

TAKEOVERS PANEL

ANNUAL REPORT
2015-2016

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6 September 2016

The Honourable Kelly O'Dwyer MP
Minister for Revenue and Financial Services
Parliament House
Canberra ACT 2600

Dear Minister

ANNUAL REPORT 2015-16

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, I submit the 2015-16 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 2016 of 39 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
Telephone: +61 3 9655 3500
Facsimile: +61 3 9655 3511
Email: allan.bulman@takeovers.gov.au



Ms Vicki McFadden
President of the Panel

Review by the President

This year (2015-2016) we released the results of our 2015 stakeholder survey on our website. I was pleased to see that 89% of those surveyed⁴ were satisfied with the Panel.

In previous years there has been a trend towards declining to conduct proceedings; for example last year we only conducted proceedings in relation to 5 out of 20 applications. In the survey in relation to the Panel's decision to conduct proceedings on applications, 35% of stakeholders responding to the survey stated that the Panel did not conduct proceedings enough.

This year there has been a reversal of this trend with the Panel conducting proceedings in 13 out of 20 applications. In part, this is a reflection of the complexity of the applications made to the Panel this year, including matters involving association (Affinity Education Group Limited, Resource Generation Limited 01 and 01R, Ainsworth Game Technology Limited 01 & 02 and Sovereign Gold Company Limited) and disclosure (Brisbane Markets Limited, Sedgman Limited, Gulf Alumina Limited and Investa Office Fund).

The Panel aims to make soundly-based commercial decisions in a timely manner, in accordance with its remit. This year, the average time from application to decision taking all decisions into account was 25.8 calendar days (the overall average is 16.1 calendar days). The median time from application to decision was 21.5 calendar days. The material increase in the average time to complete matters is a reflection of the number of times the Panel conducted proceedings and the complexity of those matters.

In particular, The President's Club Limited 02 is so far the longest matter in Panel history, taking 151 calendar days from application to decision. It involved requests for extension of time, which were granted, and a Court challenge, which was dismissed. If this matter was excluded, the average time from application to decision this year would be 19.2 calendar days. At the other end of the scale, the Panel was required to consider an urgent application over a weekend in Ainsworth Game Technology Limited 03.

4 Excluding Panel members who responded to the survey.

Some stakeholders expressed concern in the 2015 stakeholder survey about how the Panel deals with the difficult issue of association. Of the 20 applications received this year, 9 involved allegations of association. The Panel made declarations and orders in response to three of these applications and accepted undertakings in Ainsworth Game Technology Limited 01 & 02. The time limits under s657B often operate so that the Panel only has one month from receipt of the application to make a declaration if one is warranted. Of the association applications, three were made by unrepresented applicants and given the limited capacity of the executive to assist those applicants, the consideration of these applications within the time is typically more difficult.

The Panel has on issue 18 Guidance Notes to assist market participants to understand the principles and policies which the Panel will consider in deciding applications. During the year, the Panel issued Guidance Note 23 (Shareholder intention statements). The Panel made minor changes to Guidance Note 14 (Funding arrangements) to take into account the Federal Court's decision in *ASIC v Mariner Corporation Limited*⁵ interpreting s631(2)(b).⁶ The Panel also amended Guidance Note 13 (Broker handling fees) to note that broker handling fees appear to fall under the definition of 'conflicted remuneration' introduced into the Corporations Act with the FOFA reforms and are therefore prohibited unless an exception applies.⁷

The Panel is grateful to the Federal Government for its commitment to a robust, principles-based Panel regime and for its ongoing support.

At 30 June 2016, the Panel had 39 part time members. I thank members for their work throughout the year, as participants in sitting Panels, at Panel days and on policy sub-committees.

The Panel members and I greatly appreciate the support of Allan Bulman, Alan Shaw and their small executive team. During the year Alan Shaw informed me of his decision to retire from the Panel. In the more than 9 years Alan has served as Panel Counsel he has provided excellent legal advice and guidance to the Panel membership on applications, on procedures and policies and the integrity of the Panel. He was also responsible for and showed great leadership in rewriting the Panel's policies and procedural rules to make them more accessible to all market participants. We will miss Alan greatly and I wish him well.

5 [2015] FCA 589.

6 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.

