

TAKEOVERS PANEL

ANNUAL REPORT
2020-2021

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17 August 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer

ANNUAL REPORT 2020-21

In accordance with section 183 of the *Australian Securities and Investments Commission Act 2001*, I submit the 2020-21 Annual Report of the Takeovers Panel for presentation to Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Cartel', with a stylized, flowing script.

Alex Cartel
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 2021 of 49 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) (ASIC Regulations).

Our website

The Panel’s website (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;

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.

- privacy policy;
- 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
Level 16, 530 Collins Street
Melbourne VIC 3000
Telephone: +61 3 9655 3500
Email: takeovers@takeovers.gov.au



Mr Alex Cartel
President of the Panel

Review by the President

On 27 April 2021, the Panel released the results of its 2020 stakeholder survey conducted by Ipsos. The survey revealed that 91% of stakeholders surveyed were either very satisfied or somewhat satisfied with the Panel, with stakeholders highly satisfied with the Panel’s effectiveness with proceedings, the Panel’s processes, sitting Panel composition in proceedings and the Panel executive. This level of satisfaction evidences a strong support of the Panel as a peer review body from our stakeholders and is a testament to the hard work and dedication of the Panel members and executive.

The Panel is grateful to the Federal Government and Treasury for their commitment to a robust, principles-based Panel regime and for its ongoing support. On 30 April 2021, the Treasurer Josh Frydenberg announced that as part of the 2021-2022 budget, the Morrison Government would provide substantial additional funding to the Panel *“to respond to the significant growth in takeover disputes and conduct a public consultation process to consider broadening the role the Panel plays in control transactions, including potentially giving advance rulings and expanding the Panel’s remit to include members’ schemes of arrangement”*. The additional funding will allow for (among other things) the recruitment of two additional staff for the Panel executive and funding for next financial year for the Panel to obtain advice to explore potential cloud-based solutions to improve documentation and knowledge management. While any decision to expand the Panel’s jurisdiction is a matter for government, I consider that the Treasurer’s announcement is a huge vote of confidence from the government for the Panel model.

Notwithstanding the COVID-19 pandemic, the Panel had a very busy year having received 29 applications and considered several important issues including control issues relating to company administration (Virgin Australia Holdings Limited (Administrators Appointed) and Moreton Resources Limited (Administrators Appointed) 02), Truth in Takeovers (Cardinal Resources Limited 01, 03, 04 and 06R) and the control effects of a dividend reinvestment plan (Thorn Group Limited 01 and 02).

The Panel remade its Procedural Rules, which became operational from 1 April 2021. I would like to thank Tania Mattei, Katrina Fong and the Procedural Rules Panel sub-committee for all their hard work with this important project.

It is important for parties to be able to provide submissions to the Panel on the basis that they will be kept confidential, which throughout the Panel's history has been achieved by requiring parties to give confidentiality undertakings and is now subject to a specific requirement in Rule 18 of the Procedural Rules. In the 2020-2021 financial year, the Panel received an undertaking from a party not to read or tender parts of an affidavit and an exhibit to that affidavit in court proceedings containing information that the Panel considered to be subject to Panel confidentiality undertakings. The Panel had retained solicitors and counsel and was ready to commence legal proceedings if that party had not provided the undertaking voluntarily.⁴

A quieter second half of the financial year has given the Panel executive the opportunity to focus on improvement to processes and policy. The Panel has on issue 18 Guidance Notes to assist market participants to understand the principles and policies that the Panel will consider in deciding applications. The Panel has made some minor changes to its rewrite of Guidance Note 20 on Equity Derivatives and given the market three months' notice of when it will come into operation (on 4 October 2021). The Panel executive has also started a review of Guidance Note 19 on Insider Participation in Control Transactions.

At 30 June 2021, the Panel had 49 part-time members. I thank members for their work throughout the year, as participants in sitting Panels, at Panel days, on policy sub-committees and on post-matter reviews.

The Panel members and I continue to greatly appreciate the support of Allan Bulman, Tania Mattei, Katrina Fong and their small executive team. The Panel executive rose to the challenge of working from home during the pandemic and dealing with a formidable workload in the first half of the 2020-2021 financial year. I am delighted that the Panel executive has now had the opportunity to work in their new office at Level 16, 530 Collins Street and have had discussions on how to improve collaboration, drawing on the lessons of working from home under lockdown.

The executive continues to make themselves available to parties who wish to give post matter feedback and to stakeholders generally. Allan, Tania and Katrina have given a number of video presentations to stakeholders and Allan participated in a panel discussion at the Annual Conference of the Corporations Committee of the Business Law Section of the Law Council of Australia.

4 Panel media release TP20/81, *"Keybridge Capital Limited 04, 05 & 06 — Panel Enforces Confidentiality Undertaking"*.

Panel at a glance 2020-21

Applications

(average 28.8 per year since 1 July 2000)

29

Matters the Panel conducted
proceedings in

(average 53.68% since 13 March 2000)

41.38%

Matters where the Panel
accepted undertakings

3

Matters where the Panel
made declarations and orders

5

Average calendar days
between application and
decision

(average 16.7 since 13 March 2000)

21.5

Average calendar days between
decision and publication of
reasons

(average 33.7 since 13 March 2000)

34.2

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 exist⁵ and reviewing certain decisions of ASIC.⁶

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, on application, 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 ⁷ |
| Guidance | Guidance Notes, Procedural Rules, legislative policy of Chapter 6, previous decisions | Regulatory Guides, ASIC policies, reasons for ASIC’s decision, Panel policy |

5 Section 657A and, if a declaration is made, orders under section 657D.
6 Under section 655A and, during a takeover bid, section 673 (see section 656A).
7 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' ⁸ | 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. ⁹ 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 23 applications for a declaration at first instance and four applications for review | In the current period there were two 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 2021.

