



Australian Government

Takeovers Panel

Takeovers Panel

Annual Report

17
18

TAKEOVERS PANEL

ANNUAL REPORT
2017-2018

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Australian Government

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3 September 2018

The Honourable Stuart Robert MP
Assistant Treasurer
Parliament House
Canberra ACT 2600

Dear Assistant Treasurer

ANNUAL REPORT 2017-18

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, I submit the 2017-18 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 2018 of 43 specialists in mergers and acquisitions - investment bankers, lawyers, company directors and 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;

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.

- annual reports;
- legislative resources and other background material relating to mergers and acquisitions; and
- the Panel's Information Publication Scheme.

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:

Mr Allan Bulman
Director, Takeovers Panel
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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 (2017-2018) the Panel:

- considered 29 applications, the highest number since 2008-2009;
- conducted proceedings in relation to 16 applications; and
- made declarations of unacceptable circumstances in 10 matters,

making it one of the busiest in the Panel's history. At the same time the average time from application to decision and decision to reasons decreased from the previous financial year, which is an excellent result.

The increase in applications is partly a reflection of an increase in takeover activity, with 17 applications relating in some way to takeover bids. The Panel has also seen an increase in applications from shareholders, with 11 applications from shareholders made this year. Given the Panel is an efficient and a relatively low cost dispute resolution body, I would not be surprised if this upward trend in the number of applications, especially by shareholders, continues.

As I mentioned in our last annual report, it is important for the Panel to keep abreast of new information technology so it can best fulfil its mandate. The Panel now uses datarooms when it decides to conduct proceedings. Parties make submissions directly in the dataroom. We only give a party access to the other parties' submissions after we receive that party's submission in the dataroom. This ensures that no party can have an unfair advantage by emailing a submission late after looking at other parties' submissions. We are also looking at other tools to assist in the review of documents.

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 17 (Rights Issues). Most of the rights issue applications would not have resulted in unacceptable circumstances if the issuer concerned had followed one or more dispersion strategies to ensure that shareholders are dealt with equitably. The amendments to the Guidance Note 17 are designed to provide more explicit guidance on these dispersion strategies to assist market participants.

During the year the Panel consulted on an amendment to Guidance Note 1 (Unacceptable Circumstances) to provide guidance on how long a bidder must wait before making a new bid if it made a no increase statement during the bid (the Panel made this amendment in July 2018).

Both Guidance Note amendments have been well received by the market.

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 2018, the Panel had 43 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 increased workload has provided Panel members with more experience but the burden has often fallen on the executive. The Panel members and I greatly appreciate the support of Allan Bulman, Bruce Dyer, Tania Mattei and their small executive team who have worked hard to support the Panel. In addition to that support, they made themselves available to meet with stakeholders this year in Canberra, Sydney, Melbourne and Perth.

Panel at a glance 2017-18

Applications

(average 28.4 per year since 1 July 2000)
(average 23 per year since 1 July 2009)

29

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

* plus one application withdrawn

16/12*

Matters where the Panel
accepted undertakings

3

Matters where the Panel made
declarations and orders

* plus one declaration and undertakings

9*

Average calendar days between
application and decision

(average 16 since 13 March 2000)
(average 16.4 since 1 July 2009)

14.8

Average calendar days between
decision and publication of reasons

(average 34.3 since 13 March 2000)
(average 12.7 since 1 July 2009)

19

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 exist⁴ and reviewing certain decisions of ASIC.⁵

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 ⁶
Guidance	Guidance Notes, Procedural Rules, legislative policy of Chapter 6, previous decisions	Regulatory Guides, ASIC policies, reasons for ASIC’s decision, Panel policy

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

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' ⁷	Affirm, vary, set aside (and substitute/remit) the ASIC decision
Review	The Panel, on application, conducts a merits review of a decision of the initial Panel. ⁸ 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 20 applications for a declaration at first instance and eight applications for review ⁹	In the current period there were no applications for review of an ASIC decision

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 6.¹⁰ It has not made any rules under this power.

The Panel has a power to make Procedural Rules.¹¹ It published revised Procedural Rules in 2010.

The Panel may decide a matter referred from the Court.¹² There were no referrals in the current period.

