



Australian Government

Takeovers Panel

Takeovers Panel

Annual Report

16
17

TAKEOVERS PANEL

ANNUAL REPORT
2016-2017

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7 September 2017

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

Dear Minister

ANNUAL REPORT 2016-17

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, I submit the 2016-17 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 2017 of 45 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
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Telephone: +61 3 9655 3500
Facsimile: +61 3 9655 3511
Email: takeovers@takeovers.gov.au



Ms Vicki McFadden
President of the Panel

Review by the President

This year (2016-2017), the Panel considered 23 applications, 12 of which involved association issues. As I mentioned in last year's report, the time limits under s657B⁴ often mean that the Panel only has one month from receipt of an application to make a declaration if one is warranted. This time frame may be challenging given the volume of material to be considered in association cases. The Federal Court granted an extension of time this year to allow the Panel to complete its consideration of an association issue in relation to the affairs of Molopo Energy Limited.⁵

We wish to acknowledge the important role ASIC plays in investigating issues relating to Chapter 6 and either making applications to the Panel (which ASIC did twice this year) or providing information in response to applications by others. By doing this, and investigating the many complaints and allegations it receives, ASIC helps to ensure compliance with the takeovers provisions in the Corporations Act. This year the Panel executive entered into a new memorandum of understanding with ASIC, noting the desire of both organisations to work together while acknowledging the Panel's role as an independent tribunal.

The Panel was rejuvenated in 2000 to "allow takeover disputes to be resolved as quickly and efficiently as possible".⁶ Given the number of association cases the Panel needed to consider, I am pleased that the average time from application to decision this year was 16.3 calendar days, which is close to the long term average. In light of the increasing complexity of, and material provided in, Panel applications, it is important for the Panel to keep abreast of new information technology so it can continue to fulfil its mandate. The Panel trialled the use of data rooms for some matters this year. In the coming year the Panel intends to use data rooms, and potentially other software, to deal with all or nearly all applications – which will benefit parties and the Panel. This is likely to involve changes in our processes and potentially in the long run amendments to our Procedural Rules.

⁴ Unless otherwise identified, all statutory references are to the Corporations Act.

⁵ *Takeovers Panel v Keybridge Capital Limited, in the matter of Molopo Energy Limited* [2017] FCA 469.

⁶ Paragraph [7.16] of the Explanatory Memorandum for the Corporate Law Economic Reform Program Bill 1998 (Cth).

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 made amendments to Guidance Note 12 (Frustrating Action) to provide more guidance in relation to the actions by targets which the Panel is unlikely to consider unacceptable.⁷ We are considering whether to make amendments to Guidance Note 17 (Rights Issues) in the forthcoming year.

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 2017, the Panel had 45 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, Bruce Dyer, Tania Mattei and their small executive team. Bruce Dyer has taken over as Panel Counsel from Alan Shaw, who has made an extremely valuable contribution over many years. Bruce has considerable takeovers, corporate and administrative law experience as a partner at Ashurst and as an academic. We are also pleased that Tania Mattei has taken on the role as Deputy Counsel, bringing with her extensive US and cross-border M&A experience.

⁷ The Panel also made minor amendments to Guidance Note 4 (Remedies General) to clarify that the Panel considers a balance of factors, including timing, when exercising its discretion whether to accept an undertaking in lieu of a declaration or orders.

Panel at a glance 2016-17

Applications

(average 28.4 per year since 1 July 2000)
(average 22.3 per year since 1 July 2009)

23

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

* plus three applications withdrawn

9/11*

Matters where the Panel
accepted undertakings

2

Matters where the Panel made
declarations and orders

7

Average calendar days between
application and decision

(average 16.1 since 13 March 2000)
(average 16.6 since 1 July 2009)

16.3

Average calendar days between
decision and publication of reasons

(average 35.2 since 13 March 2000)
(average 11.7 since 1 July 2009)

22.2

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 (comprising three members) 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 five 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 five 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 no referrals 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.