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

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

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

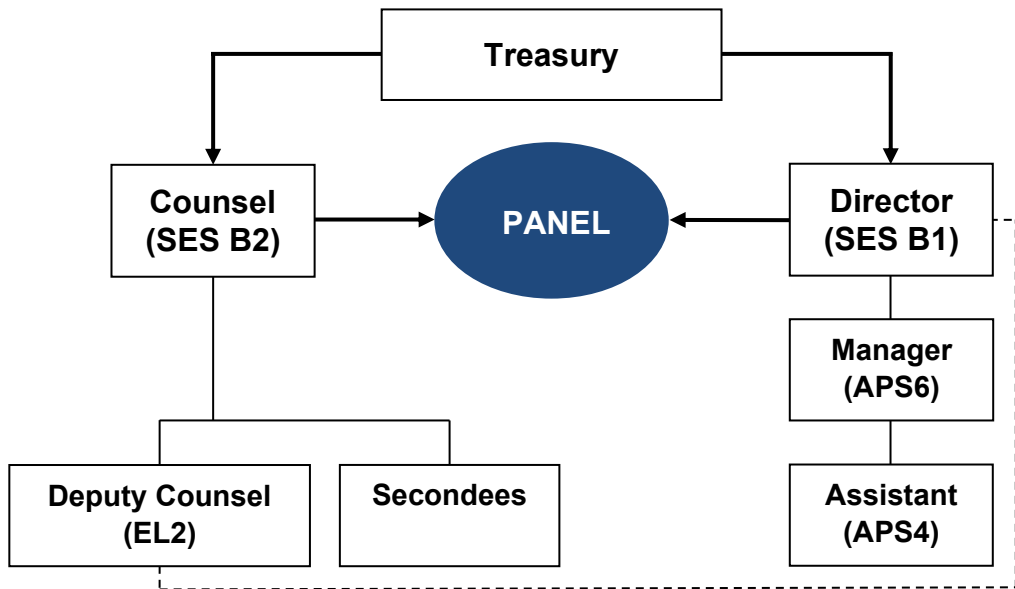
¹⁰ Section 658C.

¹¹ Section 195 of the ASIC Act.

¹² Section 657EB.

Organisational structure

Chart 1: The Panel's organisation structure



Panel President

Mr Alex Cartel, a member of the Panel, is its President.¹³ His 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.

He 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:

- Mr Richard Hunt;
- Ms Michelle Jablko;
- Mr Ron Malek;
- Ms Yasmin Allen;
- Ms Tracey Horton AO; and
- Ms Diana Nicholson.

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 executive comprises:

- Director, Mr Allan Bulman;
- Counsel, Ms Tania Mattei;
- Deputy Counsel, Ms Katrina Fong;
- 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 Depiazzi (Clayton Utz,

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

Perth), Ms Lucinda Boothby (Herbert Smith Freehills, Perth) and Mr Michael Van Der Ende (Squire Patton Boggs, Perth); and

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



The President with the executive: (L to R) Karolina Ksiezak, Rebecca Andrewartha, Alex Cartel, Tania Mattei, Katrina Fong, Michael Van Der Ende, Lucinda Boothby and Allan Bulman.

The Office

The Panel is co-located with the Department of the Treasury's Melbourne office at Level 16, 530 Collins Street.

Appointment of Panel members

Table 2: Appointment of Panel members in 2020-21

| Reappointments (14) | Appointments (3) | Terms completed (0) |
|---|---|---------------------|
| Ms Stephanie Charles; Ms Teresa Dyson; Ms Tracey Horton; Mr Richard Hunt; Mr Bill Koeck; Mr Jeremy Leibler; Mr Ron Malek; Mr Rory Moriarty; Mr Tony Osmond; Mr John O'Sullivan Ms Karen Phin; Ms Sarah Rennie; Ms Nicola Wakefield Evans; and Ms Sharon Warburton. | Ms Marina Kelman; Ms Sandy Mak; and Mr John Sheahan QC. | |