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

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

9 One application sought a variation of Panel orders.

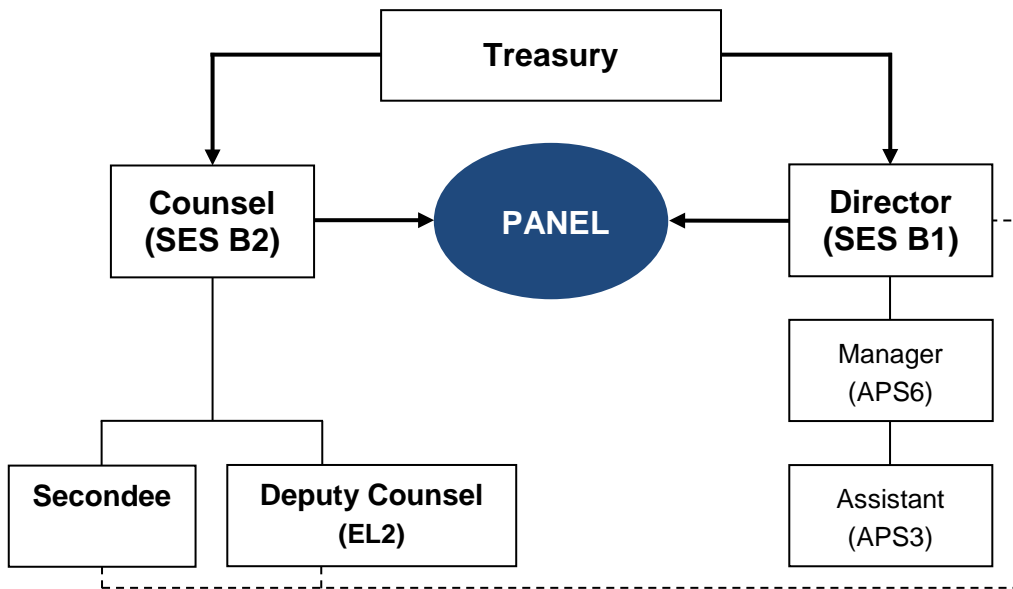
10 Section 658C.

11 Section 195 of the ASIC Act.

12 Section 657EB.

Organisational structure

Chart 1: The Panel's organisation structure



Panel President

Ms Vicki McFadden, a member of the Panel, is its President.¹³ 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.

¹³ Section 173 of the ASIC Act.

Acting Presidents

The following members have been appointed¹⁴ to act as President when the President cannot act:

- Ms Sarah Dulhunty;
- Mr Richard Hunt; 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 Ms Lauren McInnes (Allens, Melbourne), Ms Michelle Siekierka (King & Wood Mallesons, Melbourne) and Ms Annabel Humphreys (Gilbert + Tobin, Sydney); and
- two administrative staff: Ms Karolina Ksiezak as Office Manager and Ms Rebecca Andrewartha as Executive Assistant.

¹⁴ Section 182(1)(a)&(b) of the ASIC Act.



The President with the executive: (L to R) Michelle Siekierka, Allan Bulman, Rebecca Andrewartha, Vicki McFadden, Bruce Dyer, Annabel Humphreys, Karolina Ksiezak and Tania Mattei.

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 2017-18

Reappointments (13)	Appointments (4)	Terms completed (6)
Mr Alex Cartel;	Ms Teresa Dyson;	Ms Elizabeth Bryan AM;
Ms Stephanie Charles;	Mr Rory Moriarty;	Mr Lee Dewhirst;
Ms Tracey Horton AO;	Mr John O'Sullivan; and	Mr Peter Hay;
Mr Richard Hunt;	Ms Tara Page.	Mr Byron Koster;
Mr Bill Koeck;		Mr Andrew Lumsden; and
Mr Jeremy Leibler;		Ms Sophie Mitchell.
Mr Ron Malek;		
Mr Robert McKenzie;		
Mr Tony Osmond;		
Ms Karen Phin;		
Ms Sarah Rennie;		
Ms Nicola Wakefield Evans; and		
Ms Sharon Warburton.		

Members are appointed on a part-time basis, usually for three years, by the Governor-General on the nomination of the Minister.¹⁵ State and Territory 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.¹⁶ A mix of expertise, geographical representation and gender representation is also considered.

¹⁵ Section 172 of the ASIC Act.

