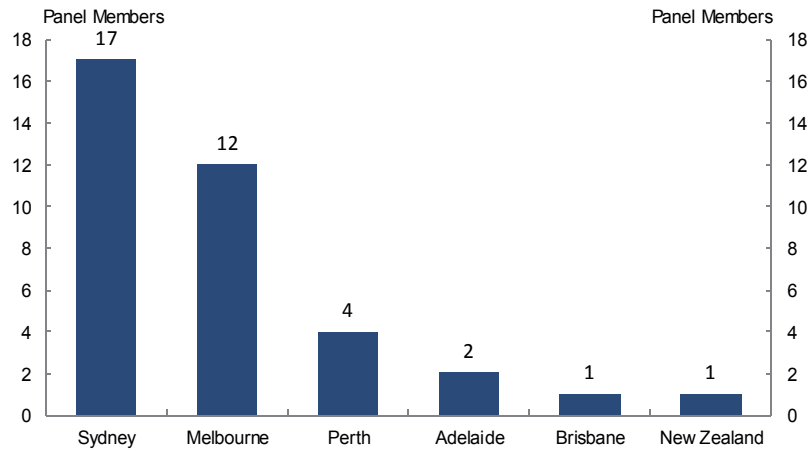
<sup>16</sup> Section 172 of the ASIC Act.

<sup>17</sup> Section 172(4A) of the ASIC Act.

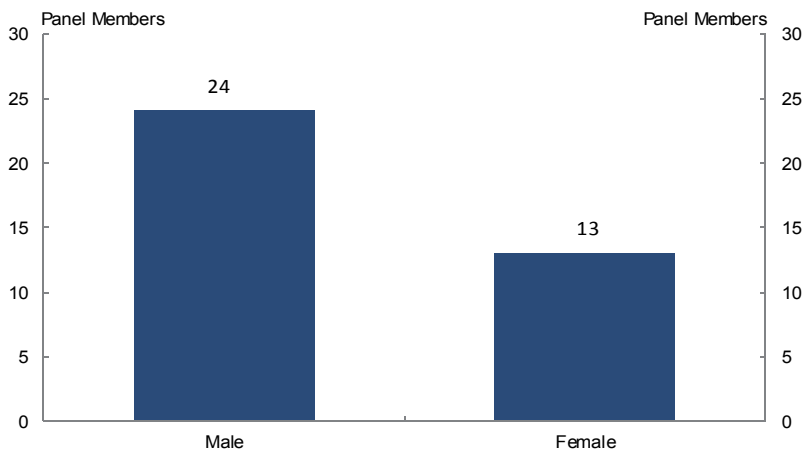
**Chart 2: Panel members by Profession**



**Chart 3: Panel members by Location**



**Chart 4: Panel members by Gender**



## *Members' biographies*

**Vicki McFadden (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.

**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).

**Geoff Brunson** — 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.

**Ewen Crouch AM (Acting President)** — 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.

**Peter Day** — Company Director (Member since 2010), non-executive director of Alumina, Ansell, Boart Longyear and SAI Global. Previously Chief Financial Officer for Amcor and Deputy Chairman of ASIC.

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

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

**Karen Evans-Cullen** — Partner, Clayton Utz (Member since 2014), member of the Corporations Committee of the Law Council of Australia.

**David Friedlander** — Partner, King & Wood Mallesons (Member since 2010), member of the ASX Disciplinary Committee, the ASX Capital Markets Advisory Panel, the Corporations Committee of the Law Council of Australia and is on the board of the Public Education Foundation.

**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), non-executive director of Sunsuper and former partner of Norton Rose Fulbright Australia, graduate of the AICD.

**Rod Halstead** — Director, Mergers & Acquisitions and Corporate Advisory, Clayton Utz (Member since 2010), previously non-executive director of Boral Limited and Amcor Limited, a Fellow of AICD.

**Peter Hay** — Chairman of Newcrest Mining Limited since January 2014 (Member since 2009), formerly Chairman of Investment Banking at Lazard Australia and Chief Executive Officer at Freehills.