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 2021

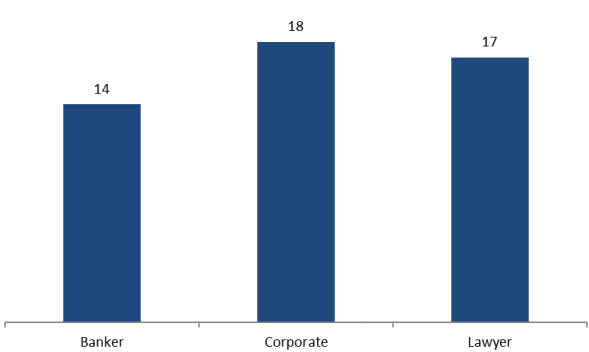


Chart 3: Panel members by Location at 30 June 2021

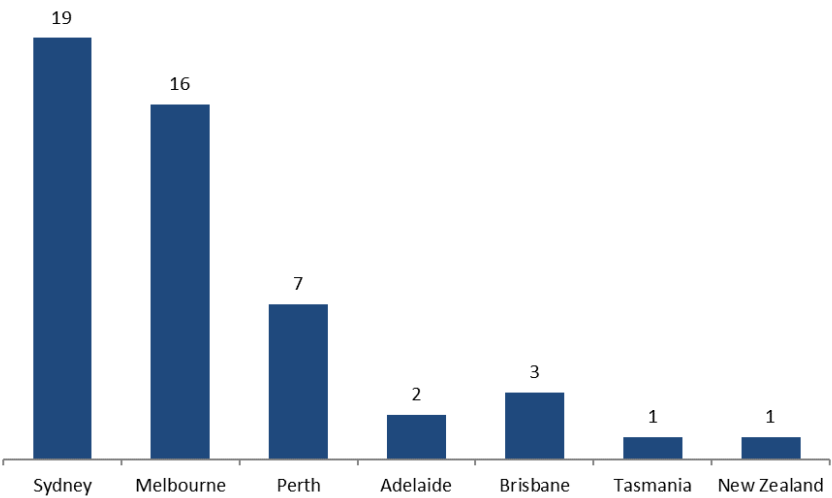
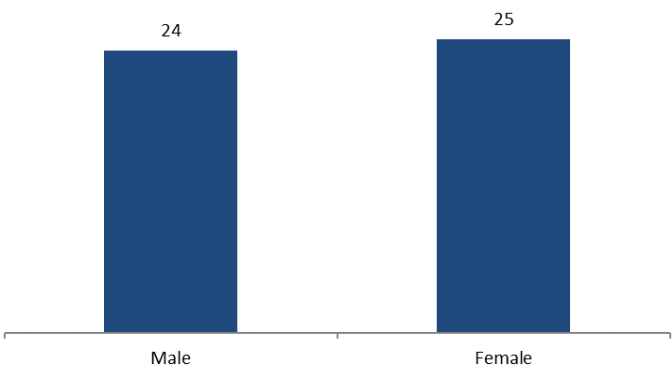


Chart 4: Panel members by Gender at 30 June 2021



Members' biographies (as at 30 June 2021)

Alex Cartel (President) — Managing Director and Head of Corporate Finance & Advisory, Citi Australia & New Zealand. Member since 2015.

Yasmin Allen (Acting President) — Chairman of Advance Global, Faethm.ai and Digital Skills Organisation, non-executive director of Cochlear Limited, Santos Limited, ASX Limited, National Portrait Gallery and The George Institute for Global Health. Member since 2017.

Amy Alston — General Counsel and Company Secretary at Ridley Corporation Limited. Member since 2019.

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

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

Michael Borsky QC — Barrister, National Competition Councillor and Member of the Business Law Section of the Law Council of Australia. Member since 2019.

Stephanie Charles — Deal Partner and Head of Capital Markets at BGH Capital. Member since 2015.

Andy Coupe — Chairman of New Zealand Takeovers Panel and Television New Zealand, non-executive director of Briscoe Group, Kingfish, Barramundi and Marlin Global. Member since 2016.

Bruce Cowley — Trustee of QSuperBoard, Chair of Cerebral Palsy League and the Griffith University Business School Advisory Board, director of Sunshine Coast Hospital and Health Board and Klarna Australia. Adjunct Professor University of Queensland, member of the Corporations Committee of the Law Council of Australia and Fellow of the AICD. Member since 2016.

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

Paula Dwyer — Chairman of Allianz Australia Limited, non-executive director of ANZ Banking Group, Lion Pty Limited and Lion Global Beverages Pty Limited. Member 2008-2014 and re-appointed 2017.

Teresa Dyson — Non-executive director of Seven West Media, Genex Power, Energy Super, Energy Queensland, Power & Water Corporation, Shine Justice, member of FIRB. Member since 2018.

Karen Evans-Cullen — Partner at PricewaterhouseCoopers, member of the Corporations Committee of the Law Council of Australia. Member since 2014.

Marissa Freund — Managing Director and Head of Mergers & Acquisitions (Australia & New Zealand) at Goldman Sachs. Member since 2019.

Elizabeth Hallett — Non-executive director of Lynch Group Holdings Limited, Sunsuper, Australian Registry Investments Pty Ltd, NPP Australia Limited, and the Civil Aviation Safety Authority, and member of the advisory board of The John Sample Group. Member since 2013.

Tracey Horton AO (Acting President) — Non-executive director of The GPT Group, Nearmap Limited and non-executive national director of the AICD. Member since 2015.

Richard Hunt (Acting President) — Executive Chairman of E&P Capital. Member since 2012.

Shirley In't Veld — Non-executive director of APA Group, Northern Star Resources, NBN Co and Alumina Ltd. Member since 2016.

Michelle Jablko (Acting President) — Chief Financial Officer of Transurban Limited. Member since 2014.

Ian Jackman SC — Barrister. Member since 2014.

Anthony Jarvis — Director, Opportuna Legal. Member since 2020.