¹⁶ Section 172(4A) of the ASIC Act.

Chart 2: Panel members by Profession at 30 June 2018

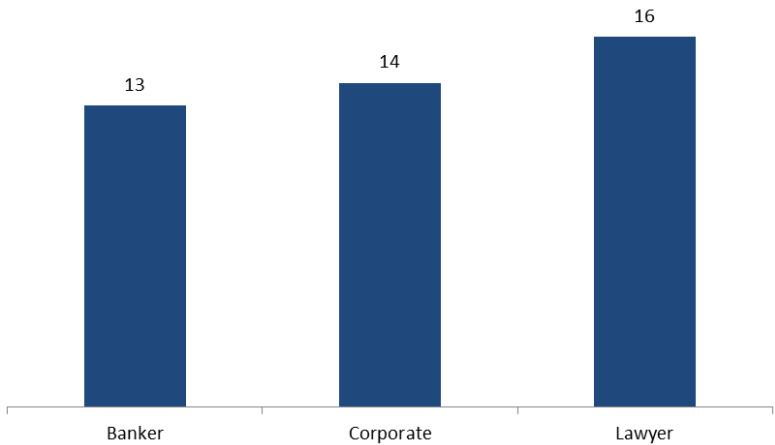


Chart 3: Panel members by Location at 30 June 2018

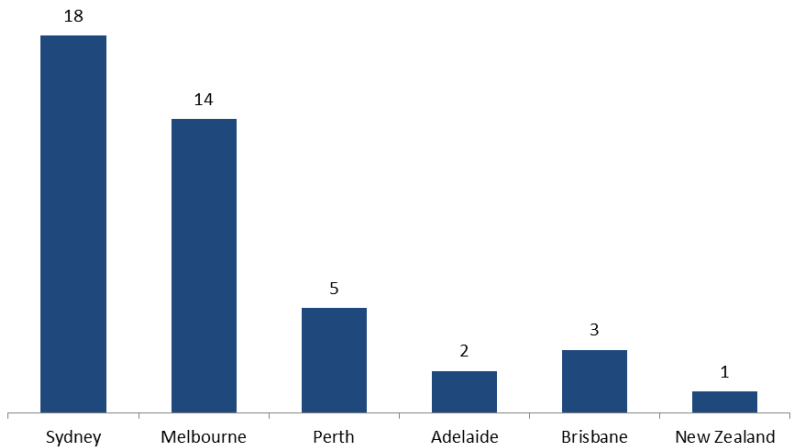
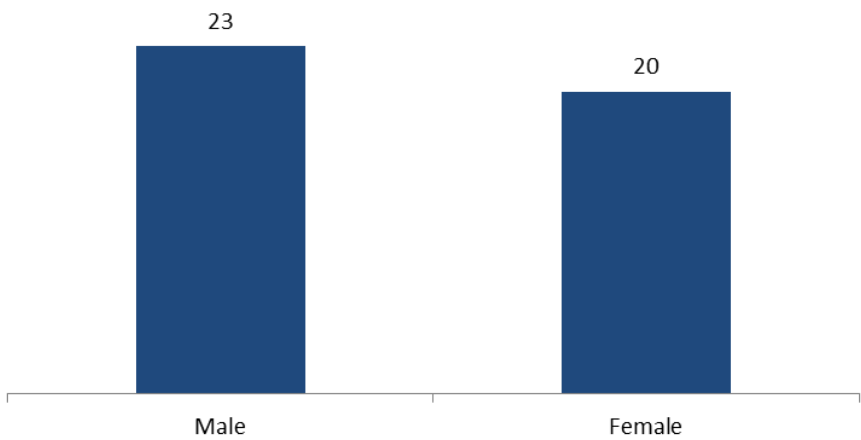


Chart 4: Panel members by Gender at 30 June 2018



Members' biographies (as at 30 June 2018)

Vicki McFadden (President) — Company Director (Member since 2008), Chairman of The GPT Group 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), Chairman of Advance, non-executive director of Cochlear Limited, Santos Limited, ASX Limited, National Portrait Gallery and The George Institute for Global Health.

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

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

Alex Cartel — Co-Head of Corporate Finance, Deutsche Bank AG Australia (Member since 2015).