7 This follows the conclusion of the Australian Government's Future of Financial Advice reforms with the passage of the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014 on 24 November 2015.

Panel at a glance 2015-16

Applications

(average 28.7 per year since 1 July 2000)
(average 22.1 per year since 1 July 2009)

20

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

* plus one application withdrawn

13/6*

Matters where the Panel
accepted undertakings

2

Matters where the Panel made
declarations and orders

9

Average calendar days between
application and decision

(average 16.1 since 13 March 2000)
(average 16.7 since 1 July 2009)

*excluding The President's Club
Limited 02

19.2*

Average calendar days between
decision and publication of reasons

(average 35.9 since 13 March 2000)
(average 10 since 1 July 2009)

17.1

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 exist⁸ and reviewing certain decisions of ASIC.⁹

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 ¹⁰
How often	In the current period there were 18 applications for a declaration at first instance ¹¹	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

8 Section 657A and, if made, orders under section 657D.
9 Under section 655A and, during a takeover bid, section 673 (see s656A).
10 Section 656A(3).
11 There were 2 review applications.

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' ¹²	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. ¹³ 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 two applications for review	NA

Other features

The Panel may make rules, not inconsistent with the Corporations Act or the Corporations Regulations, to clarify or supplement the operation of the provisions of Chapter 6.¹⁴ It has not made any rules under this power.

The Panel has a power to make Procedural Rules.¹⁵ It published revised Procedural Rules in 2010.

The Panel has a review function if a matter is referred from the Court.¹⁶ There were none in the current period.

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

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

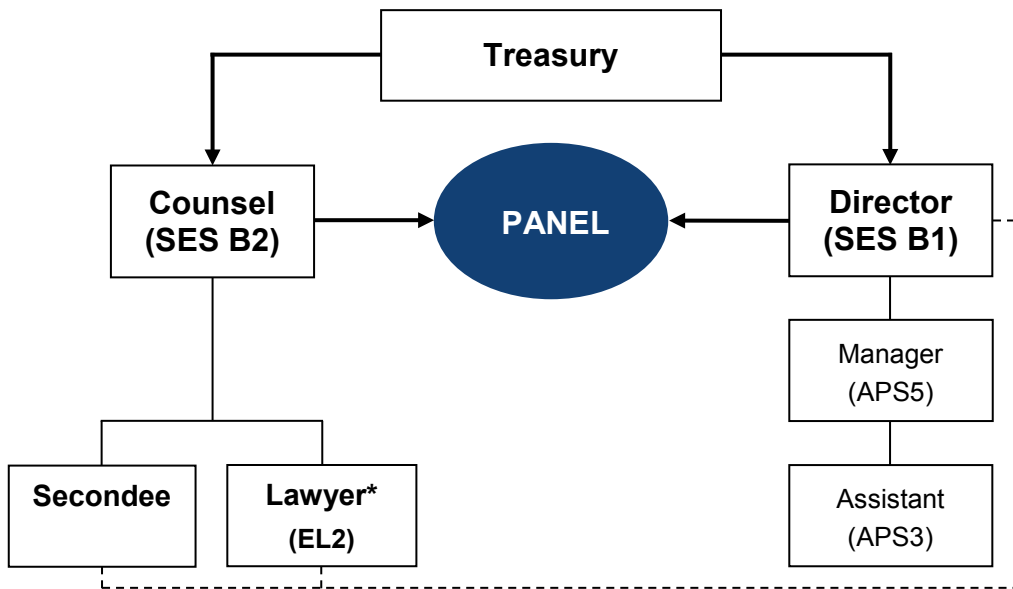
14 Section 658C.

15 Section 195 of the ASIC Act.

16 Section 657EB.

Organisational structure

Chart 1: The Panel's organisation structure



*Non-ongoing contract

Panel President

Ms Vicki McFadden, a member of the Panel, is its President.¹⁷ 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.

¹⁷ Section 173 of the ASIC Act.

Acting Presidents

The following members have been appointed¹⁸ to act as President when the President cannot act:

- Ms Sarah Dulhunty;
- Mr Richard Hunt;
- Mr Peter Hay; and
- Ms Michelle Jablko.

