

TAKEOVERS PANEL

**ANNUAL REPORT
2014-2015**

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30 September 2015

The Honourable Scott Morrison MP
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer

ANNUAL REPORT 2014-15

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, I submit the 2014-15 Annual Report of the Takeovers Panel for presentation to Parliament.

Yours sincerely

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

Vicki McFadden
President

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PART 1 — BACKGROUND

Who we are

The Takeovers Panel is a peer review body¹ established as ‘a specialist body largely comprised of takeover experts’² that is the main forum for resolving disputes in takeovers.³ It consists at 30 June 2015 of 38 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* (Cth) (Corporations Act);
- Part 10 of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act); and
- Part 3 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Our website

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

- media releases;
- reasons for decisions 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;
- legislative resources and other background material relating to mergers and acquisitions; and
- the Panel’s Information Publication Scheme.

1 Section 172(4) of the ASIC Act.

2 Paragraph [7.16] of the Explanatory Memorandum for the Corporate Law Economic Reform Program Bill 1998 (Cth).

3 Section 659AA of the Corporations Act.

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

Who to contact

Enquiries regarding this report may be directed to:

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Director, Takeovers Panel
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Melbourne VIC 3000
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Facsimile: +61 3 9655 3511
Email: allan.bulman@takeovers.gov.au



Ms Vickki McFadden
President of the Panel

Review by the President

In the 2014-2015 year, the Panel considered 20 applications. The Panel considered issues relating to (among other things) disclosure, rights issues and association.

This year we conducted proceedings in relation to 5 matters. Recently the Panel has increasingly declined to conduct proceedings and made more declarations of unacceptable circumstances when it decides to conduct proceedings. We believe this reflects the developing maturity in Panel decision making and the ability of the Panel to make quick and commercial decisions.

The Panel held its first conference since 2002 to consider the control effect of Yancoal Australia Ltd's rights offer. We received positive and useful feedback on the conference from participants. The sitting Panel in that matter, and the Panel generally, consider that the conference was a success and would consider conducting further conferences in the appropriate circumstances.

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 11.3 calendar days (the overall average is 15.6 calendar days).

The Panel has on issue 17 Guidance Notes to assist market participants understand the principles and policies which the Panel will consider in deciding applications. During the year, the Panel finalised changes to Guidance Notes 2 (Reviewing decisions), 4 (Remedies General), 12 (Frustrating action) and 18 (Takeover documents). The Panel also considered new policy in relation to shareholder intention statements, following the Panel's decisions in Bullabulling Gold Limited and Ambassador Oil and Gas Limited 01. A consultation paper on shareholder intention statements was released early in the 2015-2016 financial year.

In June 2015, the Federal Court handed down its decision in *ASIC v Mariner Corporation Limited*.⁴ Given the Court's interpretation of s631(2)(b),⁵ we intend to consult on proposed changes to Guidance Note 14 (Funding arrangements).

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 tireless efforts, professionalism and dedication throughout the year. The executive completed the Panel's index of decisions during the reporting period. It now covers all decisions from 2000 to 2014 and will be updated annually. The index has already assisted the Panel and practitioners in considering issues and helps promote consideration of the regulation of mergers and acquisitions in Australia.

Increasingly we live in a global market place, which includes the mergers and acquisitions market. In the 2014-2015 year, 60% of Panel matters involved market participants from overseas, mostly in the Asia Pacific region. It was therefore felicitous that, in March this year, the Panel hosted the third Asia Pacific Takeovers Regulators Conference in Melbourne. The conference involved over 30 participants from Australia (including ASIC), China, Hong Kong, India, Indonesia, Japan, Malaysia, New Zealand, Singapore and Thailand. Takeovers regulators deal with many common issues and participants at the conference welcomed the opportunity to discuss issues including association, shareholder activism, disclosure issues and enforcement.

The Panel is grateful to the Federal Government for its commitment to a robust, principles-based panel regime and for its ongoing support. The Panel appreciates the amendments made to the ASIC Act to allow Panel members to participate in proceedings, and the President to appoint sitting Panels, whether or not the individual members, or the President, are physically located in Australia.

At 30 June 2014, the Panel had 38 part time members, whom I thank for their work throughout the year. During the year the Panel undertook, with the assistance of Evolve Research and Consulting, a stakeholder survey of its operations. Evolve's analysis of the survey results will be of great assistance to the Panel in considering how it might improve further its operations. I am pleased that 89% of those surveyed (excluding existing Panel members) were satisfied with the Panel's performance, which is due to the hard work of the Panel members and executive.