Stephanie Charles — Partner, BGH Capital (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 Unity Office Fund and Alumina and non-executive director of Ansell. Previously Chief Financial Officer for Amcor and Deputy Chairman of ASIC.

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.

Teresa Dyson — Company Director (Member since 2018), non-executive director of Seven West Media, Energy Super, Genex Power, Energy Queensland, member of FIRB.

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 Australian Registry Investments, 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.

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 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 APA Group, Northern Star 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 — Consultant, Ashurst Australia (Member since 2015).

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.

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

Rebecca Maslen-Stannage — Deputy Senior Partner of Herbert Smith Freehills (Member since 2017), chair of the Business Law Section of the Law Council of Australia.

Denise McComish — Partner, KPMG (Member since 2013), a Chartered Accountant, member of Chief Executive Women and AICD and former member of the Corporations and Markets Advisory Committee.

Robert McKenzie — Partner, Blackwall Legal (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.

Rory Moriarty — Partner, Clayton Utz (Member since 2018).

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.

John O'Sullivan — Company Director (Member 2005-2011 and re-appointed 2018), non-executive director of AMP and Roads Retained Interest Pty Limited (the entity which will hold the continuing interest of NSW in the WestConnex project).

Tara Page — General Counsel and Company Secretary, Royal Automobile Association of South Australia Inc (Member since 2017), previously partner at Thomson Geer.

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 and IMF Bentham, 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, Lendlease Corporation, Clean Energy Finance Corporation and BUPA Australia & New Zealand.

Sharon Warburton — Company Director (Member since 2015), Co-Deputy Chairman of Fortescue Metals Group, non-executive director of NEXTDC, Gold Road Resources and Barminto Holdings Pty Limited.

David Williamson — Deputy Chairman, Flagstaff Partners (Member since 2017), previously a corporate lawyer (partner of Blake Dawson Waldron/Ashurst) and Head of Group Legal and Compliance, BHP Billiton.