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;
- 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;
- Lawyer, Ms Tania Mattei;
- 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 Viet Nguyen (Norton Rose Fulbright, Melbourne), Ms Nayanisha Samarakoon (ASIC, Melbourne) and Mr Ben Stewart (Squire Patton Boggs, Perth); and
- two administrative staff: Ms Karolina Ksiezak as Office Manager and Ms Rebecca Andrewartha as Executive Assistant.

¹⁸ Section 182(1)(a)&(b) of the ASIC Act.



The President with the executive: (L to R) Ben Stewart, Karolina Ksiezak, Alan Shaw, Vickki McFadden, Allan Bulman, Tania Mattei and Rebecca Andrewartha.

The Office

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

Appointment of Panel members

Table 2: Appointment of Panel members in 2015-16

Reappointments (9)	Appointments (11)	Terms completed (10)
Mr Peter Day;	Mr Kelvin Barry;	Mr Garry Besson;
Mr James Dickson;	Mr Robin Bishop;	Mr Geoff Brunsdon;
Ms Sarah Dulhunty;	Ms Stephanie Charles;	Mr Ewen Crouch AM;
Ms Elizabeth Hallett;	Mr Bruce Cowley;	Mr David Friedlander;
Mr Rod Halstead;	Ms Chelsey Drake;	Dr Nora Scheinkestel;
Mr David Jones MNZM;	Ms Shirley In't Veld;	Ms Jane Sheridan;
Mr Rodd Levy;	Mr Bill Koeck;	Mr Laurie Shervington;
Ms Denise McComish; and	Mr Bruce McLennan;	Mr Robert Sultan;
Ms Vicki McFadden	Ms Karen Phin;	Mr Anthony Sweetman; and
	Ms Sarah Rennie; and	Ms Alison Watkins
	Ms Nicola Wakefield Evans	

Members are appointed on a part-time basis, usually for three years, by the Governor-General on the nomination of the Minister.¹⁹ 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.²⁰ A mix of expertise, geographical representation and gender representation is also considered.

¹⁹ Section 172 of the ASIC Act.

²⁰ Section 172(4A) of the ASIC Act.

Chart 2: Panel members by Profession at 30 June 2016

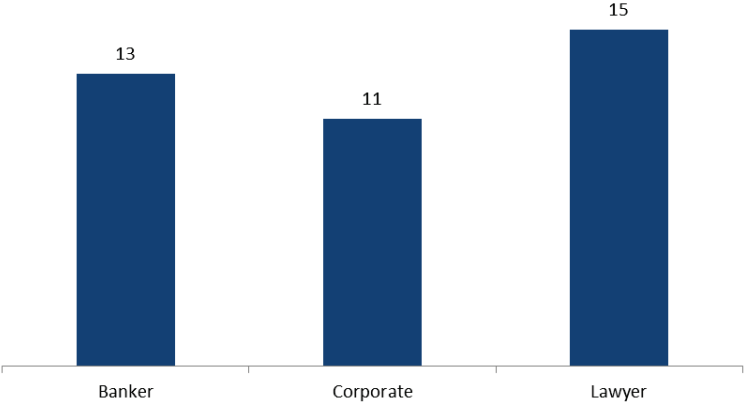


Chart 3: Panel members by Location at 30 June 2016

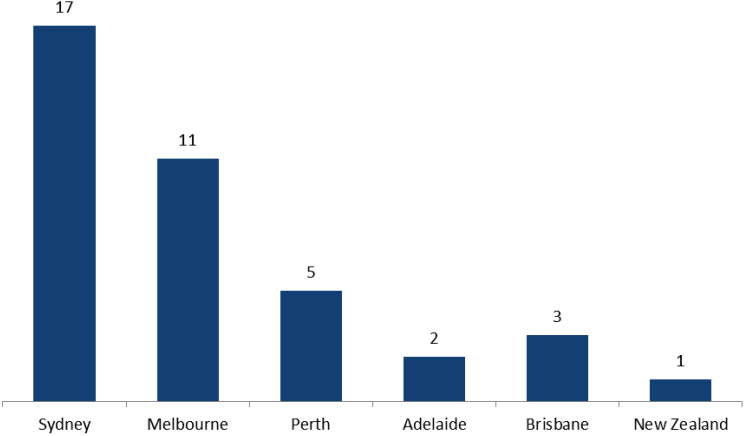
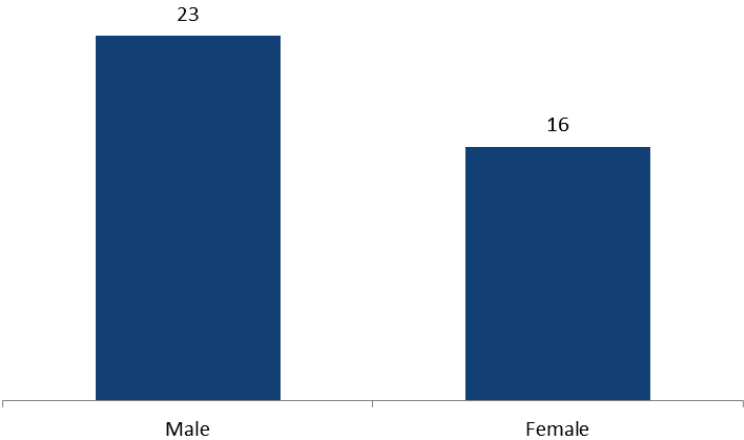