**Richard Hunt (Acting President)** — Principal of Fort Street Advisers (Member since 2012).

**Michelle Jablko** — Managing Director and Co-Head of Greenhill Australia (Member since 2014).

**Ian Jackman SC** — Barrister (Member since 2014).

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

**Christian Johnston** — Head of Investment Banking (Australia and New Zealand) and Managing Director of Goldman Sachs (Member since 2014).

**David Jones MNZM** — 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), Chairman — Executive of the Business Law Section of the Law Council of Australia, Senior Fellow, Life Member and former Board member of Finsia.

**Francesca Lee** — General Counsel & Company Secretary, Newcrest Mining 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.

**Ron Malek** — Company Director (Member since 2012), Director, Sydney Children's Hospital Foundation, Director, National Institute of Dramatic Art, member of the UNSW Council's Investment Committee and a member of the Australian Paralympic Committee's Investment Committee.

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

**Sophie Mitchell** — Director, Morgans (Member since 2009), company director.

**Nora Scheinkestel (Acting President)** — Company Director and Associate Professor (Member since 2010). Non-executive director of Telstra Limited, Orica Limited and IAG Limited.

**John Sheahan QC** — Barrister (Member since 2014). A member of the Board of Governors of the Law and Justice Foundation, a director of the Haymarket Foundation Ltd and a Fellow of the Australian Academy of Law.

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

**Laurie Shervington** — Special Counsel, Squire Patton Boggs (AU) (Member since 2010), Chairman of the Kimberley Ports Authority and company director.

**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 Investment Banking, Australasia, UBS AG (Australia) (Member since 2007).



**Alison Watkins** — Group Managing Director, Coca-Cola Amatil Limited  
(Member since 2010) and a director of The Centre of Independent Studies.

**Heather Zampatti (Acting President)** — National Head of Wealth Management, Bell Potter  
Securities (Member since 2006) and company director.