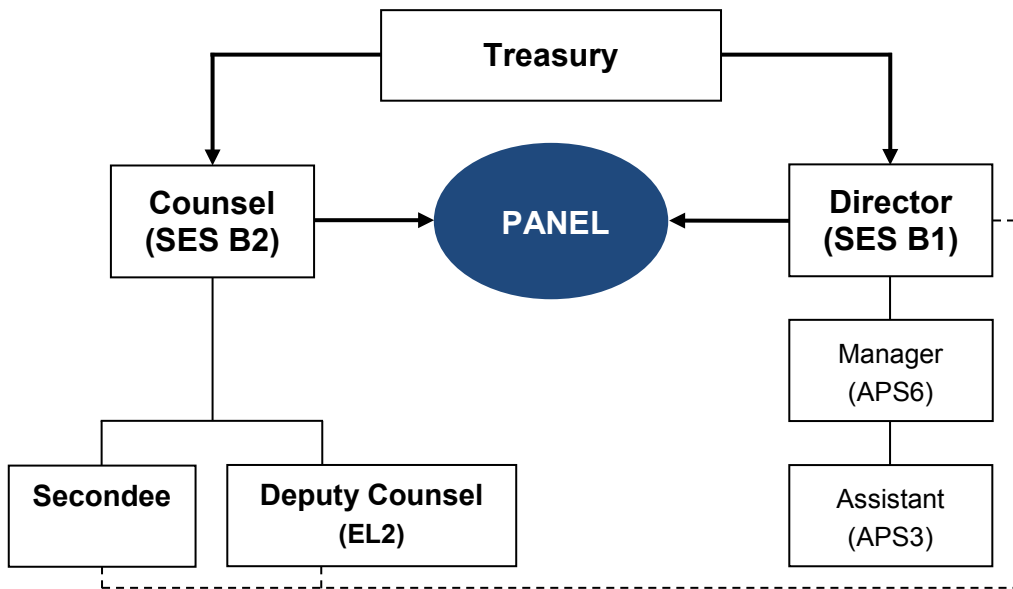
14 Section 658C.

15 Section 195 of the ASIC Act.

16 Section 657EB.

Organisational structure

Chart 1: The Panel's organisation structure



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 Bruce Dyer;
- Deputy Counsel, 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 Ben Stewart (Squire Patton Boggs, Perth) and Ms Lauren McInnes (Allens, Melbourne); 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) Bruce Dyer, Rebecca Andrewartha, Karolina Ksiezak, Lauren McInnes, Tania Mattei, Allan Bulman and Vickki McFadden.

The Office

The Panel maintains an office in Melbourne at Level 10, 63 Exhibition Street. Its current lease expires in January 2019.

Appointment of Panel members

Table 2: Appointment of Panel members in 2016-17

Reappointments (5)	Appointments (7)	Terms completed (1)
Ms Michelle Jablko;	Ms Yasmin Allen;	Mr David Jones MNZM
Mr Christian Johnston;	Mr Andy Coupe;	
Mr Ian Jackman SC;	Ms Paula Dwyer;	
Mr John Sheahan QC; and	Ms Rebecca Maslen-Stannage;	
Ms Karen Evans-Cullen.	Ms Diana Nicholson;	
	Mr Neil Pathak; and	
	Mr David Williamson.	