Chart 4: Panel members by Gender at 30 June 2016



Members' biographies

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

Kelvin Barry — Managing Director and Joint Head of Corporate Advisory, UBS AG (Member since 2016).

Robin Bishop — Head of Macquarie Capital Australia & New Zealand (Member 2011-2014 and re-appointed 2016).

Elizabeth Bryan AM — Company Director (Member since 2012), currently Chairman of Virgin Australia, Chairman of Insurance Australia Group and director of Westpac Banking Corporation.

Alex Cartel — Managing Director, Head of Mergers & Acquisitions, and Head of Australian Energy, Oil and Gas, Deutsche Bank AG Australia & New Zealand (Member since 2015).

Stephanie Charles — Managing Director, Credit Suisse Australia (Member since 2015).

Bruce Cowley — Chairman, MinterEllison (Member since 2016).

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, Piper Alderman (Member since 2010).

Chelsey Drake — Partner, Allens (Member since 2016), member of the Corporations Committee of the Law Council of Australia.

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.

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 (Acting President) — Company Director (Member since 2009), Chairman of Newcrest Mining Limited, Chairman of Vicinity Centres, a director of 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 Navitas Limited, a Commissioner of the Tourism Commission and a non-executive national director of the AICD.

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

Shirley In't Veld — Company Director (Member since 2016), Deputy Chairman of the CSIRO, non-executive director of Asciano, DUET Group, Perth Airport and NBN Co.

Michelle Jablko (Acting President) — Chief Financial Officer, ANZ Banking Group Limited (Member since 2014).

Ian Jackman SC — Barrister (Member since 2014).

Christian Johnston — Head of Investment Banking (Australia and New Zealand) and Managing Director, 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.

Bill Koeck — Senior Adviser, M&A, Ashurst Australia (Member since 2015), non-executive director of Poulos Bros, Armada Funds Management and Range International Limited.

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 2014), 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, member of AICD and former member of the Corporations and Markets Advisory Committee.

Robert McKenzie — Partner, Jackson McDonald (Member since 2014), member of the Corporations and Insolvency Committees of the Law Council of Australia, member of the WA Committee of TMA Australia, a director of Black Swan State Theatre Company.

Bruce McLennan — Managing Director and Co-Head of Advisory, Gresham Advisory Partners (Member since 2016) and non-executive director of Kingspan Group Plc.

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).

Karen Phin — Company director (Member since 2015), non-executive director of Magellan Financial Group.

Sarah Rennie — Managing Director, Head of Equity Capital Markets (Australia & New Zealand), Goldman Sachs (Member since 2015).

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.

Nicola Wakefield Evans — Company Director (Member since 2015). Non-executive director of Macquarie Group Limited, Toll Holdings Limited, Lend Lease Corporation Limited and BUPA Australia & New Zealand.

Sharon Warburton — Company Director (Member since 2015), non-executive director of Fortescue Metals Group, Wellard Limited, Western Power and Gold Road Resources. Chair Designate for Northern Australia Infrastructure Facility.