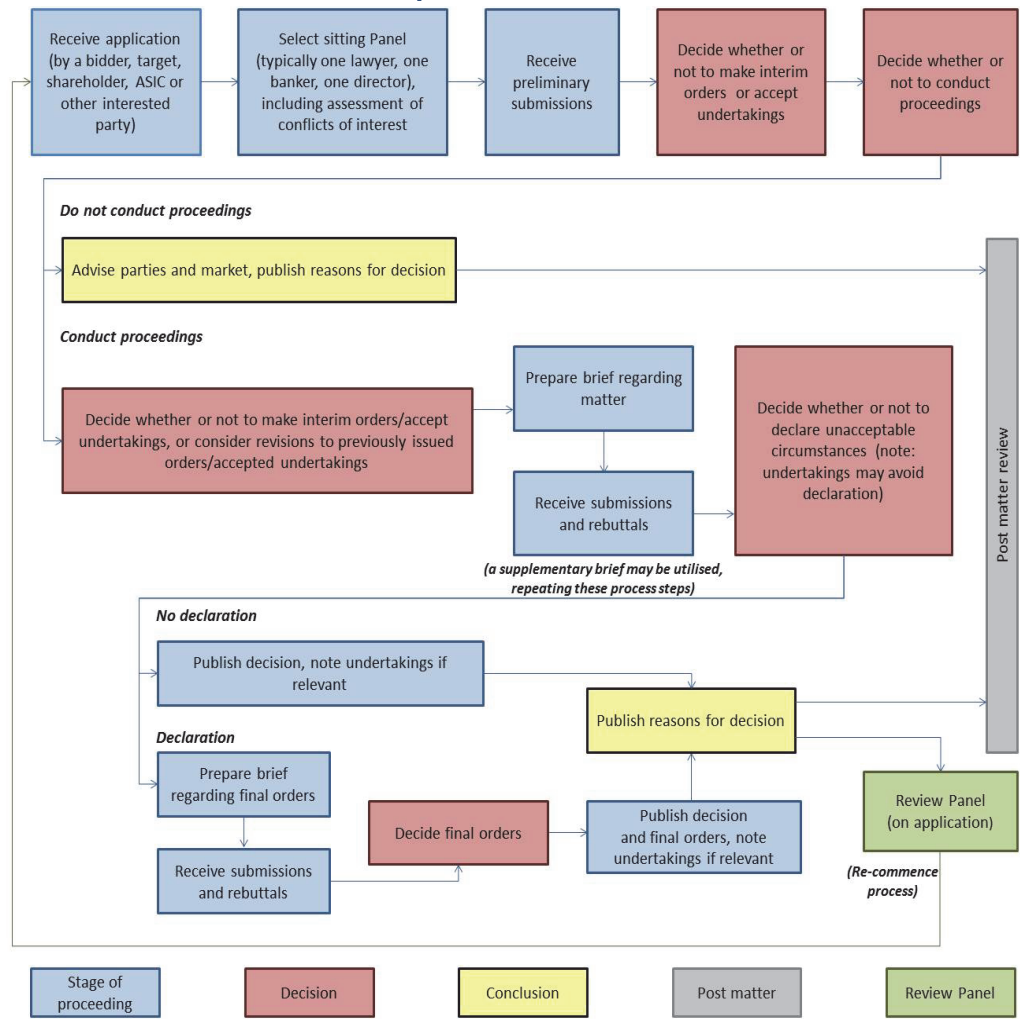
# PART 3 — THE WORK OF THE PANEL

## 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 usual process in relation to applications for declarations of unacceptable circumstances.

**Chart 5: 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 26. Table 3 groups the applications by outcome. Table 4 groups them by type.

**Table 3: Outcome of applications received by the Panel in 2013-14**

Form of resolution	Number of matters	Factors
Declaration and/or Orders	5	Circumstances are unacceptable and need to be remedied
Undertakings <sup>18</sup>	5	Potential substitute for orders
Conduct proceedings, no declaration or orders	2	Panel decides to conduct proceedings, but does not find any unacceptable circumstances
Declining to conduct proceedings	11	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	3	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	26	

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18 Section 201A of the ASIC Act.

## Issues in applications

**Table 4: Issues in 2013-14**

Issue	Number of matters	Name of case
Association	6	iCash Payments Systems Limited 01 & 02, Avalon Minerals Limited (in part), Tigers Realm Coal Limited, Agricultural Land Trust, Dragon Mining Limited, Ambassador Oil and Gas Limited 01 (in part)
Rights issues	5.5	Coppermoly Limited, Avalon Minerals Limited (in part), Virgin Australia Holdings Limited, Argosy Minerals Limited, Gondwana Resources Limited 01, Sherwin Iron Limited
Disclosure	5	Keybridge Capital Limited, Tranzact Financial Services Limited, Dampier Gold Limited, Northern Iron Limited (substantial holder and tracing notice compliance), Ambassador Oil and Gas Limited 02
Lock-up devices	2	Billabong International Limited, Moreton Resources Limited
Shareholder intention statements	1.5	Bullabulling Gold Limited, Ambassador Oil and Gas Limited 01 (in part)
Other	6	RHG Limited (collateral benefits), STI-Global Limited (s606 breach), Hastings Rare Metals Limited (frustrating action), Warrnambool Cheese and Butter Factory Company Holdings Limited (truth in takeovers), PaperlinX SPS Trust (bid structure), Lantern Hotel Group (buy-back)
Total	26	

Note: the table captures the main basis for an application (if there are two they are shown as 'in part' and contribute to half scores).

## Ensuring consistency

The Panel holds meetings of all its members twice 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 2004-2013. 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 2013-2014 although guidance was being developed.

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.
- 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.

**Table 5: Consultation papers issued in 2013-14**

Consultation Paper	Issue Date	Close Date	Number of submissions
GN 12 Frustrating action	06/01/2014	14/02/2014	5
GN on Dividends	10/01/2014	28/02/2014	5
GN 18 Takeover documents	10/01/2014	28/02/2014	4

## Legislation

The Panel operates under the Corporations Act and ASIC Act.

There have been no amendments relevant to the Panel in the current period. There was consultation on the *Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014*, including a proposed amendment in relation to Panel members acting while overseas.

## Judicial review

The Panel was subject to judicial review in *The President's Club Limited*. The Federal Court of Australia dismissed the proceedings with costs on 5 June 2014. An appeal was lodged with the Full Federal Court of Australia on 25 June 2014.





## 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 and have been involved in international takeovers regulator conferences in Bangkok and London.