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 2017

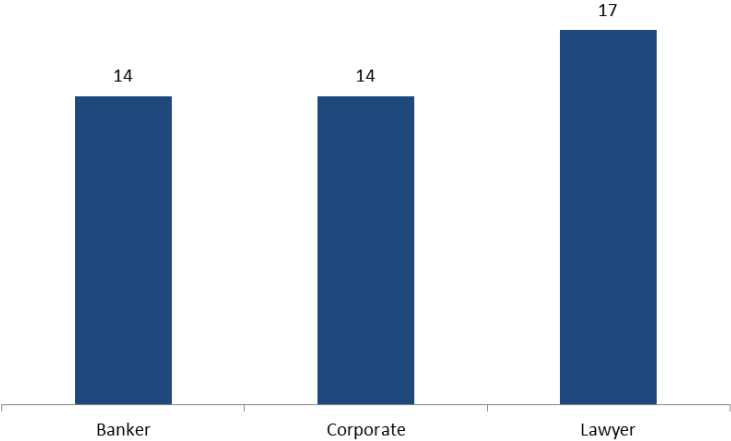


Chart 3: Panel members by Location at 30 June 2017

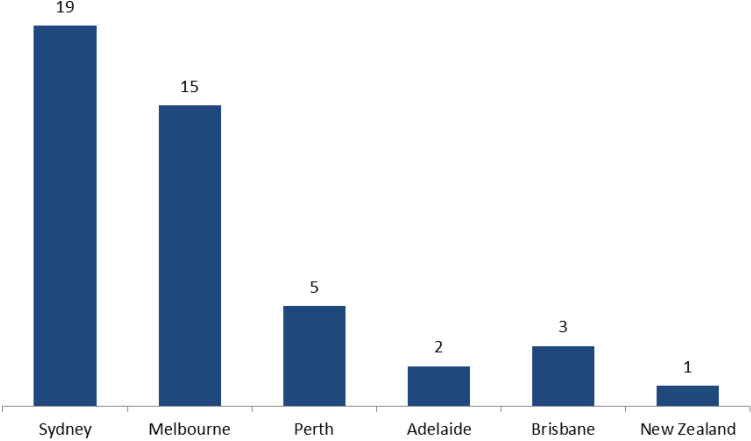
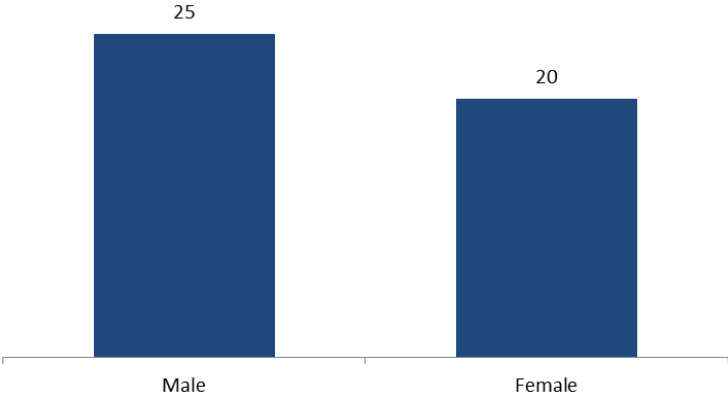


Chart 4: Panel members by Gender at 30 June 2017



Members' biographies (as at 30 June 2017)

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

Yasmin Allen — Company Director (Member since 2017), non-executive director of Cochlear Limited, Santos Limited and ASX Limited.

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

Robin Bishop — Investment banker (Member 2011-2014 and re-appointed 2016), Director of the Burnet Institute for Medical Research, AFL Commissioner.

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

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, Investment Banking, Credit Suisse Australia (Member since 2015).

Andy Coupe — Chairman, New Zealand Takeovers Panel (Member since 2016) Chairman of Sold Energy New Zealand Ltd and Farmright Ltd, and a non-executive director of Gentrack Group, Briscoe Group, Kingfish, Barramundi, Marlin Global and Television New Zealand.

Bruce Cowley — Chairman, MinterEllison (Member since 2016), member of the Corporations Committee of the Law Council of Australia and AICD Law Committee.

Peter Day — Company Director (Member since 2010), Chairman of Australian Office Fund and non-executive director of Alumina, Ansell, Boart Longyear. 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.

Paula Dwyer — Company Director (Member 2008-2014 and re-appointed 2017), Chairman of Tabcorp Holdings Limited and Healthscope Limited, non-executive director of ANZ Banking Group and Lion Pty Limited.