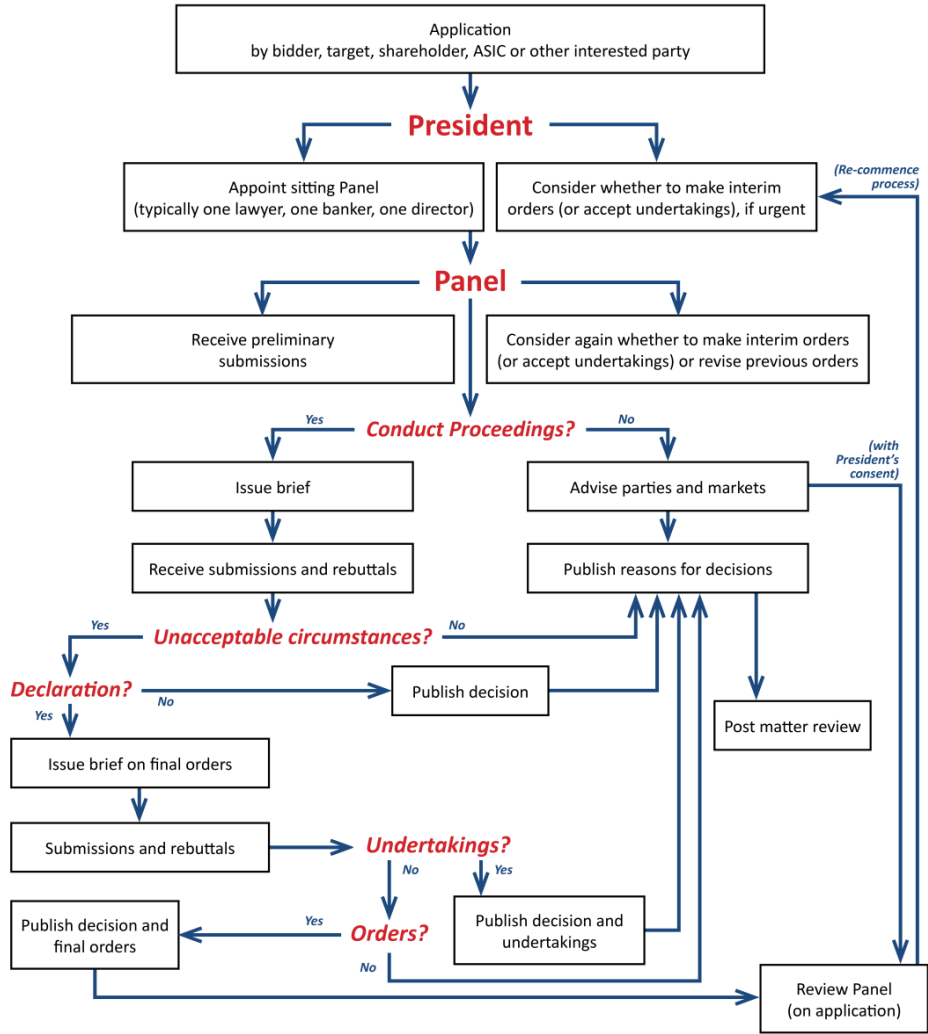
PART 3 — THE WORK OF THE PANEL

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 (29 in total). Table 3 groups the applications by outcome. Table 4 groups them by subject matter.

Table 3: Outcome of applications received by the Panel in 2017-18

Form of resolution	Number of matters	Comments
Declaration and Orders	9	Circumstances are unacceptable and may be remedied with orders
Declaration and Undertakings ¹⁷	1	Potential substitute for orders
Conduct proceedings, no declaration, orders or undertaking	6	Panel decides to conduct proceedings, but does not find any unacceptable circumstances
Decline to conduct proceedings, undertaking/action by party	2	Panel decides to not conduct proceedings after a party provides an undertaking or takes an action that resolves any potential unacceptable circumstances
Decline to conduct proceedings	10	Panel does not conduct proceedings, for example, because it did not think the circumstances complained of would be unacceptable if established, or there was not a sufficient basis for inquiring further
Proceedings withdrawn	1	Applicant withdraws (Panel consent is required)
Total	29	

¹⁷ Section 201A of the ASIC Act.

Issues in applications

Table 4: Issues in 2017-18

Issue	Number of matters	Name of case
Disclosure	7.5	Asia Pacific Data Centre Group, Strategic Minerals Corporation NL 01, 02R, 03R, 04R, 05R (in part), Bulletproof Group Limited, AWE Limited, Finders Resources Limited, Atlas Iron Limited
Rights issues	5.5	Tapp Group Limited, Yancoal Australia Limited 02, 03, 04R and 05R, MMA Offshore Limited (in part)
Association/ breach of s606	4	Tap Oil Limited, Auris Minerals Limited, Caravel Minerals Limited 01 and 02R
Frustrating action	3	RNY Property Trust, Molopo Energy Limited 09 and 10
Target conduct	2.5	Strategic Minerals Corporation NL 01, 02R, 03R, 04R, 05R (in part)
Bidder conduct	2	Molopo Energy Limited 08, Realm Resources Limited
Truth in takeovers	2	Finders Resources Limited 02 and 03R
Company meetings	1.5	MMA Offshore Limited (in part), Quantum Graphite Limited
Variation of orders	1	Molopo Energy Limited 11
Total	29	

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. 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 members time to attend, and the Panel appreciates this support.

The executive has issued an index of Panel decisions from 2000-2017.

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 one Guidance Note.

Table 5: Guidance Notes issued or amended in 2017-18

Guidance Note	GN Issue	Date
GN 17 Rights Issues	Fourth	27/06/2018

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 2017-18

Consultation Paper	Issue Date	Close Date	Number of submissions
GN 17 Rights Issues	23/02/2018	06/04/2018	5
GN 1 Unacceptable Circumstances	14/03/2018	20/04/2018	6

Legislation

The Panel operates under the Corporations Act and ASIC Act.

Judicial review

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. The trial is scheduled be held on 22 and 23 October 2018.¹⁸

¹⁸ On 16 July 2018, the Panel was served with a Federal Court application for judicial review of the Review Panel’s decision in the Finders Resources Limited 03R. The trial is scheduled be held on 23 and 24 October 2018.

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 (two post matter reviews were held in the 2017-2018 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.¹⁹

There were no referrals made during the current period.