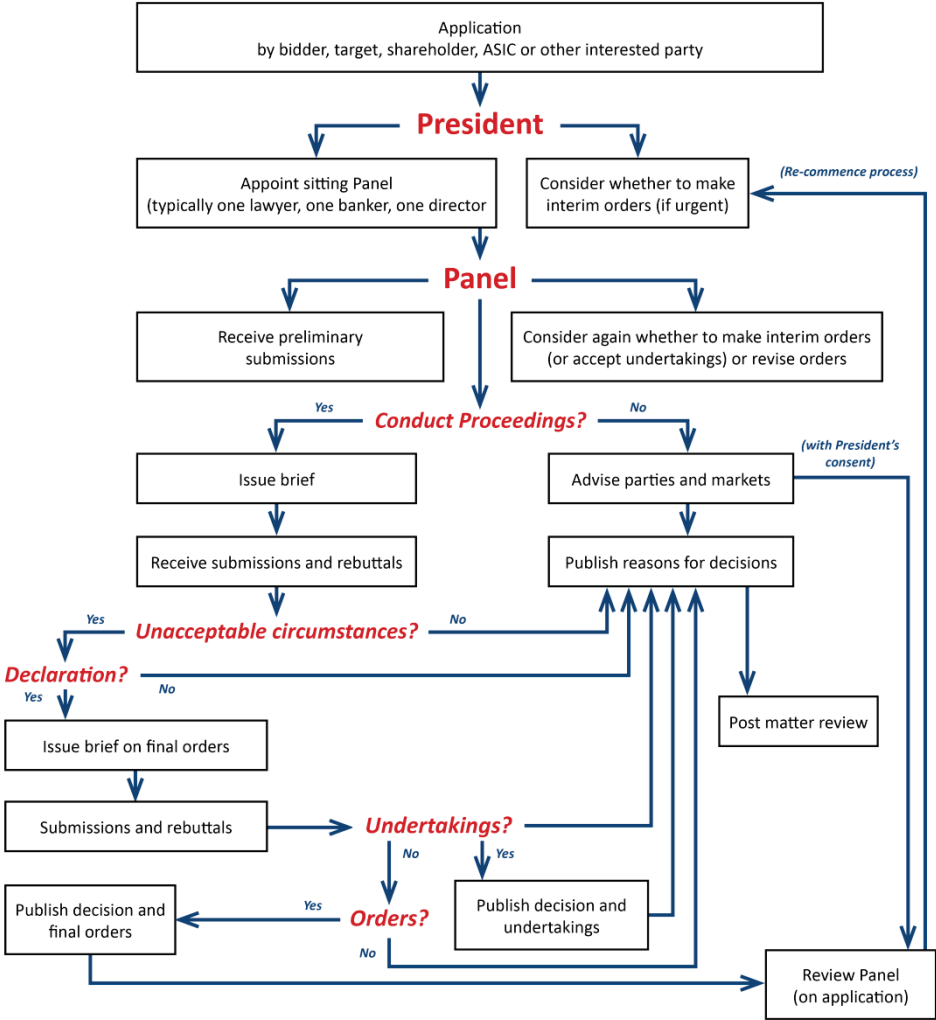
PART 3 — THE WORK OF THE PANEL

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 (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 2015-16

Form of resolution	Number of matters	Factors
Declaration and/or Orders	9	Circumstances are unacceptable and need to be remedied
Undertakings ²¹	2	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	6	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)
Total	20	

²¹ Section 201A of the ASIC Act.

Issues in applications

Table 4: Issues in 2015-16

Issue	Number of matters	Name of case
Association/breach of s606	10.5	Echo Resources Limited, Affinity Education Group Limited, The President's Club Limited 02, Resource Generation Limited 01 and 01R, CuDeco Limited (in part), Condor Blanco Mines Limited 01 and 02, Ainsworth Game Technology Limited 01 & 02, Sovereign Gold Company Limited
Disclosure	5.5	Australian Industrial REIT, Brisbane Markets Limited, Sedgman Limited, Gulf Alumina Limited, Investa Office Fund (in part), Ainsworth Game Technology Limited 03
Rights issues	3.5	CuDeco Limited (in part), ABM Resources NL 01 and 01R, Warrnambool Cheese and Butter Factory Company Holdings Limited 02
Trust schemes	0.5	Investa Office Fund (in part)
Total	20	

Note: the table captures the main basis for an application (or 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 two to three times each year. As Panel members reside in different cities, these sessions are a valuable opportunity for them to get together and discuss past proceedings, policy issues and market developments.