Karen Evans-Cullen — Partner, PricewaterhouseCoopers (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, formerly Chairman of Investment Banking at Lazard Australia and Chief Executive Officer at Freehills.

Tracey Horton AO — Company Director (Member since 2015), Chairman and non-executive director of Navitas Limited, a Commissioner of the Tourism Commission, a non-executive national director of the AICD, non-executive director and immediate past President of Chamber of Commerce and Industry (WA) and Chairman of Presbyterian Ladies College Council.

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

Shirley In't Veld — Company Director (Member since 2016), Deputy Chairman of CSIRO, non-executive director of DUET Group, Northern Start Resources 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).

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), non-executive director of Thorney Technologies Limited, 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 (5th Edition, 2017) 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.

Rebecca Maslen-Stannage — Partner and Deputy Chair of Herbert Smith Freehills (Member since 2017), chair of the Corporations Committee of the Law Council of Australia.

Denise McComish — Partner, KPMG (Member since 2013), a Chartered Accountant, member of the KPMG Australia Board, member of Chief Executive Women and 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, a director of Black Swan State Theatre Company and Keystart Loans Ltd.

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.

Diana Nicholson — Partner, King & Wood Mallesons (Member since 2017).

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

Neil Pathak — Partner, Co-Head of M&A/Corporate and Board Member, Gilbert + Tobin (Member since 2017), Senior Fellow of the University of Melbourne Law School.

Karen Phin — Company Director (Member since 2015), non-executive director of Magellan Financial Group, previously an investment banker and a Managing Director of UBS Australia and Citigroup.

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, Lend Lease Corporation and BUPA Australia & New Zealand.

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

David Williamson — Deputy Chairman, Flagstaff Partners (Member since 2017).