4 [2015] FCA 589.

5 Which prohibits a person from publicly proposing a takeover bid if the person is reckless as to whether they will be able to perform their obligations relating to the takeover bid if a substantial proportion of the offers under the bid are accepted.

Panel at a glance 2014-15

Applications

(average 29.3 per year since 1 July 2000)
(average 22.5 per year since 1 July 2009)

20

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

* does not include an interim order application, a withdrawn application or a refusal of consent to make an application for a review

5/12*

Matters where the Panel accepted undertakings

0

Matters where the Panel made declarations and orders

3

Average calendar days between application and decision

(average 15.6 since 13 March 2000)
(average 15.3 since 1 July 2009)

11.3

Average calendar days between decision and publication of reasons

(average 36.8 since 13 March 2000)
(average 8.9 since 1 July 2009)

11.8

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 exist⁶ and reviewing certain decisions of ASIC.⁷

Table 1: The Panel’s dispute resolution functions

	Unacceptable circumstances	Review of ASIC decisions
What	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
How	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 ⁸
How often	In the current period there were 15 applications for a declaration at first instance ⁹	In the current period there were no applications for review of an ASIC decision
Tools	Guidance Notes, Procedural Rules, legislative policy of Chapter 6, previous decisions	Regulatory Guides, ASIC policies, reasons for ASIC’s decision, Panel policy

6 Section 657A and, if made, orders under section 657D.
7 Under section 655A and, during a takeover bid, section 673 (see s656A).
8 Section 656A(3).
9 There were 4 review applications and one application seeking only an interim order.

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

	Unacceptable circumstances	Review of ASIC decisions
Outcomes	If a declaration is made the Panel can make any orders to address the unacceptable circumstances, including a 'remedial order' ¹⁰	Affirm, vary, set aside or stay the ASIC decision
Review	The Panel, on application, conducts a merits review of a decision of the initial Panel. ¹¹ 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
How often	In the current period there were four applications for review	NA

Other features

The Panel has a rule making power.¹² It has not made any rules under this power.

The Panel has a power to make procedural rules.¹³ It published revised Procedural Rules in 2010.

The Panel has a review function if a matter is referred from the Court.¹⁴ There were none in the current period.

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

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

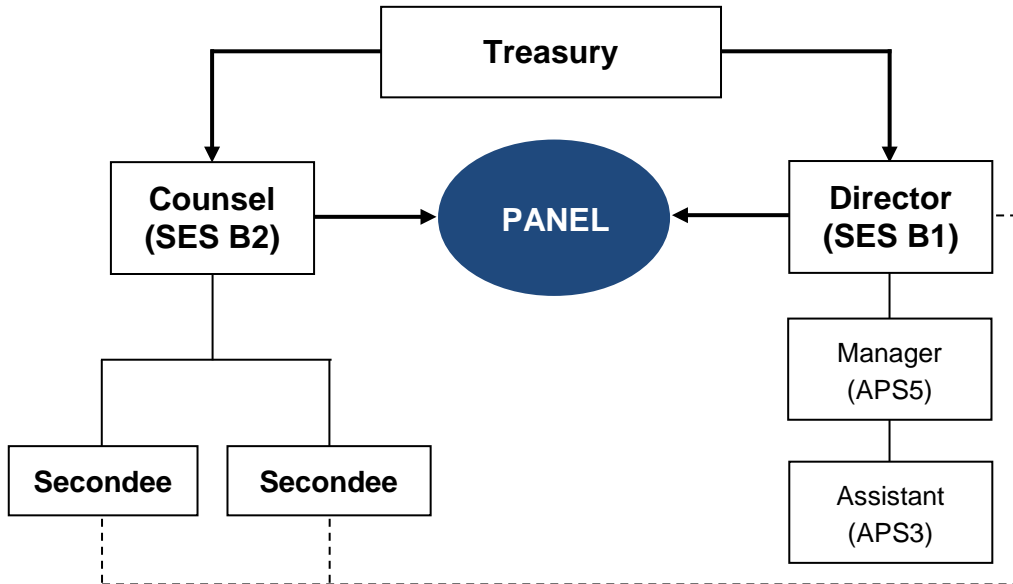
12 Section 658C.

13 Section 195 of the ASIC Act.

14 Section 657EB.

Organisational structure

Chart 1: The Panel's organisation structure



Panel President

Ms Vicki McFadden, a member of the Panel, is its President.¹⁵ 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.

¹⁵ Section 173 of the ASIC Act.