¹⁹ 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, 45,599 people visited the Panel's website (down by 8% on last year) and there were 241,416 page views (up by 1% 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 regular 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 2017-18 (\$'000)	Expenses 2017-18 (\$'000)	Balance remaining 2017-18 (\$'000)
Revenue			
Revenue (Department of the Treasury budget allocation and section 74 relevant agency receipts)	2,017	1,863	154
Total resourcing	2,017	1,863	154
		2017-18	2018-19
Average staffing levels (number)		5.8	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 (including seeking public consultation from market participants); 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 2018

	\$
NET COST OF SERVICES	
Employee expenses	
Salaries	937,949
Employer superannuation	133,151
Members' annual retainer and sitting fees	482,710
Total employee expenses	1,553,810
Operating expenses	
Property operating expenses	156,153
Travel	78,039
General Office	24,057
Contractors	16,992
Publications and subscriptions	11,689
Conferences and training	7,620
Official entertainment	7,141
Legal	3,752
Grants	3,500
Total operating expenses	308,943
Total expenses incurred to 30 June 2018	1,862,753
Other revenue	3,405
Total Revenue	3,405
Total own-source income	3,405
Net cost of/(contribution by) services	(1,859,348)
Revenue (Department of the Treasury budget allocation)	2,012,888
Surplus/(deficit)	153,540

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 2017-18 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.²⁰ All Panel decisions are subject to judicial review.²¹ 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 2017-18.

The Panel attends hearings of the Senate Standing Committee on Economics Estimates and the Parliamentary Joint Committee on Corporations and Financial Services as required. Messrs Bulman and Dyer attended a hearing of the Parliamentary Joint Committee on Corporations and Financial Services on 16 February 2018 and gave evidence. The Panel's operations and performance was discussed in the Parliamentary Joint Committee on Corporations and Financial Services' June 2018 report, "Report on the 2016-2017 annual reports of bodies established under the ASIC Act".

Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2017-18 in relation to the Panel.

Management of human resources

Staffing

At 30 June 2018, the executive consisted of four permanent staff (three full time and one part time), one non-ongoing full time employee and one legal secondee.²² Permanent staff are employed under the *Public Service Act 1999* (Cth).

²⁰ Section 657EA.

²¹ 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.

²² The Panel also engaged one senior lawyer as a consultant for a period.

Table 9: Operative staff by classification and gender²³

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 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 Accountability, Management of Human Resources).

²³ No ongoing or non-ongoing employees identified themselves as Indigenous at 30 June 2018.

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 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, non-corporate Commonwealth entities 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* reports and the *APS Statistical Bulletin*. These reports are available at www.apsc.gov.au. From 2010-11, entities have no longer 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 2017-18, who was a senior lawyer to assist the Panel executive during busy periods.

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, one consultant and two legal representation agreements that each exceeded \$10,000.

Discretionary grants

During 2017-18, 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-2017-2018/>).

Advertising and market research

The Panel did not undertake any advertising or market research during 2017-18.

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

Entities 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 2017-18. 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 2018

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

Table 11: Members appointed to the Panel in 2017-18

Ms Teresa Dyson	Mr John O'Sullivan
Mr Rory Moriarty	Ms Tara Page

Table 12: Members who ceased their membership of the Panel in 2017-18

Ms Elizabeth Bryan AM	Mr Byron Koster
Mr Lee Dewhirst	Mr Andrew Lumsden
Mr Peter Hay	Ms Sophie Mitchell

APPENDIX 2 — SUB-COMMITTEE MEMBERS

Table 13: Sub-committees

Topic	Sub-committee members	
	Panel member	External member
GN 17 Rights Issues	Ms Vickki McFadden (President)	
	Mr Alex Cartel	
	Ms Sarah Dulhunty	
	Mr Robert McKenzie	
	Ms Diana Nicholson	
	Ms Sarah Rennie	
GN 1 Unacceptable Circumstances	Ms Sharon Warburton	
	Ms Vickki McFadden (President)	
	Mr Peter Day	
	Ms Karen Evans-Cullen	
	Ms Tracey Horton	
	Mr Richard Hunt	
	Mr Christian Johnston	
	Mr Bill Koeck	
	Mr Rodd Levy	
	Mr Andrew Lumsden	
	Mr Ron Malek	
	Mr Bruce McLennan	
	Ms Sophie Mitchell	
	Mr David Williamson	