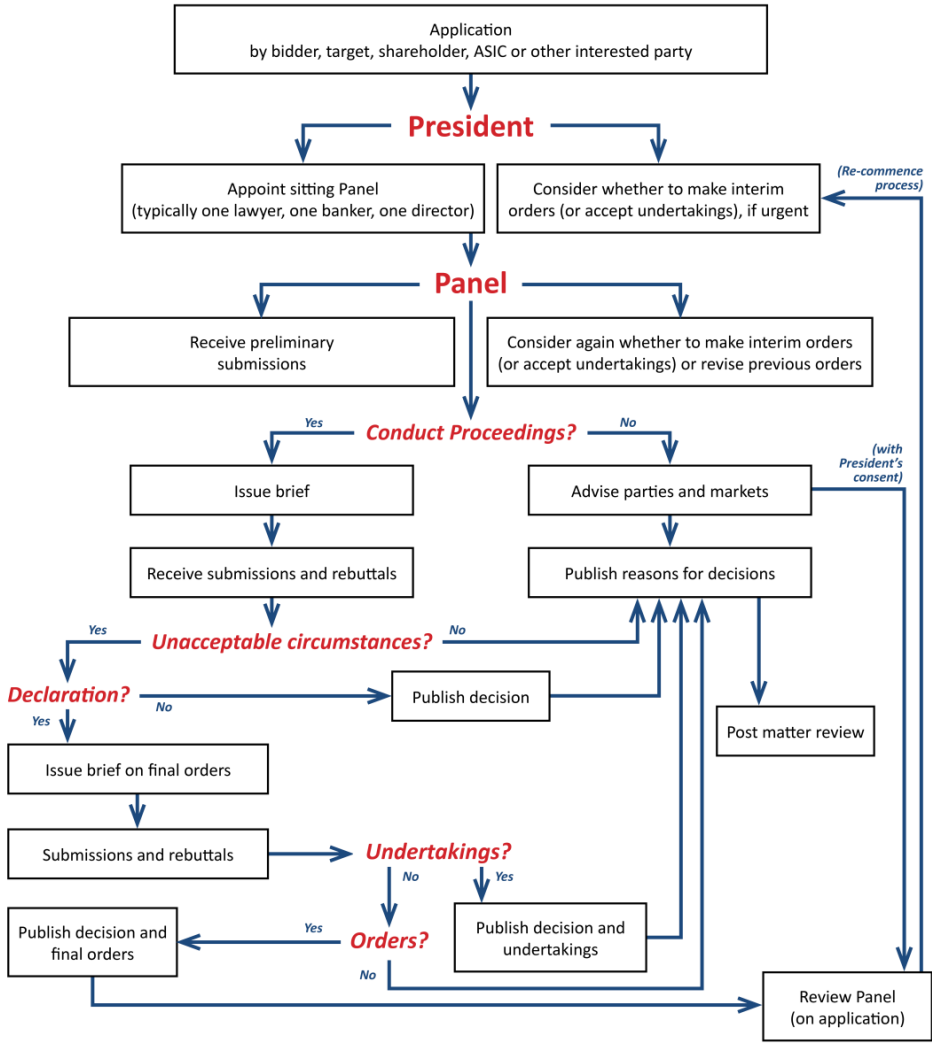
PART 3 — THE WORK OF THE PANEL

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 (23 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 2016-17

Form of resolution	Number of matters	Factors
Declaration and Orders	7	Circumstances are unacceptable and need to be remedied with orders
Declaration and Undertakings ²¹	1	Potential substitute for orders
Conduct proceedings, undertaking	1	Undertakings may resolve any unacceptable circumstances
Conduct proceedings, no declaration, orders or undertaking	-	Panel decides to conduct proceedings, but does not find any unacceptable circumstances
Decline to conduct proceedings	11	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	3	Whether the resolution of the matter has also resolved the unacceptable circumstances (the Procedural Rules require the Panel to consent before a proceeding may be withdrawn)
Total	23	

²¹ Section 201A of the ASIC Act.

Issues in applications

Table 4: Issues in 2016-17

Issue	Number of matters	Name of case
Association/ breach of s606	12	Sovereign Gold Company Limited 01R, Jervois Mining Limited, Merlin Diamonds Limited, Kasbah Resources Limited 01 and 01R, Innate Immunotherapeutics Limited, Indiana Resources Limited, Molopo Energy Limited 01, 02, 03R, 04R and 05R
Disclosure	5	Macmahon Holdings Limited, Spotless Group Holdings Limited 01 and 02, Lepidico Limited 01 and 02
Rights issues	4	McAleese Limited, Freshtel Holdings Limited, Regal Resources Limited, MEC Resources Limited
Bidder conduct	1	Hunter Hall International Limited
Item 7 resolution	1	Globe Metals & Mining Limited
Total	23	

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 at least two 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 2000-2016.

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 two Guidance Notes.

Table 5: Guidance Notes issued or amended in 2016-17

Guidance Note	GN Issue	Date
GN 12 Frustrating Action	Fifth	01/12/2016
GN 4 Remedies General	Sixth	30/01/2017

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.

Table 6: Consultation papers issued in 2016-17

Consultation Paper	Issue Date	Close Date	Number of submissions
GN 12 Frustrating Action	14/09/16	24/10/16	6
GN 4 Remedies General	02/09/16	14/10/16	1

Legislation

The Panel operates under the Corporations Act and ASIC Act.

Judicial review

There were no judicial reviews of the Panel's decisions this financial year.²² The Federal Court made a costs order in the Panel's favour in *Palmer Leisure Coolum Pty Ltd v Takeovers Panel*.²³

²² On 14 September 2017, the Panel was served with a Federal Court application for judicial review of the Panel's decision in *Molopo Energy Limited* 03R, 04R & 05R.

²³ [2016] FCA 1445.

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 (seven post matter reviews were held in the 2016-2017 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 the Panel executive has 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.

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.²⁴

There was one referral during the current period.

²⁴ 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, 49,637 people visited the Panel's website (down by 11% on last year) and there were 238,816 page views (down by 15% 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 made available on the ASX website 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's Program 1.1: Department of the Treasury.