Acting Presidents

The following members have been appointed¹⁶ to act as President when the President cannot do so:

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

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;
- 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 Ms Jing Chang (Arnold Bloch Leibler, Melbourne) and Mr Viet Nguyen (Norton Rose Fulbright, Melbourne); and
- two administrative staff: Ms Karolina Ksiezak as Office Manager and Ms Rebecca Andrewartha as Executive Assistant.

¹⁶ Section 182(1)(a)&(b) of the ASIC Act.



The President with the executive: (L to R) Jing Chang, Allan Bulman, Karolina Ksiezak, Vickki McFadden, Alan Shaw, Rebecca Andrewartha and Viet Nguyen.

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 2014-15

Reappointments (5)	Appointments (9) ¹⁷	Terms completed (8)
Ms Elizabeth Bryan AM; Mr Peter Hay; Mr Richard Hunt; Mr Ron Malek; and Ms Sophie Mitchell.	Mr Alex Cartel; Mr Lee Dewhirst; Ms Tracey Horton; Mr Byron Koster; Mr Jeremy Leibler; Mr Andrew Lumsden; Mr Robert McKenzie; Mr Tony Osmond; and Ms Sharon Warburton.	Mr Martin Alciaturi; Mr Mark Darras; Mr John M Green; Mr Robert Johanson; Mr John Keeves; Ms Francesca Lee; Mr Andrew Low; and Ms Heather Zampatti.

Members are appointed on a part-time basis, usually for three years, by the Governor-General on the nomination of the Minister.¹⁸ 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.¹⁹ A mix of expertise, geographical representation and gender representation is also considered.

¹⁷ On 23 July 2015, five new members were appointed; Ms Stephanie Charles, Mr Bill Koeck, Ms Karen Phin, Ms Sarah Rennie and Ms Nicola Wakefield Evans.

¹⁸ Section 172 of the ASIC Act.

¹⁹ Section 172(4A) of the ASIC Act.