Panel members' firms host these meetings, as well as allow 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.

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 issued one and amended two Guidance Notes.

Table 5: Guidance Notes issued or amended in 2015-16

Guidance Note	GN Issue	Date
GN 14 Funding Arrangements	Third	26/11/2015
GN 23 Shareholder Intention Statements	First	11/12/2015
GN 13 Broker Handling Fees	Third	09/03/2016 ²²

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

In addition to post matter reviews (see below), the Panel undertakes public consultation 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.

In the current period the Panel published two consultation papers.

²² No consultation paper was considered necessary prior to amending Guidance Note 13

Table 6: Consultation papers issued in 2015-16

Consultation Paper	Issue Date	Close Date	Number of submissions
GN 23 Shareholder Intention Statements	07/07/2015	01/09/2015	8
GN 14 Funding Arrangements	06/10/2015	26/10/2015	3

Legislation

The Panel operates under the Corporations Act and ASIC Act.

Judicial review

The Federal Court’s decision in *Queensland North Australia Pty Ltd v Takeovers Panel*²³ 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.²⁴ On 4 September 2015, the Full Federal Court set aside the Panel’s decision in the President’s Club Limited 01 to make a declaration and orders and remitted the matter to the Panel to be heard and determined according to law.²⁵

In considering the remitted application, the Panel granted an extension of time for making the application under s657C(3) and applied to the Federal Court for an order extending the time to make a declaration under s657B. Palmer Leisure Coolum Pty Ltd sought a judicial review of the Panel’s decision to extend time. The Federal Court dismissed Palmer Leisure Coolum Pty Ltd’s judicial review and extended the time for the Panel to make a declaration for a period of 6 weeks from the date of the Court’s decision.²⁶

²³ [2014] FCA 591.

²⁴ *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68.

²⁵ *Queensland North Australia Pty Ltd v Takeovers Panel* (No 2) [2015] FCAFC 128.

²⁶ *Palmer Leisure Coolum Pty Ltd v Takeovers Panel* [2015] FCA 1498.

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 (4 post matter reviews were held in the 2015-2016 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 FIRB) 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.

The Panel executive contributes to an Asia Pacific Takeovers Regulators Forum and, during the current period, attended a conference of Asia Pacific takeover regulators in Hong Kong.

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; or
- the Panel wants ASIC to consider whether to make an application.²⁷

There were 3 referrals during the current period. One of these referrals resulted in ASIC making a further application to the Panel (Condor Blanco Mines Limited 02).

²⁷ 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, 55,902 people visited the Panel's website (down by 1.75% on last year) and there were 281,251 page views (up by 6.73% on last year).

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 securities exchange.

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 the executive and, in certain circumstances, Panel members.

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 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: *'Promoting well-functioning markets that encourage competitive and efficient markets and contribute to consumer and investor confidence; a secure and competitive financial system and sound corporate practices; a reduced regulatory burden on businesses, individuals and the community; and a well-regulated, competitive and efficient small business sector.'*

Table 7: Resources for outcomes corporate governance and accounting

	Budget Estimate	Actual	Variation	Budget Estimate
	2015-16 (\$'000)	2015-16 (\$'000)		2016-17 (\$'000)
Revenue for agency outputs				
Revenue from Government (appropriations) contributing to price of agency outputs	2,010	1,904	106	2,032
s74 relevant agency receipts	0	1	(1)	0
Total revenue for agency outputs	2,010	1,905	105	2,032
Price of agency outputs				
Resourcing for agency outputs	2,010	1,905	105	2,032
Total price of agency outputs	2,010	1,905	105	2,032
			2015-16	2016-17
Average staffing levels (number)			6.0	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. For example, the issue of Guidance Note 23 (Shareholder intention statements) by the Panel assisted in encouraging competitive and efficient markets and contributing to consumer and investor confidence by making clear what is required when such statements are made.