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

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 sitting Panel considers that ASIC should look into aspects of the application that might give rise to concerns under the Corporations Act generally. This occurred three times during the current period; and
- the Panel wants ASIC to consider whether to make an application.<sup>19</sup>

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<sup>19</sup> ASIC Regulation 18.

## *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, 61,113 people visited the Panel's website, last year it was 48,735.

## *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 Australian market.

## **Corporate accountability**

### *Planning and review*

The executive holds regular operational review meetings with the President and 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 6: Resources for outcomes corporate governance and accounting**

	Budget Estimate 2013-14 (\$'000)	Actual 2013-14 (\$'000)	Variation	Budget Estimate 2014-15 (\$'000)
<b>Revenue for agency outputs</b>				
Revenue from Government (appropriations) contributing to price of agency outputs	2,040	1,956	84	1,997
s.31 relevant agency receipts	0	1	1	0
<b>Total revenue for agency outputs</b>	<b>2,040</b>	<b>1,955</b>	<b>85</b>	<b>1,997</b>
<b>Price of agency outputs</b>				
Resourcing for agency outputs	2,040	1,955	85	1,997
<b>Total price of agency outputs</b>	<b>2,040</b>	<b>1,955</b>	<b>85</b>	<b>1,997</b>
			<b>2013-14</b>	<b>2014-15</b>
Average staffing levels (number)			5.7	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 7: Comprehensive income statement (Showing Net Cost for Services) (unaudited) for the year ended 30 June 2014**

	\$
<b>EXPENSES</b>	
<b>Employee expenses</b>	
Salaries	940,406
Employer superannuation	149,003
Members' annual retainer and sitting fees	518,415
<b>Total employee expenses</b>	<b>1,607,824</b>
<b>Operating expenses</b>	
Printing	3,866
Travel	98,199
Official entertainment	5,811
Conferences and training	12,805
Legal	53,638
Publications and subscriptions	7,816
Property operating expenses	144,762
Other expenses	21,141
<b>Total operating expenses</b>	<b>348,038</b>
<b>Total expenses incurred to 30 June 2014</b>	<b>1,955,862</b>
<b>LESS:</b>	
<b>OWN-SOURCE INCOME</b>	
<b>Revenue</b>	
s.31 relevant agency receipts	1,751
<b>Total Revenue</b>	<b>1,751</b>
<b>Total own-source income</b>	<b>1,751</b>
<b>Net cost of (contribution by) services</b>	<b>1,954,111</b>
Appropriation Revenue	2,039,571
<b>Surplus (deficit) attributable to the Australian Government</b>	<b>85,460</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 2014. 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 \$2,039,571 classified as revenue.

#### ***Expenses***

Expenses are recognised as they occur. The Panel's expenses for 2013-2014 are also recorded in Treasury's audited financial statements for the period 1 July 2013 to 30 June 2014.

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

The balance of allocation after operating expenditure for the period 1 July 2013 to 30 June 2014 was a surplus of \$85,460.

#### ***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>20</sup> Most reviews of Panel decisions end with the review Panel process. All Panel decisions are subject to judicial review.<sup>21</sup>

### Government scrutiny

The Panel was not subject to any reports by the ANAO in 2013-14.

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>22</sup>

### Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2013-14.

## Management of human resources

### Staffing

At 30 June 2014, the executive consisted of four permanent full time staff and two legal secondees.<sup>23</sup> Permanent staff are employed under the *Public Service Act 1999*.

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20 Section 657EA.

21 Section 75(v) of the Constitution *Judiciary Act 1903* and *Administrative Decisions (Judicial Review) Act 1977*, see page 23 for details about current judicial reviews of Panel decisions.

22 The Parliamentary Joint Committee on Corporations and Financial Services in its 'Report on the 2012–13 annual reports of bodies established under the ASIC Act' (March 2014), referred to the Panel's annual report. The report also mentioned that the Panel's 2011-2012 annual report had been considered by the Economics Legislation Committee in its review of annual reports (No.1 of 2013, March 2013). The Panel was not aware of this at the time it prepared its 2012-2013 annual report.

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

**Table 8: Operative staff by classification and gender**

Classification	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 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 the Panel had only one secondee for a time.