Table 7: Summary resource statement

	Actual budget allocation	Expenses	Balance remaining
	2016-17 (\$'000)	2016-17 (\$'000)	2016-17 (\$'000)
Revenue			
Revenue (Department of the Treasury budget allocation and section 74 relevant agency receipts)	2,037	1,940	96
Total resourcing	2,037	1,940	96
		2016-17	2017-18
Average staffing levels (number)		5.7	5.8

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: Income statement (Showing Net Cost of Services) (unaudited) for the year ended 30 June 2017

	\$
NET COST OF SERVICES	
Employee expenses	
Salaries	960,800
Employer superannuation	143,771
Members' annual retainer and sitting fees	453,356
Total employee expenses	1,557,927
Operating expenses	
Printing	1,993
Travel	96,808
Official entertainment	8,655
Conferences and training	14,392
Legal	41,055
Publications and subscriptions	5,676
Property operating expenses	147,919
Contractors	43,920
Other expenses	22,146
Total operating expenses	382,564
Total expenses incurred to 30 June 2017	1,940,491
 Other revenue	 4,526
Total Revenue	4,526
Total own-source income	4,526
Net cost of/(contribution by) services	(1,935,965)
Revenue (Department of the Treasury budget allocation)	2,032,000
Surplus/(deficit)	96,035

Audit

The Panel is a division of the Treasury. Treasury's financial statements are subject to audit by the ANAO.

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

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 and is required under section 183 of the ASIC Act.

The financial information has been prepared on an accruals basis.

Revenue

Revenue represents the Panel's budget allocation of Treasury's appropriation (revenue from Government) for the financial year. Other revenue represents retained revenue receipts under section 74 of the *Public Governance, Performance and Accountability Act 2013*.

Expenses

Expenses are recognised on an accruals basis.

Surplus

The surplus represents the Panel's underspend against its budget allocation for the 2016-17 financial year.

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.²⁵ All Panel decisions are subject to judicial review.²⁶ 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 2016-17.

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' June 2017 report, "Report on the 2015-2016 annual reports of bodies established under the ASIC Act".

Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2016-17 in relation to the Panel.

Management of human resources

Staffing

At 30 June 2017, the executive consisted of four permanent full time staff, one non-ongoing full time employee and one legal secondee.²⁷ Permanent staff are employed under the *Public Service Act 1999* (Cth).

²⁵ Section 657EA.

²⁶ 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.

²⁷ The Panel also engaged one senior lawyer as a consultant for a period.

Table 9: Operative staff by classification and gender²⁸

Classification	Full time		Part time		Total
	Male	Female	Male	Female	
APS3		1			1
APS6		1			1
EL2		1			1
SEB1	1				1
SEB2			1		1
Total	1	3	1	-	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. The Panel executive organises functions and meetings with former staff and secondees, in part for succession planning purposes.

Staff development

The Panel seeks to ensure that its staff develop their core skills. Legal staff are encouraged to attend legal and commercial training and conferences. Non-legal staff are encouraged to attend training, including in relation to management and administration.

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).

²⁸ No ongoing or non-ongoing employees identified themselves as Indigenous at 30 June 2017.

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 engaged one consultant in 2016-17.

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

Discretionary grants

During 2016-17, the Panel made a discretionary grant to the Australasian Legal Information Institute (AustLii) of \$3,500 (reported by the Department of Treasury - <https://treasury.gov.au/the-department/accountability-reporting/treasury-grants/grants-2016-17/>).

Advertising and market research

The Panel did not undertake any advertising or market research during 2016-17.