Financial information

Schedule of Revenues and Expenditures

Table 8: Comprehensive income statement (Showing Net Cost for Services) (unaudited) for the year ended 30 June 2016

	\$
EXPENSES	
Employee expenses	
Salaries	986,906
Employer superannuation	156,511
Members' annual retainer and sitting fees	415,841
Total employee expenses	1,559,258
Operating expenses	
Printing	2,095
Travel	122,480
Official entertainment	4,989
Conferences and training	5,863
Legal	42,850
Publications and subscriptions	8,594
Property operating expenses	140,117
Other expenses	19,768
Total operating expenses	346,756
Total expenses incurred to 30 June 2015	1,906,014
LESS:	
s74 relevant agency receipts	1,289
Total Revenue	1,289
Total own-source income	1,289
Net cost of (contribution by) services	1,904,725
Appropriation Revenue	2,010,000
Surplus (deficit) attributable to the Australian Government	105,275

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 2016. 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 \$2,010,000 classified as revenue.

Expenses

Expenses are recognised as they occur. The Panel's expenses for 2015-2016 are also recorded in Treasury's audited financial statements for the period 1 July 2015 to 30 June 2016.

Surplus attributable to the Australian Government

The balance of allocation after operating expenditure for the period 1 July 2015 to 30 June 2016 was a surplus of \$105,275.

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.²⁸ All Panel decisions are subject to judicial review.²⁹ 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 2015-16.

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 Panel's operations and performance was discussed in the Parliamentary Joint Committee on Corporations and Financial Services' May 2016 report, "Report on the 2014-2015 annual reports of bodies established under the ASIC Act".

The Panel made a submission to the Senate Economics References Committee's Inquiry into Penalties for White Collar Crime.

Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2015-16 in relation to the Panel.

Management of human resources

Staffing

At 30 June 2016, the executive consisted of four permanent full time staff, one non-ongoing full time employee and one legal secondee.³⁰ Permanent staff are employed under the *Public Service Act 1999* (Cth).

²⁸ Section 657EA.

²⁹ Section 75(v) of the Constitution, the *Judiciary Act 1903* and the *Administrative Decisions (Judicial Review) Act 1977*, see page 21 for details about current judicial reviews of Panel decisions.

³⁰ The Panel also engaged one senior lawyer as a casual employee for a short period.

Table 9: Operative staff by classification and gender³¹

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

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

Secondments

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

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 Enterprise Agreement 2015-18 determines salary rates for non-SES Panel staff. Details and statistics on non-SES remuneration are included in Treasury's Annual Report (Part 3: Management and Accountability, Management of Human Resources).

³¹ No ongoing or non-ongoing employees identified themselves as Indigenous at 30 June 2016.

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 Treasury's 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. The first of these progress reports was published in 2014, and can be found at www.dss.gov.au.

Consultants

The Panel did not engage any consultants in 2015-16.

Competitive tendering and contracting

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

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

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

Discretionary grants

During 2015-16, 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/2015-16>).

Advertising and market research

The Panel did not undertake any advertising or market research during 2015-16.

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 2015-16. Before issuing Consultation Papers, the Panel receives advice on whether a Regulatory Impact Statement is necessary.

APPENDIX 1 — PANEL MEMBERS

Table 10: Members of the Panel at 30 June 2016

Ms Vickki McFadden (President)	Mr Ian Jackman SC
Mr Kelvin Barry	Mr Christian Johnston
Mr Robin Bishop	Mr David Jones MNZM (New Zealand)
Ms Elizabeth Bryan AM	Mr Bill Koeck
Mr Alex Cartel	Mr Byron Koster
Ms Stephanie Charles	Mr Jeremy Leibler
Mr Bruce Cowley	Mr Rodd Levy
Mr Peter Day	Mr Andrew Lumsden
Mr Lee Dewhirst	Mr Ron Malek
Mr James Dickson	Ms Denise McComish
Ms Chelsey Drake	Mr Robert McKenzie
Ms Sarah Dulhunty	Mr Bruce McLennan
Ms Karen Evans-Cullen	Ms Sophie Mitchell
Ms Elizabeth Hallett	Mr Tony Osmond
Mr Rod Halstead	Ms Karen Phin
Mr Peter Hay	Ms Sarah Rennie
Ms Tracey Horton	Mr John Sheahan QC
Mr Richard Hunt	Ms Nicola Wakefield Evans
Ms Shirley In't Veld	Ms Sharon Warburton
Ms Michelle Jablko	