## *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.

## *Occupational Health and Safety*

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. 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*

### **Compliance in prior years**

The Panel had in previous years adopted Treasury's policies and procedures in relation to the Commonwealth's disability strategy, which included:

- making managers aware of OH&S and rehabilitation services and support offered;
- adjusting workstations to assist staff with disabilities; and
- making provision for staff with disabilities in emergency, evacuation and safety procedures.<sup>24</sup>

### **Changes to disability reporting in annual reports**

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007-08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010-11, departments and agencies have not been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010-2020, which sets out a ten-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high level two-yearly report will track progress against each of the six outcome areas of the

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24 See <http://www.treasury.gov.au/About-Treasury/OurDepartment/Treasury-Disability-Action-Plan>.

Strategy and present a picture of how people with disability are faring. The first of these reports will be available in late 2014, and can be found at [www.dss.gov.au](http://www.dss.gov.au).

## Consultants

The Panel engaged one consultant in 2013-14.

## 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 the two secondment agreements for the year, one secondment agreement for the new financial year and one legal representation agreement that exceeded \$10,000.

## Discretionary grants

During 2013-14, 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 2013-14.

## 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 recycles paper.

## 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>25</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 and what it proposes to publish 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.

## Regulatory Impact Statements

The Panel did not submit any Regulatory Impact Statements in 2013-14.

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<sup>25</sup> Repealed and replaced by the *Australian Securities and Investments Commission Act 2001*.



## APPENDIX 1 — PANEL MEMBERS

### Members of the Panel at 30 June 2014

Ms Vicki McFadden (President)	Mr Robert Johanson
Mr Martin Alciaturi	Mr Christian Johnston
Mr Garry Besson	Mr David Jones MNZM (New Zealand)
Mr Geoff Brunsdon	Mr John Keeves
Ms Elizabeth Bryan	Ms Francesca Lee
Mr Ewen Crouch AM	Mr Rodd Levy
Mr Mark Darras	Mr Andrew Low
Mr Peter Day	Mr Ron Malek
Mr James Dickson	Ms Denise McComish
Ms Sarah Dulhunty	Ms Sophie Mitchell
Ms Karen Evans-Cullen	Dr Nora Scheinkestel
Mr David Friedlander	Mr John Sheahan QC
Mr John M Green	Ms Jane Sheridan
Ms Elizabeth Hallett	Mr Laurie Shervington
Mr Rod Halstead	Mr Robert Sultan
Mr Peter Hay	Mr Anthony Sweetman
Mr Richard Hunt	Ms Alison Watkins
Ms Michelle Jablko	Ms Heather Zampatti
Mr Ian Jackman SC	

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## New members appointed to the Panel in 2013-14

Ms Karen Evans-Cullen

Mr Christian Johnston

Ms Michelle Jablko

Mr John Sheahan QC

Mr Ian Jackman SC

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## Members who ceased their membership of the Panel in 2013-14

Mr Robin Bishop

Professor John Humphrey

Ms Diana Chang

Mr Alastair Lucas AM

Mr Stephen Creese

Ms Julie McPherson

Ms Stephanie Daveson

Mr Tony Osmond

Mr Hamish Douglass

Mr Mike Roche

Ms Paula Dwyer

Mr Peter Scott

Mr John Fast

Mr Andrew Sisson

Ms Fiona Gardiner-Hill\*

Mr John Story

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\* Passed away during the year

## APPENDIX 2 — SUB-COMMITTEE MEMBERS

**Table 9: Sub-committees**

Topic	Sub-committee members	
	Panel member	External member <sup>26</sup>
Takeover Documents	James Dickson	Jane Eccleston*
	Sarah Dulhunty	Kevin Lewis
	Richard Hunt	Kevin Lindgren*
	Robert Johanson	Kate O'Rourke*
	Vickki McFadden	
	Robert Sultan	
Takeover Documents	Garry Besson	Andrew Sisson
Sounding Group	Ewen Crouch AM	Peter Scott
	Rod Halstead	
	John Keeves	
	Rodd Levy	
	Jane Sheridan	
Franking Credits	Rodd Levy	Stephen Creese
	Vickki McFadden	John Fast
	Anthony Sweetman	Andrew Sisson
Tracing Beneficial Ownership	Francesca Lee	Diana Chang
	Rodd Levy	Peter Scott
	Andrew Low	
	Vickki McFadden	
	Sophie Mitchell	
	Jane Sheridan	