Christian Johnston — Chairman, Goldman Sachs, Australia & New Zealand. Member since 2014.

Kristen Jung — Global Head of Legal and Executive Director at Macquarie Capital and Sydney University Master of Laws Lecturer in Takeovers and Reconstructions. Member since 2020.

Marina Kelman — Executive Director, Goldman Sachs. Member since 2021.

Bill Koeck — Chairman of Coronado Global Resources Inc and non-executive director of Poulos Goup and Nick Scali Limited. Member since 2015.

Jeremy Leibler — Partner at Arnold Bloch Leibler, non-executive director of Thorney Technologies Limited, member of the Business Law Section of the Law Council of Australia and AICD. Member since 2015.

Michael Lishman — Of Counsel, Jones Day, member of the advisory board of Curtin University Law School. Previously partner of Mallesons Stephen Jaques, Cochrane

Lishman and Clifford Chance and a Managing Director at Gresham Advisory Partners. Member since 2020.

Sandy Mak — Partner, Head of Corporate/M&A at Corrs Chambers Westgarth. Member since 2021.

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

Rebecca Maslen-Stannage — Global Chair and Senior Partner at Herbert Smith Freehills, executive member of the Business Law Section of the Law Council of Australia. Member since 2017.

Denise McComish — Non-executive director of Webjet Limited, Macmahon Holdings Limited, Beyond Blue, Chief Executive Women and Chair, Advisory Board, School of Business and Law at Edith Cowan University. Member since 2013.

John McGlue — Managing Director of Castle Gates Australia and Chairman of Alterra Limited. Member since 2019.

Robert McKenzie — Co-managing Director at McKenzie Moncrieff, Chairman of Source Certain and Isopogen, non-executive director of Keystart Loans Limited and member of the International Insolvency Institute. Member since 2014.

Bruce McLennan — Managing Director and Co-Head of Advisory at Gresham Advisory Partners. Member since 2016.

Rory Moriarty — Partner at Clayton Utz. Member since 2018.

Kerry Morrow — Director at Laity Morrow and non-executive director of Tennis SA. Member since 2019.

Diana Nicholson (Acting President) — Partner at King & Wood Mallesons. Member since 2017.

Tony Osmond — Head of Banking, Capital Markets and Advisory, Citi Australia & New Zealand, non-executive director of The Australian Ballet. Member 2011-2014 and re-appointed 2015.

John O'Sullivan — Non-executive director of AMP and Roads Retained Interest Pty Limited and the WestConnex entities, and Chairman of Serendipity Capital Holdings Limited. Member 2005-2011 and re-appointed 2018.

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

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

Karen Phin — Non-executive director of Magellan Financial Group, Omni Bridgeway and ARB Corporation. Member since 2015.

Sarah Rennie — Managing Director, Head of Equity Capital Markets at Jarden Australia. Member since 2015.

John Sheahan QC — Barrister. Member 2014-2020 and re-appointed 2021.

James Stewart — Partner at DLA Piper, non-executive director of The Splendid Gin. Member since 2020.

Philippa Stone — Partner at Herbert Smith Freehills, non-executive director of the Centre for Independent Studies. Member since 2019.

Nicola Wakefield Evans — Non-executive director of Macquarie Group, Lendlease Corporation, Clean Energy Finance Corporation, MetLife Insurance Limited, MetLife General Insurance Limited, Australian Institute of Company Directors and GO (Goodes O'Loughlin) Foundation. Member since 2015.

Sharon Warburton — Non-executive director of Wesfarmers, Gold Road Resources, Blackmores and Worley. Director of Perth Children's Hospital Foundation and an Independent Director of the Karkla Nyiyaparli Aboriginal Corporation RNTBC. Member since 2015.