Chart 2: Panel members by Profession at 30 June 2015

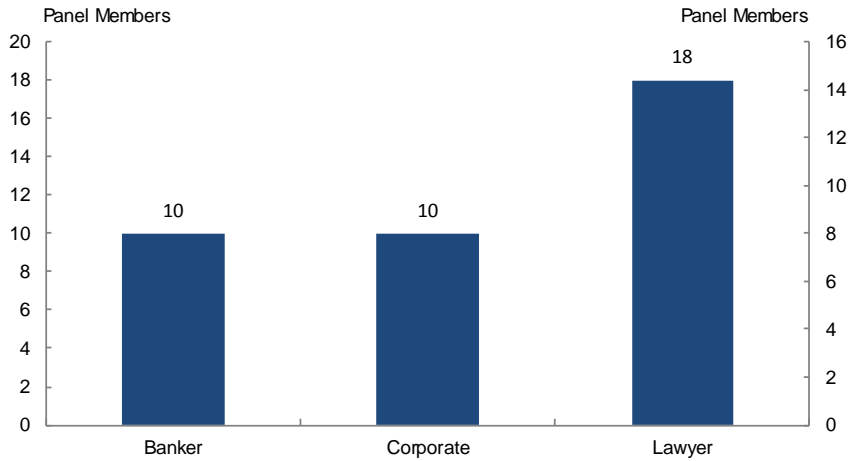


Chart 3: Panel members by Location at 30 June 2015

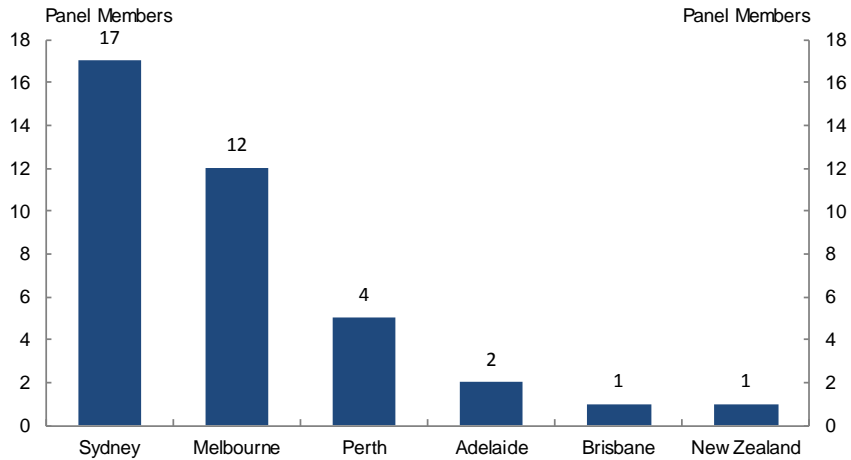
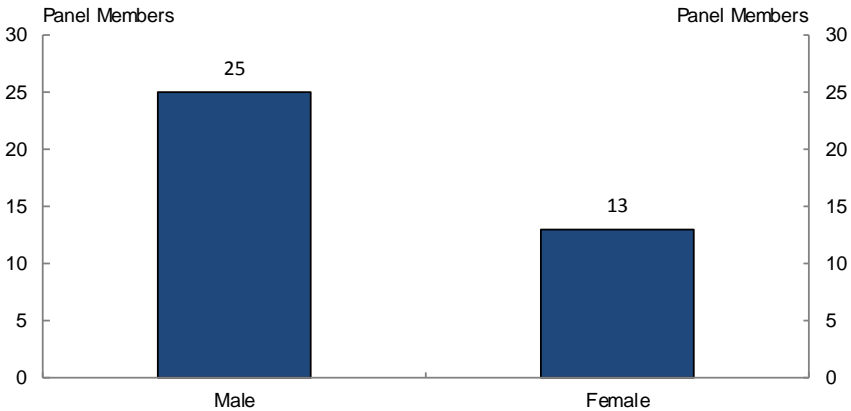


Chart 4: Panel members by Gender at 30 June 2015



Members' biographies

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

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

Geoff Brunsdon — Company Director (Member since 2007), currently Chairman of 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 AM — Company Director (Member since 2012), currently Chairman of Caltex Australia Limited, Chairman of Virgin Australia, Deputy Chairman of Insurance Australia Group and director of Westpac Banking Corporation.

Alex Cartel — Managing Director, Mergers and Acquisitions, Head of Melbourne Corporate Finance and Head of Australian Energy, Oil and Gas at Deutsche Bank AG (Member since 2015).

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.

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.

Lee Dewhirst — Special Counsel, Thomson Geer (Member since 2014).

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 — Australian Head of Public M&A, King & Wood Mallesons (Member since 2010), member of the ASX Tribunal, the Corporations Committee of the Law Council of Australia and a director of the Public Education Foundation.

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, Strategic Corporate M&A, Clayton Utz (Member since 2010), previously non-executive director of Boral Limited and Amcor Limited, a Fellow of AICD.

Peter Hay — Company Director (Member since 2009), Chairman of Newcrest Mining Limited, Chairman of Federation Centres, a director of GUD Holdings Limited, Novion RE Limited and the AICD, formerly Chairman of Investment Banking at Lazard Australia and Chief Executive Officer at Freehills.

Tracey Horton — Company Director (Member since 2015), non-executive director of Skilled Group, Navitas Limited and Automotive Holdings Group. Fellow of AICD and Governance Institute of Australia.

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).

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.

Byron Koster — Partner, Johnson Winter & Slattery (Member 2004-2013 and re-appointed 2014).

Jeremy Leibler — Partner, Arnold Bloch Leibler (Member since 2015), member of the Business Law Section of the Law Council of Australia and AICD.

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 Lumsden — Partner, Corrs Chambers Westgarth (Member 2002-2011 and re-appointed 2015), member of the board of Corrs Chambers Westgarth, member of the Corporations Committee of the Law Council of Australia.

Ron Malek — Founder and Executive Co-Chairman, Luminis Partners (Member since 2012), a director of the Sydney Children's Hospital Foundation, the National Institute of Dramatic Art and a member the UNSW Council'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.

Robert McKenzie — Partner, Jackson McDonald (Member since 2014), a commissioner for the WA Football Commission, a director of the Black Swan State Theatre Company and a fellow of the AICD.

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

Tony Osmond — Managing Director, Head of Corporate and Investment Banking for Australia and New Zealand, Citigroup (Member 2011-2014 and re-appointed 2015).

Nora Scheinkestel (Acting President) — Company Director and Associate Professor (Member since 2010). Chairman of Macquarie Atlas Roads Limited, a non-executive director of Telstra Limited, Orica Limited and Macquarie Atlas Roads International 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).

Sharon Warburton — Executive Director, Strategy and Finance, Brookfield Multiplex (Member since 2015), non-executive director of Fortescue Metals Group and a director of the Princess Margaret Hospital Foundation.