Table 11: Members appointed to the Panel in 2015-16

Mr Kelvin Barry	Mr Bill Koeck
Mr Robin Bishop	Mr Bruce McLennan
Ms Stephanie Charles	Ms Karen Phin
Mr Bruce Cowley	Ms Sarah Rennie
Ms Chelsey Drake	Ms Nicola Wakefield Evans
Ms Shirley In't Veld	

Table 12: Members who ceased their membership of the Panel in 2015-16

Mr Garry Besson	Ms Jane Sheridan
Mr Geoff Brunsdon	Mr Laurie Shervington
Mr Ewen Crouch AM	Mr Robert Sultan
Mr David Friedlander	Mr Anthony Sweetman
Dr Nora Scheinkestel	Ms Alison Watkins

APPENDIX 2 — SUB-COMMITTEE MEMBERS

Table 13: Sub-committees

Topic	Sub-committee members	
	Panel member	External member
GN 23 Shareholder Intention Statements	Ms Vickki McFadden (President)	Mr John Keeves
	Mr David Friedlander	Mr Andrew Sisson
	Mr Rodd Levy	Ms Heather Zampatti
	Mr Robert Sultan	
GN 14 Funding Arrangements	Ms Vickki McFadden (President)	
	Mr Lee Dewhirst	
	Ms Sarah Dulhunty	
	Mr Jeremy Leibler	
	Mr Andrew Lumsden	
	Mr Robert Sultan	
	Mr John Sheahan QC	

APPENDIX 3 — PANEL APPLICATIONS

Table 14: Applications received by the Panel in 2015-16

	Matter No.	Section	Matter name	Decision	Application Date	Decision date
1	2015/09	657A,D&E	Echo Resources Limited	Declined to conduct proceedings	10/07/2015	17/07/2015
2	2015/10	657A,D&E	Affinity Education Group Limited	Declaration and Orders	26/08/2015	05/10/2015
3	2015/11	657A,D&E	The President's Club Limited 02	Declaration and Orders	04/09/2015 (remittal)	02/02/2016
4	2015/12	657A&D	Australian Industrial REIT	Declined to conduct proceedings, action by party	07/10/2015	09/10/2015
5	2015/13	657A,D&E	Resource Generation Limited	Declaration and Orders	12/10/2015	18/11/2015
6	2015/14	657A,D&E	CuDeco Limited	Declined to conduct proceedings, action by party	23/10/2015	02/11/2015
7	2015/15	657EA	Resource Generation Limited 01R	Declined to conduct proceedings	18/11/2015	24/11/2015
8	2016/01	657A,D&E	Brisbane Markets Limited	Declaration and Orders	06/01/2016	09/02/2016
9	2016/02	657A,D&E	Sedgman Limited	Conducted proceedings, no declaration, action by party	19/01/2016	02/02/2016
10	2016/03	657A&D	Gulf Alumina Limited	Declaration and Orders	15/02/2016	11/03/2016
11	2016/04	657A,D&E	ABM Resources NL	Declaration and Orders	10/03/2016	07/04/2016
12	2016/05	657A,D&E	Investa Office Fund	Declaration and Orders	21/03/2016	08/04/2016

Matter No.	Section	Matter name	Decision	Application Date	Decision date
13	2016/06	657EA ABM Resources NL 01R	Conducted proceedings, no declaration	11/04/2016	28/04/2016
14	2016/07	657A,D&E Condor Blanco Mines Limited	Declaration and Orders	01/05/2016	27/05/2016
15	2016/08	657A,D&E Ainsworth Game Technology Limited 01	Conducted proceedings, no declaration, undertaking	13/05/2016	14/06/2016
16	2016/09	657A,D&E Ainsworth Game Technology Limited 02	Conducted proceedings, no declaration, undertaking	17/05/2016	14/06/2016
17	2016/10	657A,D&E Sovereign Gold Company Limited	Declaration and Orders	09/06/2016	08/07/2016
18	2016/11	657A,D&E Ainsworth Game Technology Limited 03	Declined to conduct proceedings	24/06/2016	25/06/2016
19	2016/12	657A,D&E Warrnambool Cheese and Butter Factory Company Holdings Limited 02	Declined to conduct proceedings	27/06/2016	30/06/2016
20	2016/13	657A,D&E Condor Blanco Mines Limited 02	Withdrawn	28/06/2016	06/07/2016

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
FIRB	Foreign Investment Review Board
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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