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

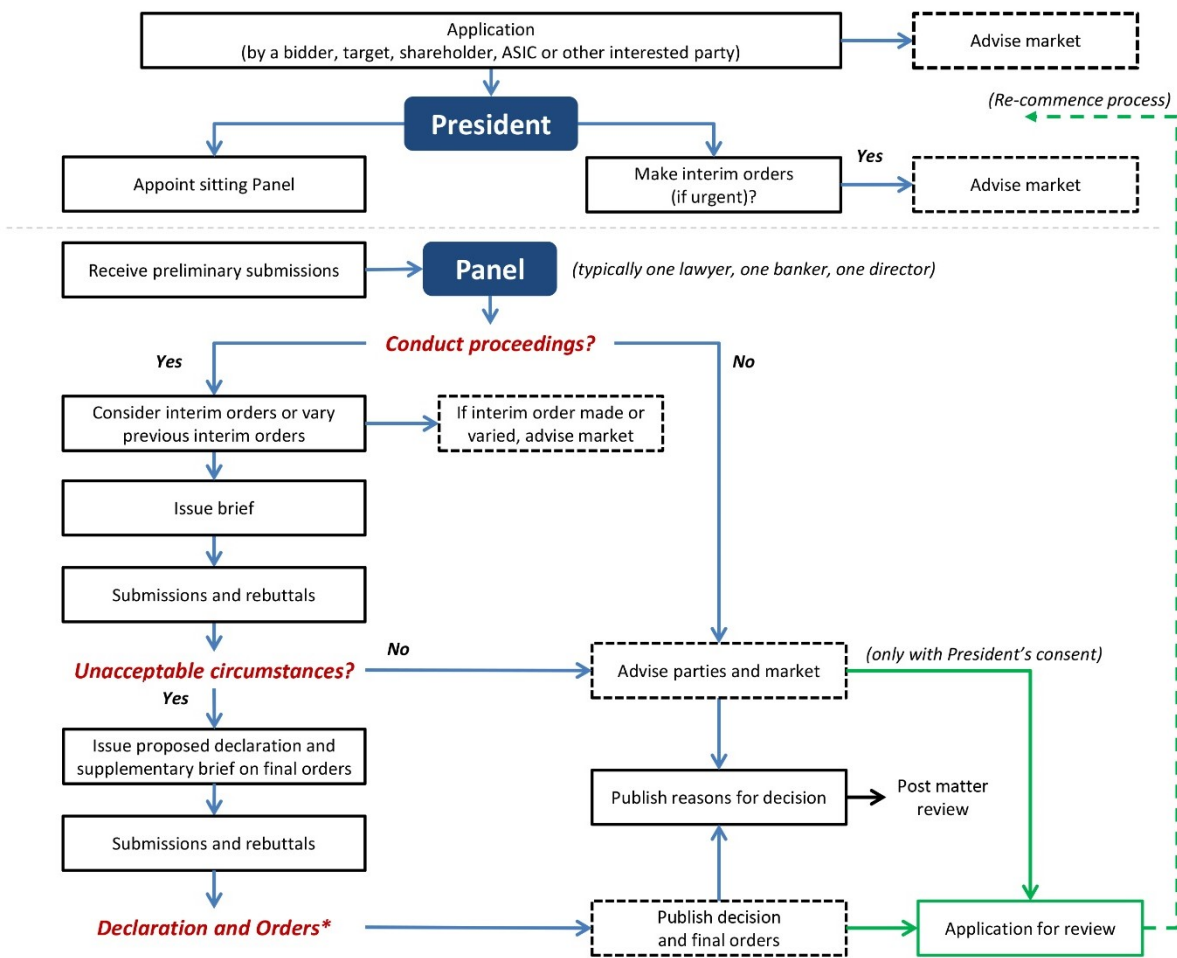
PART 3 — THE WORK OF THE PANEL

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 the 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



* Alternatively, accept undertaking in lieu of declaration or orders or make no orders

The Panel usually receives material voluntarily from parties in response to a Panel brief. The Panel has the power to convene a conference¹⁷ and summon witnesses to give evidence and provide documents.¹⁸ These powers were not used during the 2020-2021 financial year.

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 2020-21

| Form of resolution | Number of matters | Comments |
|---|-------------------|--|
| Declaration and Orders | 5 | Circumstances are unacceptable and may be remedied with orders |
| Declaration and Undertakings¹⁹ | 0 | Potential substitute for orders |
| Conduct proceedings, no declaration, undertaking/action by party | 3 | Panel decides to conduct proceedings, but does not find any unacceptable circumstances after a party provides an undertaking or takes an action that resolves any potential unacceptable circumstances |
| Conduct proceedings, no declaration | 4 | Panel decides to conduct proceedings, but does not find any unacceptable circumstances |
| Decline to conduct proceedings, undertaking/action by party | 1 | 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 | 14 | Panel does not conduct proceedings, for example, because it did not think the circumstances complained of would be unacceptable, or there was not a sufficient basis for inquiring further |
| Proceedings withdrawn | 2 | Applicant withdraws (Panel consent is required) |
| Total | 29 | |

17 Regulations 35 to 41 of the ASIC Regulations.

18 Section 192 of the ASIC Act.

19 Section 201A of the ASIC Act.

Issues in applications

Table 4: Issues in 2020-21

| Issue | Number of matters | Name of case |
|--------------------------------------|-------------------|--|
| Rights issues | 4.5 | Alto Metals Limited (in part), Adavale Resources Limited, CFOAM Limited, Beston Global Food Company Limited, Sementis Limited |
| Truth in takeovers | 4 | Cardinal Resources Limited 01, 03, 04 and 06R |
| Bidder's statement disclosure | 3 | Keybridge Capital Limited 13, Webcentral Group Limited (in part), Webcentral Group Limited 02R (in part), Webcentral Group Limited 03 (in part), Webcentral Group Limited 04R (in part) |
| Association/ breach of s606 | 2.5 | Keybridge Capital Limited 14, Cardinal Resources Limited 02 (in part), Cardinal Resources Limited 05 |
| Target's statement disclosure | 2 | Webcentral Group Limited (in part), Webcentral Group Limited 02R (in part), Webcentral Group Limited 03 (in part), Webcentral Group Limited 04R (in part) |
| Administration | 2 | Virgin Australia Holdings Limited (Administrators Appointed) 02, Moreton Resources Limited (Administrators Appointed) 02 |
| Bidder conduct | 2 | Cardinal Resources Limited 07, The Agency Group Australia Limited 01 |
| Dividend reinvestment plan | 2 | Thorn Group Limited 01 and 02 |
| Item 7 disclosure | 2 | The Agency Group Australia Limited 02, The Agency Group Australia Limited 03R |
| Review of ASIC relief | 2 | Keybridge Capital Limited 11 and 12 |
| Bid conditions | 1 | E&P Financial Group Limited |
| Other | 2 | Alto Metals Limited (in part, Frustrating action), Cardinal Resources Limited 02 (in part, Shareholder intention statements), Excelsior Capital Limited (Trading in an uninformed market and substantial holding disclosure) |
| 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) in the view of the Panel executive.