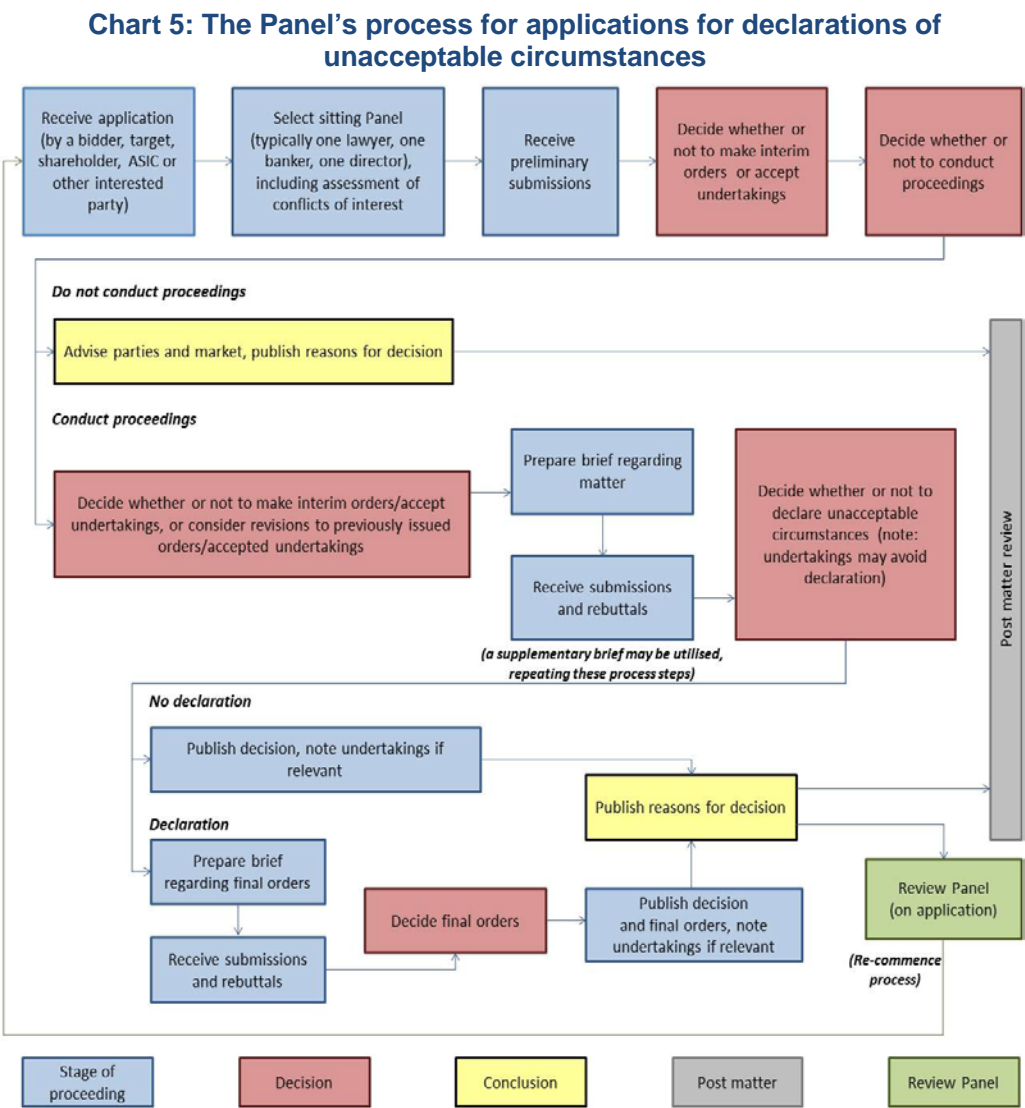
Alison Watkins — Group Managing Director, Coca-Cola Amatil Limited (Member since 2010) and a director of The Centre of Independent Studies.

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.



Further description of the Panel's process can be found on its website.

Appendix 3 lists the applications in the current period (20 in total). Table 3 groups the applications by outcome. Table 4 groups them by type.

Table 3: Outcome of applications received by the Panel in 2014-15

Form of resolution	Number of matters	Factors
Declaration and/or Orders	3	Circumstances are unacceptable and need to be remedied
Undertakings ²⁰	0	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	12	Whether the circumstances complained of would give rise to a declaration of unacceptable circumstances if established, given 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	1	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)
Decline to consent to review application	1	A party can only make a review application with the consent of the President if the decision is either not to make a declaration or not to make orders

²⁰ Section 201A of the ASIC Act.