\* Observers

26 Some of these were Panel members whose terms completed during the year.

## APPENDIX 3 — PANEL APPLICATIONS

**Table 10: Applications received by the Panel in 2013-14**

Matter No.	Section	Matter name	Decision	Application Date	Decision date
1	2013/08	657A,D&E Billabong International Limited	Conducted proceedings, no declaration, undertaking	18/07/2013	21/08/2013
2	2013/09	657A,D&E Coppermoly Limited	Declaration and Orders	26/07/2013	20/08/2013
3	2013/10	657A,D&E iCash Payment Systems Limited	Withdrawn	29/07/2013	14/08/2013
4	2013/11	657A,D&E iCash Payment Systems Limited 02	Withdrawn	19/08/2013	21/08/2013
5	2013/12	657A,D&E Avalon Minerals Limited	Declaration and Orders	05/09/2013	07/10/2013
6	2013/13	657A&D RHG Limited	Declined to conduct proceedings	25/09/2013	02/10/2013
7	2013/14	657A,D&E STI-Global Limited	Declaration and Orders	23/10/2013	07/11/2013
8	2013/15	657A,D&E Hastings Rare Metals Limited	Declined to conduct proceedings	04/11/2013	12/11/2013
9	2013/16	657A,D&E Moreton Resources Limited	Conducted proceedings, no declaration, undertaking	07/11/2013	26/11/2013
10	2013/17	657A&D Virgin Australia Holdings Limited	Conducted proceedings, no declaration	22/11/2013	02/12/2013
11	2013/18	657A,D&E Warmambool Cheese and Butter Factory Company Holdings Limited	Conducted proceedings, no declaration, undertaking	26/11/2013	17/12/2013
12	2013/19	657A,D&E Keybridge Capital Limited	Declined to conduct proceedings	12/12/2013	19/12/2013
13	2013/20	657A,D&E Tigers Realm Coal Limited	Conducted proceedings, no declaration, undertaking	16/12/2013	23/01/2014
14	2014/01	657A,D&E PaperlinX SPS Trust	Declined to conduct proceedings	13/01/2014	17/01/2014
15	2014/02	657A,D&E Tranzact Financial Services Limited	Declined to conduct proceedings	17/01/2014	24/01/2014
16	2014/03	657A,D&E Agricultural Land Trust	Declined to conduct proceedings	24/01/2014	30/01/2014
17	2014/04	657A,D&E Dragon Mining Limited	Declined to conduct proceedings	02/02/2014	07/02/2014
18	2014/05	657A,D&E Lantern Hotel Group	Declined to conduct proceedings	11/03/2014	17/03/2014
19	2014/06	657A,D&E Argosy Minerals Limited	Declined to conduct proceedings	18/03/2014	21/03/2014
20	2014/07	657A,D&E Gondwana Resources Limited	Conducted proceedings, declaration, undertaking	29/04/2014	06/06/2014
21	2014/08	657A&D Bullabulling Gold Limited	Conducted proceedings, no declaration, undertaking	13/05/2014	05/06/2014
22	2014/09	657A,D&E Dampier Gold Limited	Withdrawn	14/05/2014	16/06/2014



**Table 10: Applications received by the Panel in 2013-14**

	<b>Matter No.</b>	<b>Section</b>	<b>Matter name</b>	<b>Decision</b>	<b>Application Date</b>	<b>Decision date</b>
23	2014/10	657A,D&E	Northern Iron Limited	Declaration and Orders	23/05/2014	19/06/2014
24	2014/11	657A,D&E	Ambassador Oil and Gas Limited 01	Declaration and Orders	18/06/2014	28/07/2014
25	2014/12	657A,D&E	Sherwin Iron Limited	Declined to conduct proceedings	19/06/2014	3/07/2014
26	2014/13	657A,D&E	Ambassador Oil and Gas Limited 02	Declined to conduct proceedings	22/06/2014	20/08/2014

## 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
EEO	Equal Employment Opportunity
EL	Executive Level
Finsia	Financial Services Institute of Australasia
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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