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 to 30 June 2019.

Guidance

The Panel publishes Guidance Notes to assist the market in relation to takeovers matters and to assist Panel members make consistent decisions.

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 one consultation paper.

Table 5: Consultation papers issued in 2020-21

| Consultation Paper | Issue Date | Close Date | Number of submissions |
|------------------------------|------------|------------|-----------------------|
| Remaking of Procedural Rules | 02/10/2020 | 23/10/2020 | 3 |

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.

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 (five post matter reviews were held in 2020-21).

Industry liaison

The Panel executive 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 executive holds regular liaison meetings with ASIC staff to discuss policy developments and recent issues.

The Panel executive contributes to the 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.²⁰

There were no referrals made during the current period.

²⁰ Regulation 18 of the ASIC Regulations.

Website

The Panel uses its website (www.takeovers.gov.au) to maintain a market presence, inform, invite contact, publish documents and undertake policy consultation. In the current period, 80,536 people visited the Panel's website (up by 23% on last year) and there were 261,421 page views (down by 4.6% 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 governance

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 Treasury's Fraud and Corruption Control Plan 2019-2021.

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: *'Supporting and implementing informed decisions on policies for the good of the Australian people, including for achieving strong, sustainable economic growth, through the provision of advice to Treasury Ministers and the efficient administration of Treasury's functions.'*

The Panel's outputs contribute to Treasury's Program 1.1: Department of the Treasury.

Table 6: Summary resource statement

| | Actual budget allocation 2020-21 (\$'000) | Expenses 2020-21 (\$'000) | Balance remaining 2020-21 (\$'000) |
|--|---|---------------------------------|---|
| Revenue | | | |
| Revenue (Department of the Treasury budget allocation and section 74 relevant agency receipts) | 1,920 | 1,897 | 23 |
| Total resourcing | 1,920 | 1,897 | 23 |
| | | 2020-21 | 2021-22 |
| Average staffing levels (number) | | 6.5 | 8.0 |

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 (including seeking public consultation from market participants); and
- procedural rules for fair, timely and cost-effective resolution of disputes.

Financial information

Schedule of Revenues and Expenditures

Table 7: Income statement (Showing Net Cost of Services) (unaudited) for the year ended 30 June 2021

| | \$ |
|---|--------------------|
| NET COST OF SERVICES | |
| Employee expenses | |
| Salaries | 1,043,929 |
| Employer superannuation | 145,278 |
| Members' annual retainer and sitting fees | 487,142 |
| Total employee expenses | 1,676,349 |
| Operating expenses | |
| Property operating expenses | 2,199 |
| Legal | 21,461 |
| Travel | 5,740 |
| Consultants | 35,409 |
| General Office | 15,528 |
| Contractors | 109,371 |
| Publications and subscriptions | 18,801 |
| Conferences and training | 9,418 |
| Grants | 3,500 |
| Total operating expenses | 221,427 |
| Total expenses incurred to 30 June 2021 | 1,897,776 |
| Own source income | - |
| Net cost of services | (1,897,776) |
| Revenue (Department of the Treasury budget allocation) | 1,920,375 |
| Surplus/(Deficit) | 22,599 |

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. Expenses only relate to the direct costs of the Panel.

Surplus

The surplus represents the Panel's underspend against its budget allocation for the 2020-21 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.²¹ All Panel decisions are subject to judicial review.²² 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 2020-21.

The Panel attends hearings of the Senate Standing Committee on Economics Estimates and the Parliamentary Joint Committee on Corporations and Financial Services as required.²³

Ombudsman

The Panel was not aware of any reports by the Commonwealth Ombudsman in 2020-21 in relation to the Panel.

Management of human resources

Staffing

At 30 June 2021, the executive consisted of five permanent staff and one legal secondees.²⁴ Permanent staff are employed under the *Public Service Act 1999* (Cth).

21 Section 657EA. A decision that is not a decision to make a declaration, an interim order or a final order can only be reviewed under this section with the President's consent.

22 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.

23 See Parliamentary Joint Committee on Corporations and Financial Services, Report on the 2019-2020 annual reports of bodies established under the ASIC Act. Pages 3 to 6 of the report discuss the Takeovers Panel. The Panel provided answers to questions on notice to the Committee.

24 The Panel also engaged two senior lawyers as contractors for a period.

Table 8: Operative staff by classification and gender²⁵

| Classification | Full time | | Total |
|----------------|-----------|----------|----------|
| | Male | Female | |
| APS4 | | 1 | 1 |
| APS6 | | 1 | 1 |
| EL2 | | 1 | 1 |
| SEB1 | 1 | | 1 |
| SEB2 | | 1 | 1 |
| Total | 1 | 4 | 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 or ASIC. 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.

Executive remuneration

As Panel executive staff are Treasury employees, information about executive remuneration can be found 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 2018-21 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).

²⁵ No employees identified themselves as Indigenous at 30 June 2021.