**Table 3: Outcome of applications received by the Panel in 2014-15
(continued)**

Form of resolution	Number of matters	Factors
Declined to make an interim order	1	A party can apply for an interim order without making an application for a declaration of unacceptable circumstances
Total	20	

Issues in applications

Table 4: Issues in 2014-15

Issue	Number of matters	Name of case
Association/breach of s606	4.5	Gondwana Resources Limited 02 (in part), Gondwana Resources Limited 02R, Blackham Resources Limited, Scantech Limited, Richfield International Limited
Rights issues	6	Aspen Parks Property Fund 01 and 02, Celamin Holdings NL 01 and 01R, Wollongong Capital Limited, Yancoal Australia Limited
Disclosure	7	Envestra Limited, Careers Australia Group Limited 03 and 03R, Payce Consolidated Limited, Phosphate Australia Limited., Mungana Goldmines Limited 01 and 01R
Contravention of the substantial holding provisions	1	KBL Mining Limited
Frustrating action	0.5	Gondwana Resources Limited 02 (in part)
Other	1	CIC Australia Limited (disclosure and voting in relation to a scheme of arrangement)
Total	20	

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 2000-2014, completing a project it commenced in 2010. The index will be updated annually.

Guidance

The Panel publishes Guidance Notes to assist the market in relation to takeovers matters and to assist Panel members make consistent decisions. In the current period the Panel amended four Guidance Notes.

Table 5: Guidance Notes amended in 2014-15

Consultation Paper	GN Issue	Date
GN 12 Frustrating action	Fourth	18/07/2014
GN 18 Takeover documents	Third	21/07/2014
GN 2 Reviewing decisions	Fifth	27/05/2015
GN 4 Remedies general	Fifth	27/05/2015

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 6: Consultation papers issued in 2014-15

Consultation Paper	Issue Date	Close Date	Number of submissions
GN 2 Reviewing decisions	16/03/2015	15/04/2015	1
GN 4 Remedies general	16/03/2015	10/04/2015	1

Legislation

The Panel operates under the Corporations Act and ASIC Act.

In the current period, the *Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2014* (Cth) was enacted, which amended sections 188 and 184 of the ASIC Act to allow:

- Panel members to participate in proceedings whether or not they are physically located in Australia; and
- The President to give a direction about the members who are to constitute the Panel whether or not the President is physically located in Australia.

Judicial review

The Federal Court's decision in *Queensland North Australia Pty Ltd v Takeovers Panel*²¹ was appealed to the Full Federal Court on 25 June 2014. The Full Federal Court on 22 May 2015 handed down its decision allowing the appeal.²² During the reporting period, the Full Federal Court had not made final orders.

²¹ [2014] FCA 591.

²² [2015] FCAFC 68.

PART 4 — PERFORMANCE REPORTING

Matter reviews

Panel decisions are discussed at Panel days. The Panel also invites parties to participate in a post matter review after a matter has concluded (7 post matter reviews were held in the 2014-2015 year).

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 hosted the third Asia Pacific Takeovers Regulators Conference in Melbourne from 25 to 27 March 2015. Over 30 participants attended and a number of common issues were discussed including association, shareholder activism, disclosure issues and enforcement.

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.



Participants of the third Asia Pacific Takeovers Regulators Conference, 25 to 27 March 2015.

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; or
- the Panel wants ASIC to consider whether to make an application.²³ This occurred once during the current period.

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, 56,879 people visited the Panel's website, last year it was 61,113.

Announcements and media releases

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

²³ 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 Treasury.

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

The APS Values and Code of Conduct apply to Panel members, in certain circumstances, and to 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, that is reviewed biannually, and a risk dashboard that is considered 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 Deputy Secretary, 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: *Ensure well-functioning markets by providing advice on policies that promote competitive, efficient markets that work to enhance consumer and investor wellbeing, a secure and competitive financial system and sound corporate practices, a reduced regulatory burden on businesses, individuals and the community, and foreign investment consistent with Australia's national interest and the development of an efficient small business sector.'*

Table 7: Resources for outcomes corporate governance and accounting

	Budget Estimate	Actual	Variation	Budget Estimate
	2014-15 (\$'000)	2014-15 (\$'000)		2015-16 (\$'000)
Revenue for agency outputs				
Revenue from Government (appropriations) contributing to price of agency outputs	1,997	1,602	395	2,010
s74 relevant agency receipts	0	10	(10)	0
Total revenue for agency outputs	1,997	1,612	385	2,010
Price of agency outputs				
Resourcing for agency outputs	1,997	1,612	385	2,010
Total price of agency outputs	1,997	1,612	385	2,010
			2014-15	2015-16
Average staffing levels (number)			5.4	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 8: Comprehensive income statement (Showing Net Cost for Services) (unaudited) for the year ended 30 June 2015