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 2016-17. 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 2017

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

Table 11: Members appointed to the Panel in 2016-17

Ms Yasmin Allen	Ms Diana Nicholson
Mr Andy Coupe	Mr Neil Pathak
Ms Paula Dwyer	Mr David Williamson
Ms Rebecca Maslen-Stannage	

Table 12: Members who ceased their membership of the Panel in 2016-17

Mr David Jones MNZM

APPENDIX 2 — SUB-COMMITTEE MEMBERS

Table 13: Sub-committees

Topic	Sub-committee members	
	Panel member	External member
GN 12 Frustrating Action	Ms Vickki McFadden (President)	
	Mr Richard Hunt	
	Ms Michelle Jablko	
	Mr Christian Johnston	
	Mr Rodd Levy	
	Mr Andrew Lumsden	
	Ms Nicola Wakefield Evans	

APPENDIX 3 — PANEL APPLICATIONS

Table 14: Applications received by the Panel in 2016-17²⁹

Matter No.	Section	Matter name	Decision	Application Date	Decision date
1	2016/14	657EA&D	Sovereign Gold Company Limited 01R	Declined to conduct proceedings	11/07/2016
2	2016/15	657A,D&E	McAleese Limited	Declined to conduct proceedings	15/07/2016
3	2016/16	657A,D&E	Freshtel Holdings Limited	Withdrawn	01/09/2016
4	2016/17	657A,D&E	Regal Resources Limited	Declaration and Orders	14/10/2016
5	2016/18	657A&D	Jervois Mining Limited	Declined to conduct proceedings	29/09/2016
6	2016/19	657A,D&E	Merlin Diamonds Limited	Declaration and Orders	29/11/2016
7	2016/20	657A,D&E	Kasbah Resources Limited	Declined to conduct proceedings	19/12/2016
8	2016/21	657EA&D	Kasbah Resources Limited 01R	Declined to conduct proceedings	28/12/2016
9	2017/01	657A,D&E	Innate Immunotherapeutics Limited	Declined to conduct proceedings	14/02/2017
10	2017/02	657A,D&E	Hunter Hall International Limited	Withdrawn	20/02/2017

²⁹ Under ss 657C and 657EA. The Panel received one application for consent to vary confidentiality undertakings in *Multiplex Prime Property Fund* 05 [2017] ATP 4.

Matter No.	Section	Matter name	Decision	Application Date	Decision date
11	2017/03	657A, D&E Macmahon Holdings Limited	Declined to conduct proceedings	06/03/2017	07/03/2017
12	2017/04	657A, D&E Spotless Group Holdings Limited	Declined to conduct proceedings	31/03/2017	07/04/2017
13	2017/05	657A, D&E Indiana Resources Limited	Declaration and Undertaking	04/04/2017	03/05/2017
14	2017/06	657A, D&E MEC Resources Limited	Declined to conduct proceedings	10/04/2017	20/04/2017
15	2017/07	657A, D&E Molopo Energy Limited 01	Declaration and Orders	11/04/2017	30/05/2017
16	2017/08	657A, D&E Molopo Energy Limited 02	Declaration and Orders	11/04/2017	30/05/2017
17	2017/09	657A&D Globe Metals & Mining Limited	Declined to conduct proceedings	26/04/2017	03/05/2017
18	2017/10	657A&D Spotless Group Holdings Limited 02	Undertaking	03/05/2017	23/05/2017
19	2017/11	657EA&D Molopo Energy Limited 03R	Declaration and Orders	01/06/2017	30/06/2017
20	2017/12	657EA, A&D Molopo Energy Limited 04R	Declaration and Orders	01/06/2017	30/06/2017
21	2017/13	657A&D Lepidico Limited	Withdrawn	06/06/2017	26/06/2017
22	2017/14	657EA&D Molopo Energy Limited 05R	Declaration and Orders	15/06/2017	30/06/2017
23	2017/15	657A&D Lepidico Limited 02	Declined to conduct proceedings	30/06/2017	05/07/2017

APPENDIX 4 — ABBREVIATIONS AND ACRONYMS

AICD	Australian Institute of Company Directors
ANAO	Australian National Audit Office
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited
EEO	Equal Employment Opportunity
EL	Executive Level
FIRB	Foreign Investment Review Board
M&A	Mergers and Acquisitions
MOU	Memorandum of Understanding
OH&S	Occupational Health and Safety
SEB	Senior Executive Band
SES	Senior Executive Service

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