Workplace diversity

The Panel values diversity and benefits from Treasury's Inclusion and Diversity Strategy 2019-21. Details and statistics on workplace diversity are included in Treasury's Annual Report (Part 3: Management and Accountability, Management of Human Resources).

Industrial democracy

Panel staff utilise Treasury's Performance Development System and Integrated Leadership System. Treasury's Workplace Relations Committee deals with industrial democracy issues.

Work Health and Safety

Panel staff have the benefit of Treasury's Work Health and Safety Management System. 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 utilises Treasury's Employee Assistance Program, an external and confidential counselling service for Treasury staff and their families.

Commonwealth disability strategy

Disability reporting mechanism

The National Disability Strategy is Australia's overarching framework for disability reform. It acts to ensure the principles underpinning the United Nations Convention on the Rights of Persons with Disabilities are incorporated into Australia's policies and programs that affect people with disability, their families and carers.

All levels of government will continue to be held accountable for the implementation of the strategy through biennial progress reporting to the Council of Australian Governments. Progress reports can be found at dss.gov.au.

Disability reporting is included the Australian Public Service Commission's State of the Service reports and the APS Statistical Bulletin. These reports are available at apsc.gov.au.

Purchasing

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 Team.

During the current period the Panel entered into seven contracts that each exceeded \$10,000. These related to three secondment agreements, two contractors, one market research consultant and one legal representation agreement.

Consultants

During 2020-21, the Panel contracted a market research firm to deliver the Panel's stakeholder survey.

Small business

The Panel supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance's website — www.finance.gov.au.

Discretionary grants

During 2020-21, the Panel made a discretionary grant to the Australasian Legal Information Institute (AustLII) of \$3,500 (reported by Treasury on GrantConnect — www.grants.gov.au).

Advertising and market research

The Panel engaged a market research firm to deliver the Panel's stakeholder survey in 2020-21.

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 2020-21.

APPENDIX 1 — PANEL MEMBERS

Table 9: Members of the Panel at 30 June 2021

| | |
|----------------------------|----------------------------|
| Mr Alex Cartel (President) | Mr Jeremy Leibler |
| Ms Yasmin Allen | Mr Michael Lishman |
| Ms Amy Alston | Ms Sandy Mak |
| Mr Kelvin Barry | Mr Ron Malek |
| Mr Robin Bishop | Ms Rebecca Maslen-Stannage |
| Mr Michael Borsky QC | Ms Denise McComish |
| Ms Stephanie Charles | Mr John McGlue |
| Mr Andy Coupe | Mr Robert McKenzie |
| Mr Bruce Cowley | Mr Bruce McLennan |
| Ms Chelsey Drake | Mr Rory Moriarty |
| Ms Paula Dwyer | Ms Kerry Morrow |
| Ms Teresa Dyson | Ms Diana Nicholson |
| Ms Karen Evans-Cullen | Mr Tony Osmond |
| Ms Marissa Freund | Mr John O'Sullivan |
| Ms Elizabeth Hallett | Ms Tara Page |
| Ms Tracey Horton AO | Mr Neil Pathak |
| Mr Richard Hunt | Ms Karen Phin |
| Ms Shirley In't Veld | Ms Sarah Rennie |
| Ms Michelle Jablko | Mr John Sheahan QC |
| Mr Ian Jackman SC | Mr James Stewart |
| Mr Anthony Jarvis | Ms Philippa Stone |
| Mr Christian Johnston | Ms Nicola Wakefield Evans |
| Ms Kristen Jung | Ms Sharon Warburton |
| Ms Marina Kelman | Mr David Williamson |
| Mr Bill Koeck | |

Table 10: Members appointed to the Panel in 2020-21

| | |
|------------------|--------------------|
| Ms Marina Kelman | Mr John Sheahan QC |
| Ms Sandy Mak | |

Table 11: Members who ceased their membership of the Panel in 2020-21

| |
|-----|
| Nil |
|-----|

APPENDIX 2 — SUB-COMMITTEE MEMBERS

Table 12: Sub-committees

| Topic | Sub-committee members | |
|--------------------------|----------------------------|-----------------|
| | Panel member | External member |
| GN 20 Equity Derivatives | Mr Alex Cartel (President) | Mr Rodd Levy |
| | Mr Kelvin Barry | |
| | Ms Stephanie Charles | |
| | Mr Richard Hunt | |
| | Mr Neil Pathak | |
| | Ms Sarah Rennie | |
| Procedural Rules | Mr Alex Cartel (President) | |
| | Ms Elizabeth Hallett | |
| | Ms Rebecca Maslen-Stannage | |
| | Mr John McGlue | |
| | Ms Kerry Morrow | |