	\$
EXPENSES	
Employee expenses	
Salaries	806,199
Employer superannuation	126,378
Members' annual retainer and sitting fees	342,293
Total employee expenses	1,274,871
Operating expenses	
Printing	3,055
Travel	79,692
Official entertainment	20,885
Conferences and training	10,766
Legal	28,583
Publications and subscriptions	2,178
Property operating expenses	142,800
Other expenses	59,008
Total operating expenses	346,967
Total expenses incurred to 30 June 2015	1,621,838
LESS:	
s74 relevant agency receipts	10,125
Total Revenue	10,125
Total own-source income	10,125
Net cost of (contribution by) services	1,611,712
Appropriation Revenue	1,997,000
Surplus (deficit) attributable to the Australian Government	385,288

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 2015. 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 \$1,997,000 classified as revenue.

Expenses

Expenses are recognised as they occur. The Panel's expenses for 2014-2015 are also recorded in Treasury's audited financial statements for the period 1 July 2014 to 30 June 2015.

Surplus attributable to the Australian Government

The balance of allocation after operating expenditure for the period 1 July 2014 to 30 June 2015 was a surplus of \$385,288.

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.²⁴ All Panel decisions are subject to judicial review.²⁵ However, most reviews of Panel decisions end with the review Panel process.

Government scrutiny

The Panel was not subject to any reports by the ANAO in 2014-15.

The Panel attends hearings of the Senate Standing Committee on Economics Estimates and the Parliamentary Joint Committee on Corporations and Financial Services as required. The Takeovers Panel's operations and performance was discussed in the Committee's November 2014 report, *"Statutory Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation – Report No.1 of the 44th Parliament"*.

Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2014-15 in relation to the Panel.

Management of human resources

Staffing

At 30 June 2015, the executive consisted of four permanent full time staff and one legal secondeé.²⁶ Permanent staff are employed under the *Public Service Act 1999* (Cth).

²⁴ Section 657EA.

²⁵ Section 75(v) of the Constitution, the *Judiciary Act 1903* and the *Administrative Decisions (Judicial Review) Act 1977*, see page 23 for details about current judicial reviews of Panel decisions.

²⁶ The Panel also engaged one senior lawyer as a casual employee for a short period.

Table 9: Operative staff by classification and gender²⁷

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).

27 At 30 June 2014 and 30 June 2015. No ongoing or non-ongoing employees identified themselves as Indigenous at 30 June 2014 and 30 June 2015.

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

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. 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 Strategy and present a picture of how people with disability are faring. We are informed that the first of these reports will be available in late 2015, and can be found at www.dss.gov.au.

Consultants

During 2014-15, one new consultancy contract was entered into involving total actual expenditure of \$25,630 (inclusive of GST). Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website www.tenders.gov.au.

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 legal representation agreement and one consultancy that exceeded \$10,000.

Discretionary grants

During 2014-15, the Panel made a discretionary grant to the Australasian Legal Information Institute (AustLii) of \$3,500 (reported by the Department of Treasury - <http://www.treasury.gov.au/About-Treasury/OurDepartment/Treasury-Grants/2014-15>).

Advertising and market research

The Panel undertook a stakeholder survey during 2014-15. The survey, conducted by Evolve Research and Consulting, was sent to 658 stakeholders. We received responses from 124 stakeholders. The Panel paid Evolve \$25,630 (inclusive of GST) for their work on the survey.

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

Agencies subject to the *Freedom of Information Act 1982* (Cth) (FOI Act) are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a ‘section 8 statement’ in an annual report. Each agency must display on its website a plan showing what information it publishes in accordance with the IPS requirements. The Panel’s IPS can be found on its website.

Regulatory Impact Statements

The Panel did not submit any Regulatory Impact Statements in 2014-15.

APPENDIX 1 — PANEL MEMBERS

Members of the Panel at 30 June 2015

Ms Vicki McFadden (President)	Mr Christian Johnston
Mr Garry Besson	Mr David Jones MNZM (New Zealand)
Mr Geoff Brunsdon	Mr Byron Koster
Ms Elizabeth Bryan AM	Mr Jeremy Leibler
Mr Alex Cartel	Mr Rodd Levy
Mr Ewen Crouch AM	Mr Andrew Lumsden
Mr Peter Day	Mr Ron Malek
Mr Lee Dewhirst	Ms Denise McComish
Mr James Dickson	Mr Robert McKenzie
Ms Sarah Dulhunty	Ms Sophie Mitchell
Ms Karen Evans-Cullen	Mr Tony Osmond
Mr David Friedlander	Dr Nora Scheinkestel
Ms Elizabeth Hallett	Mr John Sheahan QC
Mr Rod Halstead	Ms Jane Sheridan
Mr Peter Hay	Mr Laurie Shervington
Ms Tracey Horton	Mr Robert Sultan
Mr Richard Hunt	Mr Anthony Sweetman
Ms Michelle Jablko	Ms Sharon Warburton
Mr Ian Jackman SC	Ms Alison Watkins