APPENDIX 3 — PANEL APPLICATIONS

Table 14: Applications received by the Panel in 2017-18²⁴

Matter No.	Section	Matter name	Decision	Application Date	Decision date
1	2017/16	657A,D&E	Tapp Group Limited	Withdrawn	24/07/2017
2	2017/17	657A,D&E	Yancoal Australia Limited 02	Declined to conduct proceedings	09/08/2017
3	2017/18	657A,D&E	Yancoal Australia Limited 03	Declined to conduct proceedings	14/08/2017
4	2017/19	657EA,A,D&E	Yancoal Australia Limited 04R	Declined to conduct proceedings	16/08/2017
5	2017/20	657EA,A,D&E	Yancoal Australia Limited 05R	Declined to conduct proceedings	16/08/2017
6	2017/21	657A,D&E	RNY Property Trust	Declined to conduct proceedings	27/09/2017
7	2017/22	657A,D&E	Asia Pacific Data Centre Group	Declined to conduct proceedings	09/10/2017
8	2017/23	657A,D&E	Molopo Energy Limited 08	Declined to conduct proceedings	23/10/2017
9	2017/24	657A,D&E	MMA Offshore Limited	Declaration and undertaking	17/11/2017
10	2017/25	657A,D&E	Tap Oil Limited	Conducted proceedings, no declaration	24/11/2017

²⁴ Under ss 657C and 657EA. The Panel received one application to vary confidentiality directions in *Molopo Energy Limited 06* [2017] ATP 14, and one application to vary the final orders in *Molopo Energy Limited 07* [2017] ATP 17.

Table 14: Applications received by the Panel in 2017-18 (continued)

Matter No.	Section	Matter name	Decision	Application Date	Decision date	
11	2017/26	657A,D&E	Molopo Energy Limited 09	Conducted proceedings, no declaration	24/11/2017	08/12/2017
12	2018/01	657A,D&E	Strategic Minerals Corporation NL	Declaration and orders	03/01/2018	01/02/2018
13	2018/02	657A,D&E	Quantum Graphite Limited (subject to Deed of Company Arrangement)	Conducted proceedings, no declaration	16/01/2018	01/02/2018
14	2018/03	657A&D	Bulletproof Group Limited	Conducted proceedings, no declaration	19/01/2018	08/02/2018
15	2018/04	657A,D&E	AWE Limited	Declined to conduct proceedings, undertaking	02/02/2018	15/02/2018
16	2018/05	657EA&D	Strategic Minerals Corporation NL 02R	Declaration and orders	05/02/2018	02/03/2018
17	2018/06	657EA,D&E	Strategic Minerals Corporation NL 03R	Declaration and orders	05/02/2018	02/03/2018
18	2018/07	657EA&D	Strategic Minerals Corporation NL 04R	Declaration and orders	19/02/2018	02/03/2018
19	2018/08	657EA&D	Strategic Minerals Corporation NL 05R	Declaration and orders	19/02/2018	02/03/2018
20	2018/09	657A&D	Finders Resources Limited	Declined to conduct proceedings	01/03/2018	12/03/2018
21	2018/10	657A,D&E	Caravel Minerals Limited	Conducted proceedings, no declaration	23/03/2018	19/04/2018
22	2018/11	657A&D	Finders Resources Limited 02	Declaration and orders	28/03/2018	26/04/2018
23	2018/12	657A,D&E	Auris Minerals Limited	Declined to conduct proceedings	29/03/2018	05/04/2018
24	2018/13	657EA	Caravel Minerals Limited 02R	Declined to conduct proceedings	23/04/2018	02/05/2018
25	2018/14	657EA,D&E	Finders Resources Limited 03R	Declaration and orders	30/04/2018	06/06/2018

Table 14: Applications received by the Panel in 2017-18 (continued)

Matter No.	Section	Matter name	Decision	Application Date	Decision date	
26	2018/15	657A,D&E	Molopo Energy Limited 10	Declaration and orders	11/05/2018	08/06/2018
27	2018/16	657D	Molopo Energy Limited 11	Conducted proceedings, no variation	24/05/2018	08/06/2018
28	2018/17	657A&D	Realm Resources Limited	Declaration and orders, undertakings	29/05/2018	28/06/2018
29	2018/18	657A,D&E	Atlas Iron Limited	Declined to conduct proceedings, action by party	25/06/2018	29/06/2018

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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