APPENDIX 3 — PANEL APPLICATIONS

Table 13: Applications received by the Panel in 2020-21²⁶

| Matter No. | Section | Matter name | Decision | Application Date | Decision date |
|------------|---------|-------------|---|---------------------------------------|---------------|
| 1 | 2020/15 | 657A,D,E | Virgin Australia Holdings Limited (Administrators Appointed) 02 | Declined to conduct proceedings | 03/07/2020 |
| 2 | 2020/16 | 657A,D,E | Moreton Resources Limited (Administrators Appointed) 02 | Declined to conduct proceedings | 10/07/2020 |
| 3 | 2020/17 | 657A,D,E | Alto Metals Limited | Declaration and orders | 14/07/2020 |
| 4 | 2020/18 | 657A,D,E | Adavale Resources Limited | Withdrawn | 23/07/2020 |
| 5 | 2020/19 | 656A,B | Keybridge Capital Limited 11 | Conducted proceedings, no declaration | 24/07/2020 |
| 6 | 2020/20 | 656A,B | Keybridge Capital Limited 12 | Conducted proceedings, no declaration | 24/07/2020 |
| 7 | 2020/21 | 657A,D,E | Keybridge Capital Limited 13 | Conducted proceedings, no declaration | 24/07/2020 |
| 8 | 2020/22 | 657A,D,E | Keybridge Capital Limited 14 | Declined to conduct proceedings | 11/09/2020 |
| 9 | 2020/23 | 657A,D,E | Thorn Group Limited 01 | Declaration and orders | 14/10/2020 |

²⁶ Under sections 657C and 657EA. The Panel also received one application seeking the President's consent to a review of the decision in Moreton Resources Limited (Administrators Appointed) 02, one application to vary the final orders in Keybridge Capital Limited 04, 05 & 06, one application to vary the final orders in Molopo Energy Limited 03R, 04R & 05R and a request to enforce a confidentiality undertaking to the Panel in Keybridge Capital Limited 04, 05 & 06.

Table 13: Applications received by the Panel in 2020-21 (continued)

| Matter No. | Section | Matter name | Decision | Application Date | Decision date |
|------------|---------|---|--|------------------|---------------|
| 10 | 2020/24 | 657A,D,E Thorn Group Limited 02 | Declaration and orders | 21/10/2020 | 17/12/2020 |
| 11 | 2020/25 | 657A,D,E Webcentral Group Limited | Declined to conduct proceedings | 21/10/2020 | 28/10/2020 |
| 12 | 2020/26 | 657A,D,E Cardinal Resources Limited 01 | Withdrawn | 22/10/2020 | 27/10/2020 |
| 13 | 2020/27 | 657A,D,E Cardinal Resources Limited 02 | Declined to conduct proceedings | 26/10/2020 | 29/10/2020 |
| 14 | 2020/28 | 657A,D Excelsior Capital Limited | Conducted proceedings, no declaration, action by party | 29/10/2020 | 20/11/2020 |
| 15 | 2020/29 | 657A,D Cardinal Resources Limited 03 | Declined to conduct proceedings | 30/10/2020 | 16/11/2020 |
| 16 | 2020/30 | 657A,D Cardinal Resources Limited 04 | Declined to conduct proceedings | 30/10/2020 | 16/11/2020 |
| 17 | 2020/31 | 657A,D Cardinal Resources Limited 05 | Declined to conduct proceedings | 30/10/2020 | 16/11/2020 |
| 18 | 2020/32 | 657EA,D Webcentral Group Limited 02R | Declined to conduct proceedings | 30/10/2020 | 24/11/2020 |
| 19 | 2020/33 | 657A,D,E CFOAM Limited | Declined to conduct proceedings | 03/11/2020 | 06/11/2020 |
| 20 | 2020/34 | 657EA,D Cardinal Resources Limited 06R | Declined to conduct proceedings | 18/11/2020 | 09/12/2020 |
| 21 | 2020/35 | 657EA Cardinal Resources Limited 07 | Declined to conduct proceedings | 20/11/2020 | 02/12/2020 |
| 22 | 2020/36 | 657A,D The Agency Group Australia Limited 01 | Declaration and orders | 08/12/2020 | 29/01/2021 |
| 23 | 2020/37 | 657A,D,E The Agency Group Australia Limited 02 | Declaration and orders | 16/12/2020 | 29/01/2021 |
| 24 | 2020/38 | 657A,D,E E&P Financial Group Limited | Decline to conduct proceedings, undertaking | 21/12/2020 | 19/01/2021 |

Table 13: Applications received by the Panel in 2020-21 (continued)

| Matter No. | Section | Matter name | Decision | Application Date | Decision date |
|------------|---------|---|---|------------------|---------------|
| 25 | 2021/01 | 657A,D,E Beston Global Food Company Limited | Conducted proceedings, no declaration, undertakings | 04/01/2021 | 01/02/2021 |
| 26 | 2021/02 | 657A,D Webcentral Group Limited 03 | Conducted proceedings, no declaration | 10/01/2021 | 04/02/2021 |
| 27 | 2021/03 | 657EA,A,D,E The Agency Group Australia Limited 03R | Declined to conduct proceedings | 02/02/2021 | 22/02/2021 |
| 28 | 2021/04 | 657EA,D Webcentral Group Limited 04R | Declined to conduct proceedings | 07/02/2021 | 26/02/2021 |
| 29 | 2021/05 | 657A,D,E Sementis Limited | Conducted proceedings, no declaration, undertakings | 25/05/2021 | 23/06/2021 |

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 |
| EL | Executive Level |
| FIRB | Foreign Investment Review Board |
| M&A | Mergers and Acquisitions |
| MOU | Memorandum of Understanding |
| SEB | Senior Executive Band |
| SES | Senior Executive Service |
| Treasury | Commonwealth Department of the Treasury |

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