Members appointed to the Panel in 2014-15

Mr Alex Cartel	Mr Andrew Lumsden
Mr Lee Dewhirst	Mr Robert McKenzie
Ms Tracey Horton	Mr Tony Osmond
Mr Byron Koster	Ms Sharon Warburton
Mr Jeremy Leibler	

Members who ceased their membership of the Panel in 2014-15

Mr Martin Alciaturi	Mr John Keeves
Mr Mark Darras	Ms Francesca Lee
Mr John M Green	Mr Andrew Low
Mr Robert Johanson	Ms Heather Zampatti

APPENDIX 2 — SUB-COMMITTEE MEMBERS

Table 10: Sub-committees

Topic	Sub-committee members	
	Panel member	External member
Tracing Beneficial Ownership	Francesca Lee	Diana Chang
	Rodd Levy	Peter Scott
	Andrew Low	
	Vickki McFadden	
	Sophie Mitchell	
	Jane Sheridan	
Shareholder Intention	David Friedlander	John Keeves
Statements	Rodd Levy	Andrew Sisson
	Vickki McFadden	Heather Zampatti
	Robert Sultan	

APPENDIX 3 — PANEL APPLICATIONS

Table 11: Applications received by the Panel in 2014-15

	Matter No.	Section	Matter name	Decision	Application Date	Decision date
1	2014/14	657A,D&E	Envestra Limited	Declined to conduct proceedings	01/07/2014	09/07/2014
2	2014/15	657A,D&E	Gondwana Resources Limited 02	Declaration and Orders	17/07/2014	15/08/2014
3	2014/16	657A,D&E	Blackham Resources Limited	Conducted proceedings, no declaration	25/07/2014	20/08/2014
4	2014/17	657EA	Gondwana Resources Limited 02R	Declined to conduct proceedings	19/08/2014	28/08/2014
5	2014/18	657A,D&E	Scantech Limited	Declined to conduct proceedings	26/09/2014	13/10/2014
6	2014/19	657A,D&E	Aspen Parks Property Fund 01	Declined to conduct proceedings	03/10/2014	09/10/2014
7	2014/20	657A,D&E	Aspen Parks Property Fund 02	Declined to conduct proceedings	07/10/2014	09/10/2014
8	2014/21	657A,D&E	Celamin Holdings NL	Conducted proceedings, no declaration, action by party	07/11/2014	03/12/2014
9	2014/22	657A,D&E	Wollongong Coal Limited	Declined to conduct proceedings	20/11/2014	26/11/2014
10	2014/23	657A,D&E	Yancoal Australia Limited	Declaration and Orders	21/11/2014	12/12/2014
11	2014/24	657EA	Celamin Holdings NL 01R	Declined to conduct proceedings	05/12/2014	12/12/2014
12	2014/25	657A,D&E	Careers Australia Group Limited 03	Declined to conduct proceedings	23/12/2014	06/01/2015
13	2015/01	657EA	Careers Australia Group Limited 03R	Declined to give consent to make review application	08/01/2015	08/01/2015
14	2015/02	657A&D	KBL Mining Limited	Declined to conduct proceedings, action by party	09/01/2015	16/01/2015
15	2015/03	657A,D&E	Payce Consolidated Limited	Withdrawn	12/01/2015	13/01/2015
16	2015/04	657A,D&E	Richfield International Limited	Declaration and Orders	24/03/2015	22/04/2015
17	2015/05	657A,D&E	Phosphate Australia Limited	Declined to conduct proceedings, action by party	23/04/2015	30/04/2015
18	2015/06	657E	CIC Australia Limited	No interim order made	25/05/2015	26/05/2015
19	2015/07	657A&D	Mungana Goldmines Limited	Declined to conduct proceedings, action by party	01/06/2015	05/06/2015
20	2015/08	657EA	Mungana Goldmines Limited 01R	Declined to conduct proceedings	09/06/2015	17/06/2015

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
ICAA	Institute of Chartered Accountants of Australia
MOU	Memorandum of Understanding
OH&S	Occupational Health and Safety
SEB	Senior Executive Band
SES	Senior Executive Service

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